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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 10/07/2026

Before :

Mr Justice Sheldon

- -

Between :

The King (on the application of) **(1) AYA** **(2) EXR** **(3) GIP** **(4) HRE** **(5) KAG**	**Claimant**
- and –	
Secretary of State for the Home Department	**Defendant**

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Sonali Naik KC, Gordon Lee, Josephine Fathers, Catherine Meredith (instructed by Duncan Lewis Solicitors) for the Claimant: AYA
Sam Grodzinski KC, Shu Shin Luh, Jennifer MacLeod, Agata Patyna (instructed by Bindmans LLP) for the Claimant: EXR
Sam Grodzinski KC, Shu Shin Luh, Jennifer MacLeod, David Sellwood (instructed by Wilson Solicitors LLP) for the Claimant: HRE
Sam Grodzinski KC, Shu Shin Luh, Jennifer MacLeod, Grace Capel (instructed by Deighton Pierce Glynn) for the Claimant: GIP
Sonali Naik KC, James Robottom, Eleanor Mitchell, Jessica Sutton (instructed by Duncan Lewis Solicitors) for the Claimant: KAG
Kate Grange KC, Cathryn McGahey KC, Edward Brown KC, Mark Vinall, Jack Anderson, Naomi Hart (instructed by Government Legal Department) for the Defendant

Hearing dates: 28th, 29th, 30th April, 1st May 2026

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Approved Judgment

This judgment was handed down remotely at 10.30am on 10/07/26 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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MR JUSTICE SHELDON

Judgment Approved by the court for handing down.

Mr Justice Sheldon:

1. At a "rolled-up hearing" on 28 April to 1 May 2026, I considered a number of judicial review challenges brought by individuals who had been at risk of removal, or had been removed, to France under the "Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the French Republic on the Prevention of Dangerous Journeys" ("the Treaty"). At the hearing, which had been directed by Chamberlain J at a case management hearing on 11 February 2026, I considered a number of common issues relating to removals under the Treaty. I also considered the individual challenges brought by the Claimants on their particular facts.

2. I had previously considered some of the common issues at an interim relief hearing on 3-4 March 2026, giving judgment on 11 March 2026 (see [2026] EWHC 552 (Admin) ("the Interim Relief Hearing"). Other common issues - (i) the selection of individuals for removal under the Treaty; and (ii) the treatment of individuals who claim to be under the age of 18 – are being dealt with separately.

3. At the hearing before me, the main common issue for determination was whether it was lawful for the Secretary of State to amend the *Modern Slavery: Statutory Guidance for England and Wales (under s49 of the Modern Slavery Act 2015)* ("the Guidance") by removing the right to request reconsideration of a negative "reasonable grounds" or "conclusive grounds" decision by, or on behalf of, a person who has received such a decision and where the Secretary of State intends to remove that person to a country that is a signatory state to the Council of Europe Convention on Action Against Trafficking in Human Beings ("ECAT") and the European Convention on Human Rights ("the Convention"): see paragraph 14.216 of the Guidance.

4. In particular, I was asked to consider whether:

    (i) paragraph 14.216 of the Guidance had the effect alleged by the Claimants of rendering the United Kingdom's victim identification process deficient and incompatible with Article 10 of ECAT and/or Article 4 of the Convention and/or whether it was a breach of section 49 of the Modern Slavery Act 2015 ("the 2015 Act")?

    (ii) paragraph 14.216 of the Guidance was unlawful on common law grounds as constituting a fetter of the Secretary of State's discretion?

    (iii) the decision to introduce paragraph 14.216 of the Guidance was taken in breach of the *Tameside* duty of inquiry? If so, does section 31(2A) of the Senior Courts Act 1981 apply?

    (iv) the decision involved an exercise of the power to amend the Guidance conferred by section 49(2) of the 2015 Act which was contrary to the *Padfield* principle?

    (v) the amended policy was contrary to the principles in R (A) v Secretary of State for the Home Department [2021] 1 WLR 3931?

5. A number of other common issues relate to the circumstances of the Claimants and will be addressed when I deal with their individual cases. The Claimants have been anonymised and are known by the initials AYA, EXR, HRE, GIP, and KAG.

6. In this judgment, I shall deal first with the common issues that relate to the amendment to the Guidance. I shall then deal with the issues raised in the Claimants' individual cases. So as to assist in navigating this judgment, an index to the main areas is as follows:

I. The Legal Background

7. The legal framework within which the Claimants' challenges need to be considered includes the Treaty, ECAT, the Convention, the 2015 Act and the Guidance. I shall outline some of the key features of each of those instruments.

(a) The Treaty

8. The Treaty entered into force on 6 August 2025. The background to the Treaty was described by the Court of Appeal in R (CTK) v Secretary of State for the Home Department [2025] EWCA Civ 1264 at [34]:

> "The numbers of people crossing the English Channel in boats have gone up significantly this year. About 44,000 crossed between

> 5 July 2024 and 4 July 2025. Some of those trying to cross the Channel died; 78 in 2024. The Treaty's purpose is to prevent unauthorised crossings of the Channel."

9. The Court of Appeal pithily described the way the Treaty works as follows:

> "it enables the United Kingdom, if certain conditions are met, to send back a person who has illegally crossed the Channel in a boat, and, in exchange, obliges the United Kingdom to accept into the United Kingdom from France, one other person, who has made an application from France under the Immigration Rules (HC 395 as amended) and has been accepted by Her Majesty's Government for reciprocal admission into the United Kingdom. Ms Grange accepted that the Treaty binds the two relevant states in international law, but that in England and Wales it has no effect in domestic law except to the extent that its provisions have been incorporated into domestic law. That had not been done."

10. Some of the main features of the Treaty are that it applies to persons who have not made a protection claim or have withdrawn their protection claim, or have had their protection claim declared inadmissible in the United Kingdom; it also applies to persons who do not have an outstanding human rights claim, which includes third country nationals whose human rights claim have been certified as "clearly unfounded". The Treaty provides that an application for readmission to France will contain "a statement indicating that the person to be transferred may need medical assistance or care". After transfer to France, the Treaty provides that all reasonable steps should be taken to arrange the transfer of the individual back to the United Kingdom if a court or tribunal finds that the original transfer was unlawful, or a court or tribunal orders that the individual is transferred back. Where an individual has been transferred to France and they have ongoing legal proceedings, France confirms in the Treaty that it has no objection to the giving or taking of evidence from within its jurisdiction for the purposes of those proceedings.

11. The arrangements for removing individuals to France under the Treaty are known internally within the Home Office as Operation Hillmore.

(b) The European Convention against Trafficking

12. ECAT is a Convention agreed to by the Council of Europe. It came into force in respect of the United Kingdom on 1 April 2009. The preamble to ECAT observes that "trafficking in human beings constitutes a violation of human rights and an offence to the dignity and the integrity of the human being". The purposes of ECAT are described at Article 1 as:

a. to prevent and combat trafficking in human beings, while guaranteeing gender equality;

b. to protect the human rights of the victims of trafficking, design a comprehensive framework for the protection and assistance of victims and witnesses, while guaranteeing gender equality, as well as to ensure effective investigation and prosecution;

c. to promote international cooperation on action against trafficking in human beings.

13. The definition of "Trafficking in human beings" for the purposes of ECAT is set out at Article 4(a):

> "the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs"

The constituent elements are often described as "action", "means" and "purpose".

14. "Victim" is defined (at Article 4(e)) as "any natural person who is subject to trafficking in human beings as defined in this article". Article 10 of ECAT is headed "Identification of the victims", and provides that:

> "1. Each Party shall provide its competent authorities with persons who are trained and qualified in preventing and combating trafficking in human beings, in identifying and helping victims, including children, and shall ensure that the different authorities collaborate with each other as well as with relevant support organisations, so that victims can be identified in a procedure duly taking into account the special situation of women and child victims and, in appropriate cases, issued with residence permits under the conditions provided for in Article 14 of the present Convention.
>
> 2. Each Party shall adopt such legislative or other measures as may be necessary to identify victims as appropriate in collaboration with other Parties and relevant support organisations. Each Party shall ensure that, if the competent authorities have reasonable grounds to believe that a person has been victim of trafficking in human beings, that person shall not be removed from its territory until the identification process as victim of an offence provided for in Article 18 of this Convention has been completed by the competent authorities and shall likewise ensure that that person receives the assistance provided for in Article 12, paragraphs 1 and 2."

15. Article 12 of ECAT provides under the heading "Assistance to victims":

> "Each Party shall adopt such legislative or other measures as may be necessary to assist victims in their physical, psychological and social recovery. Such assistance shall include at least:

> a) standards of living capable of ensuring their subsistence, through such measures as appropriate and secure accommodation, psychological and material assistance;
>
> b) access to emergency medical treatment;
>
> c) translation and interpretation services, when appropriate;
>
> d) counselling and information, in particular as regards their legal rights and the services available to them, in a language that they can understand;
>
> e) assistance to enable their rights and interests to be presented and considered at appropriate stages of criminal proceedings against offenders;
>
> f) access to education for children."

16. Article 13 of ECAT provides for a "Recovery and reflection period":

> "1. Each Party shall provide in its internal law a recovery and reflection period of at least 30 days, when there are reasonable grounds to believe that the person concerned is a victim. Such a period shall be sufficient for the person concerned to recover and escape the influence of traffickers and/or to take an informed decision on cooperating with the competent authorities. During this period it shall not be possible to enforce any expulsion order against him or her. This provision is without prejudice to the activities carries out by the competent authorities in all phases of the relevant national proceedings, and in particular when investigating and prosecuting the offences concerned. During this period, the Parties shall authorise the persons concerned to stay in their territory
>
> 2. During this period, the persons referred to in paragraph 1 of this Article shall be entitled to the measures contained in Article 12, paragraphs 1 and 2".

17. Article 31 of ECAT is headed "Jurisdiction". It provides that:

> "Each Party shall adopt such legislative and other measures as may be necessary to establish jurisdiction over any offence established in accordance with this Convention, when the offence is committed:
>
> a. in its territory; or
>
> b. on board a ship flying the flag of that Party; or
>
> c. on board an aircraft registered under the laws of that Party; or
>
> d. by one of its nationals or by a stateless person who has his or her habitual residence in its territory, if the offence is punishable under

> criminal law where it was committed or if the offence is committed outside the territorial jurisdiction of any State;
>
> e. against one of its nationals."

(Paragraph 2 permits signatories to reserve the right not to apply the jurisdiction rules laid down in paragraph 1(d) and (e)).

18. Article 36 of ECAT provides for a "Group of experts on action against trafficking in human beings", referred to as "GRETA", to monitor the implementation of the convention by the parties.

(c) The European Convention on Human Rights

19. Article 4 of the European Convention on Human Rights ("the Convention") is concerned with the "Prohibition of slavery and forced labour". It provides that:

> "1 No one shall be held in slavery or servitude.
>
> 2 No one shall be required to perform forced or compulsory labour."

20. In Rantsev v Cyprus and Russia (2010) 51 E.H.R.R. 1, the Strasbourg Court held at [282] that trafficking within the meaning of article 4(a) of ECAT falls within the scope of Article 4 of the Convention. Whilst the Strasbourg Court has said that it will be "guided" by ECAT in interpreting Article 4 (see VCL at [150]), there is no automatic read across with ECAT: see R (TDT (Vietnam)) v Secretary of State for the Home Department [2018] 1 WLR 4922 at [30]-[31]; and R (A and B) v Criminal Injuries Compensation Authority [2021] 1 WLR 3746 at [33].

21. Article 4 of the Convention has been found to impose positive obligations on Contracting States. There is:

> (1) a general duty to implement measures to combat trafficking and to protect victims - the "systems duty";
>
> (2) a duty, in certain circumstances, to take operational measures to protect individual victims, or potential victims, of trafficking - the "protection duty" or the "operational duty"; and
>
> (3) a duty to investigate situations of potential trafficking within a member state's own territory– the "investigation duty" or "the procedural duty".
>
> See TDT at [17], referring to Rantsev and Chowdury v Greece (Application no. 21884/15).

22. In VCL v United Kingdom (2021) 73 E.H.R.R. 9, the Strasbourg Court explained at [159] that the duty to take operational measures had two principal aims: "to protect the victim of trafficking from further harm; and to facilitate his or her recovery". The latter aim was described in Begum v Secretary of State for the Home Department [2024] EWCA Civ 152 at [76] as "the recovery duty", which included "an obligation to assist victims in their physical, psychological and social recovery, and to provide support and treatment for the consequences of past ill-treatment": see at [79].

23. In Rantsev, it was stated at [287] that the duty to take operational measures must be interpreted in a way which "does not impose an impossible or disproportionate burden on authorities".

(d) The Modern Slavery Act 2015 and the Nationality and Borders Act 2022

24. The 2015 Act is described as "An Act to make provision about slavery, servitude and forced or compulsory labour and about human trafficking, including provision for the protection of victims . . ." The 2015 Act was amended by the Nationality and Borders Act 2022 ("the 2022 Act").

25. Part V of the 2015 Act is concerned with the "Protection of victims". Section 49 of the 2015 Act provides, under the heading "Guidance about identifying and supporting victims" that:

> "(1) The Secretary of State must issue guidance to such public authorities and other persons as the Secretary of State considers appropriate about—
>
> (a) the sorts of things which indicate that a person may be a victim of slavery or human trafficking;
>
> (b) arrangements for providing assistance and support to persons who there are reasonable grounds to believe are victims of slavery or human trafficking or who are such victims;
>
> (c) arrangements for determining whether there are reasonable grounds to believe that a person is a victim of slavery or human trafficking ;
>
> (d) arrangements for determining whether a person is a victim of slavery or human trafficking.
>
> . . .
>
> (2) The Secretary of State may, from time to time, revise the guidance issued under subsection (1)."

26. Section 50A of the 2015 Act provides that:

> "(1) The Secretary of State must secure that any necessary assistance and support is available to an identified potential victim (within the meaning given by section 61 of the Nationality and Borders Act 2022 (the "2022 Act")) during the recovery period.
>
> (2) For the purposes of this section, assistance and support is "necessary" if the Secretary of State considers that it is necessary for the purpose of assisting the person receiving it in their recovery from any physical, psychological or social harm arising from the conduct which resulted in the positive reasonable grounds decision in question.

> . . .
>
> In this section, a reference to assistance and support is to assistance and support provided in accordance with— (a) arrangements referred to in section 49(1)(b), or (b) regulations made under section 50."

27. The reference to section 61 of the 2022 Act is to the following provision:

> "(1) This section applies to a person (an "identified potential victim") if—
>
> (a) a decision is made by a competent authority that there are reasonable grounds to believe that the person is a victim of slavery or human trafficking (a "positive reasonable grounds decision"), and
>
> (b) that decision is not a further RG decision (as to which, see section 62).
>
> (2) Subject to section 63(2), the identified potential victim may not be removed from, or required to leave, the United Kingdom during the recovery period.
>
> (3) The "recovery period" , in relation to an identified potential victim, is the period—
>
> (a) beginning with the day on which the positive reasonable grounds decision is made, and
>
> (b) ending with whichever of the following is the later".
>
> (i) the day on which the conclusive grounds decision is made in relation to the identified potential victim;
>
> (ii) the end of the period of 30 days beginning with the day mentioned in paragraph (a)."

28. Section 65 of the 2022 Act obliges the Secretary of State to provide limited leave to remain for victims of trafficking who have received a positive conclusive grounds decision ("VTS leave"), save where (among other things) their need for assistance can be met in a country to which they can be removed pursuant to an agreement between that country and the United Kingdom. Thus, section 65 provides that:

> "This section applies if a positive conclusive grounds decision is made in respect of a person—
>
> (a) who is not a British citizen, and
>
> (b) who does not have leave to remain in the United Kingdom.

> (2) The Secretary of State must grant the person limited leave to remain in the United Kingdom if the Secretary of State considers it is necessary for the purpose of—
>
> (a) assisting the person in their recovery from any physical or psychological harm arising from the relevant exploitation,
>
> (b) enabling the person to seek compensation in respect of the relevant exploitation, or
>
> (c) enabling the person to co-operate with a public authority in connection with an investigation or criminal proceedings in respect of the relevant exploitation.
>
> (2) Subsection (2) is subject to section 63(2).
>
> …
>
> (4) Leave is not necessary for the purpose mentioned in—
>
> (a) subsection (2)(a) if the Secretary of State considers that the person's need for assistance is capable of being met in a country or territory within paragraph (a) or (b) of subsection (5) (or both);
>
> (b) subsection (2)(b) if the Secretary of State considers that—
>
> (i) the person is capable of seeking compensation from outside the United Kingdom, and
>
> (ii) it would be reasonable for the person to do so in the circumstances.
>
> (5) A country or territory is within this subsection if—
>
> (a) it is a country of which the person is a national or citizen;
>
> (b) it is one to which the person may be removed in accordance with an agreement between that country or territory and the United Kingdom (which may be, but does not need to be, an agreement contemplated by Article 40(2) of the Trafficking Convention).
>
> . . .
>
> (10) In this section— "positive conclusive grounds decision" means a decision made by a competent authority that a person is a victim of slavery or human trafficking;
>
> … "

29. The Slavery and Human Trafficking (Definition of Victim) Regulations 2022 (“the 2022 Regulations”) provide definitions of terms “victim of slavery”, “victim of human trafficking”, for the purposes of Part 5 of the 2022 Act (which amends the 2015 Act).

(e) The Modern Slavery Guidance

30. The Guidance states that it is "aimed at competent authority staff in any part of the UK who make decisions on whether or not an individual is a potential victim/victim of modern slavery for the purpose of the National Referral Mechanism ("NRM") – wherever in the UK a potential victim is identified." The NRM is the United Kingdom's framework for identifying and supporting victims of modern slavery. It is one means of ensuring that adult victims receive the necessary support and assistance in the period immediately after their identification as a potential victim.

31. When a potential victim of trafficking is referred into the NRM, the Guidance explains that a "Reasonable Grounds decision" is one where there are reasonable grounds to believe that a person is a victim of trafficking or slavery, or is not a victim of any form of modern slavery. The threshold is an objective one. This decision should normally be made within 5 working days of the referral.

32. Following a positive Reasonable Grounds decision, a victim will receive a Recovery Period of at least 30 days. The Guidance states that the Conclusive Grounds decision should generally be made as soon as possible: the test at the Conclusive Grounds stage is whether, on the balance of probabilities, there are sufficient grounds to decide that the individual being considered is a victim of human trafficking or slavery, servitude, and forced or compulsory labour.

33. At paragraph 7.14 of the Guidance it is stated that "In some situations, someone may request a reconsideration of a Reasonable Grounds or Conclusive Grounds decision where there is additional evidence that may impact the decision or they believe the decision is not in line with published guidance." Paragraph 7.15 refers to consideration for a grant of leave for victims of human trafficking or slavery who do not have the right to remain in the United Kingdom.

34. The approach to "Reconsideration of negative Reasonable Grounds or Conclusive Grounds decision" is set out at paragraphs 14.217-14.235.

35. Paragraph 14.217 provides that:

> "An individual, or someone acting on their behalf, may request reconsideration of a negative Reasonable Grounds or Conclusive Grounds decision by the relevant competent authority. A reconsideration request must be made within 30 calendar days of the negative Reasonable Grounds or Conclusive Grounds decision on the following grounds:
>
> • Where additional evidence can be provided which, taken with all the available evidence already considered, could demonstrate that the individual is a victim of modern slavery.
>
> • There are specific concerns that a decision made is not in line with this guidance."

36. Paragraph 14.218 provides that:

> "The relevant competent authority must review whether there are sufficient grounds to reconsider the negative decision, and in turn reconsider the decision where it has determined there are grounds to do so."

37. Paragraph 14.220 deals with evidence to support the reconsideration request and states that:

> "If this evidence could have been provided in advance of the negative reasonable grounds or conclusive grounds decision, there should be an explanation as to why this evidence was not provided earlier."

The Guidance provides at paragraph 14.232 that, generally, only one reconsideration request will be considered.

38. Paragraph 14.216 – which is the amended provision of the Guidance and was the focus of argument before the Court – provides that those paragraphs do not apply to individuals that the Secretary of State intends to remove to France, among other countries. Its full terms are as follows:

> "Paragraphs 14.217 to 14.235 do not apply to individuals who have received a negative RG or CG decision, and where the SSHD intends to remove that individual to a country that is a signatory to the Council of Europe Convention on Action Against Trafficking in Human Beings (ECAT) and European Convention on Human Rights (ECHR). For example, this may include individuals who have been served a notice or decision that informs an individual we are considering removing them to a country which is a signatory of ECAT and ECHR."

II. Amendment to the Guidance: the Factual Background

39. The right to request reconsideration of a trafficking decision has been a feature of the United Kingdom's framework for identifying victims since 2013. The amendment to the framework to remove the right to reconsideration took place on 17 September 2025. Although this appears to have been a direct response to a decision of this Court in R(CTK) v Secretary of State for the Home Department [2025] EWHC 2622 (Admin), the matter had clearly been under consideration within the Home Office for some time.

40. In July 2025, Daniel Hobbs, who has served in the Home Office as Director General, Migration and Borders Group since 14 August 2023 and was, up until 24 November 2025, the Senior Responsible Officer for the Treaty, prepared a submission which was not sent to Ministers. The draft submission refers to two options for updating the Guidance: removing reconsideration requests for those being removed to an ECAT or Convention signatory country, and amending the policy so that reconsideration can be sought from abroad. It was explained that:

> "The current Guidance states that if a reconsideration request is accepted and the outcome of the reconsideration is another negative decision (the negative decision is upheld), a reconsideration of the second negative decision can only be requested where there are good reasons for why the decision should be reconsidered once more.

> Negative NRM decisions are not appealable, so the reconsideration policy provides an opportunity to challenge the negative decision where there are concerns it was not made in line with guidance. It also allows for new evidence to be provided. Beyond this, any challenge to negative decisions will be through judicial review.
>
> **The purpose of the reconsideration policy is to ensure the NRM operates fairly and proportionately, balancing the need to ensure decision-making is accurate and informed by appropriate evidence and delivering administrative efficiency and maintaining the integrity of the process.**"
>
> (Emphasis added).

41. A claim for interim relief brought by an individual anonymised as *CTK* came before me in the Administrative Court on 16 September 2025. I made an order restraining the claimant's removal to France pending him having an opportunity to make representations to the NRM with respect to a negative reasonable grounds decision that had been made. In my judgment (given *ex tempore*), I said at [18] that there was "a public interest in ensuring that the process for reconsideration, which is the Secretary of State's process, should be given full effect".

42. On 17 September 2025, changes were made to the Guidance removing the provisions that concerned the right to request reconsideration for those individuals who the Secretary of State intended to remove to a country that was a signatory to ECAT and the Convention.

43. The changes were preceded by a submission to the Secretary of State which had been cleared by Mr Hobbs. The rationale for the change was to take away what was seen as a possible barrier to the removal of individuals to France under the Treaty. This was encapsulated in paragraphs 9 and 11 of the submission, and at paragraph 26 of the witness statement of Mr Hobbs dated 27 March 2026, set out at paragraph 48 below.

44. The submission of 17 September 2025, provided that:

> "5. As set out in the note shared with you (Home Secretary) on Monday 15th September (Annex A), the National Referral Mechanism (NRM) is the UK's framework for identifying and supporting victims of modern slavery and human trafficking. Duties under the NRM comply with our international obligations under ECAT and are part of the overall system through which we meet our obligations under Article 4 'prohibition of slavery and forced labour' of the European Convention on Human Rights (ECHR).
>
> 6. The Home Office existing policy on NRM reconsiderations is set out in the Modern Slavery Statutory Guidance and states that a reconsideration should be sought within 30 calendar days of a negative National Referral Mechanism (NRM) Reasonable Grounds (RG) or Conclusive Grounds (CG) decision in particular circumstances.
>
> 7. This policy seeks to reduce judicial reviews and balance decision making with individual vulnerability and trauma. If a reconsideration

request is accepted, the outcome of the reconsideration may either be a positive determination or to uphold the original decision. A reconsideration of the second negative decision can only be requested where there are good reasons for why the decision should be reconsidered once more.

8. Negative NRM decisions are not appealable, so the reconsideration policy provides an opportunity to challenge the negative decision where there are concerns it was not made in line with guidance. It also allows for new evidence to be provided. Beyond this, any challenge to negative decisions will be through judicial review.

9. If a reconsideration request is accepted, removal is deferred to allow for a new Reasonable Grounds decision to be made. While decision making is incomplete removal is, in effect, paused.

10.This paper sets out immediate options to amend the reconsideration policy in the context of progressing Thursday's flight and thus is focussed on the RG stage. We will also need to consider at pace reconsideration policy for any negative Conclusive Grounds and Temporary Permission to Stay policy and wider options for the NRM in this context on which we will provide advice in due course.

Option 1 – No Reconsideration, Judicial Review only route

11.Amend the Reconsideration policy to state that in cases where an individual has a negative Reasonable Grounds (RG) decision, and removal directions to be removed to an ECAT and ECHR signatory country, that no reconsideration requests can be made. That would leave Judicial Review as the only appeal route, which would be non-suspensive as per wider policy. The policy implications of this would be that a negative Reasonable Grounds decision would mean that the NRM process has concluded and there are no NRM barriers to removal.

12.Operationally, this option is the simplest and quickest to implement, requiring very limited training to ensure Competent Authority (CA) staff are aware to differentiate between decisions that can be reconsidered or not. We also need to work through any interactions with wider policies, such as the public order disqualification.

13. [Redacted]

Option 2 – Reconsideration can be undertaken from ECAT signatory / third country (non-suspensive JR replication)

14.Amend the Reconsideration policy to state that individuals with a negative RG decision and removal directions to be removed to an ECAT and ECHR signatory country can be removed and are able to make a reconsideration request from that country via the usual process. Under this option, the current reconsideration policy would be followed wherein the Competent Authority (CA) will decide whether to accept the reconsideration request. If accepted, the CA would make a new RG decision, which would include consideration of any new evidence provided by the individual. If the new decision was a positive RG the

individual may be returned to the UK where the recovery period would apply.

15. [Redacted]

16. Operationally, there are various logistical considerations that make this a more complex option to implement, although not insurmountable. We would need to ensure the mechanism exists for a reconsideration request to be made from another country. Where UK based legal representatives remain instructed, existing processes would continue to apply. We can also explore utilising the provision set up at the Paris Visa Application Centre (VAC) for individuals to submit a non-suspensive JR and extend this to making reconsideration requests.

17.If the grounds for granting a reconsideration are on the basis of flawed decision making, there is a strong possibility that this would require the return of individuals back to the UK to continue their NRM referral despite having been removed. Generally, individuals are only returned to the UK post-removal due to clear error or where we have been found in contempt of court. This is a significantly higher threshold than when considering a reconsideration request and this could act as an incentive to make further reconsiderations.

Wider Considerations

18. To note that changing the reconsiderations policy via either option set out above would apply to all individuals in the NRM. We will need to rapidly review the PSED depending on the chosen option and will provide further advice, noting the vulnerabilities of this cohort. In 2024, 19,125 potential victims of modern slavery were referred to the Home Office, of those 31% (5,999) were children and 23% were British Nationals.

19. There is also the consideration of proportionality in light of overall NRM referrals, given that of the 32 NRM referrals considered by the IECA to date for Operation Hillmore, only 8 (25%) have received a positive decision at the reasonable grounds stage, with the remaining 24 attracting a negative decision. Wider work is ongoing to deliver NRM Reform, including the live Call for Evidence that closes 8 October which will inform further advice to Ministers on further options.

20.Whilst we expect NRM referrals to be made for small boat arrivals, noting individuals arriving in the UK via small boat will have, by definition, a higher propensity to both enter the NRM and receive a positive RG decision. This is typically due to the experiences individuals may have encountered causing them to leave their country of origin or experienced on route, exacerbated by vulnerability factors and reliance on smuggler networks and their proximity to organised crime.

21. The current policy on NRM reconsiderations is subject to ongoing legal challenge and is being reviewed and made clearer.

…

> **Next steps**
>
> [Redacted]
>
> 25.Beyond that to deliver either option we would need to amend modern slavery statutory guidance and the decision letters, as well as ensuring decision makers are briefed to make decisions under this new policy. For Option 2 we would also need to ensure that there is a feasible operational route to deliver reconsiderations from another country into the NRM supported by legal advice. We would also need to consider interactions with wider policies including modern slavery Public Order Disqualification (POD) policy and the specific Modern Slavery Adults at Risk in Immigration Detention policy.
>
> 26. Alongside the above, we think further work should be done to ensure referrals are coming into the NRM at the earliest opportunity which would support decision making and lower legal risks."

(It was drawn to my attention during the course of oral argument that the paragraph describing the "purpose of the reconsideration policy" in Mr Hobbs' draft submission in July 2025 (highlighted at paragraph 40 above) did not appear in the submission of 17 September 2025).

45. Appended to the Ministerial submission was Annex A. This described the "NRM policy provisions" and set out the "Current legislative framework" and operation of the NRM. It stated that:

> "The Modern Slavery Act 2015 sets out the statutory duty to identify victims of modern slavery. This duty is discharged by Statutory First Responders which includes parts of the Home Office (e.g. Border Force and Immigration Enforcement), the Police and Local Authorities. The National Referral Mechanism (NRM) is the UK's framework for identifying and supporting victims of modern slavery and human trafficking. The NRM incorporates a two-stage decision-making process: when an individual is referred into the NRM, a decision will be taken by one of two Competent Authorities within the Home Office, on whether there are Reasonable Grounds (RG) to believe that the individual is a victim of modern slavery. If a positive RG decision is made, a Conclusive Grounds (CG) decision will be made as to whether on the balance of probabilities there are sufficient grounds to decide that the individual is a victim of modern slavery. A negative RG means that the NRM process has concluded and there are no NRM barriers to removal. This is, however, potentially subject to a successful reconsideration request, which typically are time-bound and generally only one is permissible but to note the current policy on reconsiderations is subject to legal challenge, and is being reviewed and made clearer."

46. The Immigration Enforcement Competent Authority ("IECA") was the Competent Authority that dealt with cases falling under Operation Hillmore. Under the heading "Steps taken to strengthen the NRM threshold and support the implementation of Operation Hillmore", it was stated in Annex A that in 2025, 36% of the RG decisions made by the IECA were positive. It was explained that prioritisation of Conclusive

Grounds decisions for Operation Hillmore cases had been introduced and the effect of this was that:

> "the IECA considers the vast majority of Hillmore cases. **RG decisions are being actively prioritised and are made in < 1 working day**. For individuals in receipt of a positive RG decision, onward decision-making is also prioritised with conclusive grounds (CG) decisions expected to be made within 50 calendar days of the NRM referral (this includes the 30-day recovery period)."

47. It was also stated that:

> "It is important to note the context of the cohort of individuals in scope for Operation Hillmore. Individuals arriving in the UK via small boat will have, by definition, a higher propensity to both enter the NRM and receive a positive RG decision. This is typically due to the experiences individuals may have encountered causing them to leave their country of origin or experienced on route, exacerbated by vulnerability factors and reliance on smuggler networks and their proximity to organised crime. However, the measures detailed above have enabled the IECA to both consider all Operation Hillmore referrals expeditiously and apply the RG threshold rigorously. **Of the 29 NRM referrals considered by the IECA to date, only 8 (28%) have received a positive decision at the reasonable grounds stage, with the remaining 21 attracting a negative decision**".

48. Mr Hobbs set out the rationale for the change to the reconsideration policy in his witness statement dated 27 March 2026, as follows:

> "25. It is not, and to my knowledge has never been, the intention of the Home Office for a reconsideration window to act as a barrier to removal. Once this position was set out by the claimant's solicitors and accepted as arguable by the judge, work was undertaken at pace by Home Office operational, policy and legal teams to understand the impact of the injunction and work through options for policy change.
>
> 26. Treating the 30-day window for applying for reconsideration as a barrier to removal would have significant consequences on the SSHD's ability to pursue an effective removals policy. It would mean that anyone in receipt of a negative NRM decision (and therefore not recognised as a victim of trafficking) would be protected from removal for a further 30 days after that decision. This could provide an opportunity for the NRM to be misused by individuals raising false modern slavery claims in order to delay removal and seek release from immigration detention. Although the timing of CTK's interim relief hearing (coming relatively early in the pilot) meant that we were unaware of the exact extent to which this would impact the individuals the SSHD intended to return to France under the Treaty, previous operational experience indicated there would likely be a significant volume of individuals in this group being referred into the NRM. We are now aware that around 40% of

individuals notified of the intent to return them to France under the Treaty have been referred into the NRM.

27. In the context of the Treaty, there was an added urgency as it requires that an individual be removed to France within a set timeframe of their acceptance by the French government (subject to the possibility of agreeing an extension) and therefore any delay to removal could have a detrimental impact on the pilot.

28. On 17 September, draft advice was provided to support initial Ministerial consideration of how to respond. The draft advice identified two main options.

Option 1 was to amend the reconsideration policy so that in the context of removals to an ECAT and ECHR signatory country, no reconsideration request could be made. Limiting the policy amendment so it only affected those being removed to countries which were ECAT and ECHR signatories was proposed as an additional safeguard for individuals. While the policy only applies to those with negative decisions, who should not require onward identification or support in the country they are returned to, this approach ensured the policy change only applied in the context of returns to countries which are committed to providing a level of protection for fundamental rights that is likely to make it feasible for someone to continue to challenge the outcome of the NRM decision after their return should they so wish. In short, this context "ECHR and ECAT signatories" was proposed as a useful proxy for the provision of a minimum level of treatment. We recognised that this may weigh in the balance of convenience in the event of applications for injunctive relief to prevent removals being sought.

Option 2 was to provide that reconsideration can be undertaken from an ECAT signatory/third country. Later the same day, officials recommended Option 1 and a final submission regarding possible further policy changes, with regards to the reconsideration policy, was submitted that afternoon. Ministers were also provided with an initial equality impact assessment which is kept under review as per best practise.

29. The policy change was agreed by the Home Secretary, and the change went live on gov.uk on the evening of 17 September. It was implemented by competent authorities with immediate effect.

30. At the time that the reconsideration policy was amended, the SSHD relied on the objective information contained within the CPIN, including reference to France's status as a Tier 1 country in the 2024 USSD TiP report, GRETA monitoring, French government produced documents and detail on provision of support (including details of government provision and NGOs).

31. In parallel, the SSHD was also liaising with the French government and NGOs to strengthen the section of the CPIN relating to provision of support for victims of trafficking in France. This ongoing work was not directly relevant to the reconsideration policy change considered by

> Ministers at this time by virtue of the group impacted by the reconsideration policy change being those in receipt of a negative decision and therefore who were considered not to require support in France.
>
> 32. It is important to note that this change to the Reconsideration Policy is situated in the context of wider reforms to the Reconsideration Policy triggered by the litigation in EO (referred to above at paragraph 21) which have been under consideration for a number of months prior to the amendment of paragraph 14.216in September 2025. This work is with a view to clarifying the policy and the process of requesting a reconsideration and ensuring that the policy does not incentivise late NRM claims or reconsideration requests, impede removals and to ensure the policy is applied consistently. To date that work remains ongoing. This means that any amendment to ensure the continued effective operation of removals, including under the pilot with France, whilst not a temporary policy, was not – and is not – anticipated to be in force in its current form for a significantly long period of time. Although the work remains to be completed, officials have worked continuously to progress this. Officials intend to share advice with Ministers for their approval in the very near future, and once Ministerial agreement to the recommendations is secured, the updated reconsiderations policy would be implemented and operationalised shortly after."

49. In this witness statement, Mr Hobbs described how paragraph 14.216 of the Guidance has been applied:

> "33. Internal communications were circulated across the competent authorities on 18 September 2025 notifying them of a change to the reconsideration policy and setting out directions for decision makers to follow. Where a reconsideration request is received (whether or not this is for an individual who has the right to reconsideration), the content of the request will still be reviewed to some extent and where it is practical in all the circumstances. I note that such informal review will not be recorded. This review is completed by a HEO Technical Specialist. If further advice is needed, for example for a particularly complex request or if considering applying discretion outside of the reconsideration policy, it would be escalated to an SEO and/or a G7 Chief Caseworker. If it is considered that the negative decision was fundamentally flawed or if new evidence is provided that renders the initial negative finding untenable, a reconsideration will be undertaken.
>
> 34. Reconsideration requests cannot be made from outside of the UK and this was the policy position presented in the case of CTK. In the case of DYC, an application for interim relief was refused on 26 November 2025 and the individual was removed to France the following day. The individual's legal representatives continued to pursue the judicial review which included a challenge to the negative RG decision. After reviewing the grounds, the Immigration Enforcement Competent Authority (IECA) identified medical evidence that was before the decision maker but may not have been adequately considered in the RG decision. It was

> therefore considered appropriate to reconsider the RG decision taking into account the omitted medical evidence. A further negative RG decision was made on 9 February 2026. This is an example of the sort of reconsideration that is referred to at paragraph 8 above."

50. After the rolled-up hearing, and in response to questions that I posed at that hearing, a witness statement was provided by James Stephenson, the Deputy Director for the IECA. He confirmed that 9% of reasonable grounds decisions of persons falling under Operation Hillmore had received a positive outcome. Mr Stephenson also stated that, following a manual trawl, 16 cases had been identified where the IECA applied discretion to reconsider decisions in spite of paragraph 14.216 between 17 September 2025 and 6 May 2026. All of these cases occurred at the pre-action protocol stage after review by a caseworker in the IECA's litigation team. Mr Stephenson said that he was not aware of any instances of discretion being applied prior to litigation, although this could not be confirmed. He stated that, in every instance, the decision to apply discretion to reconsider decisions was made based on the IECA's assessment that there was a fundamental error in the original decision, rather than new evidence becoming available.

51. The Claimants objected to this further evidence being taken into consideration by the Court. This was material that could, and ought to, have been provided by the Secretary of State in advance of the hearing, and the Claimants rightly pointed out that the Courts have repeatedly deprecated the failure of parties to depart from the procedural rigour that applies to judicial review cases. In this case, however, I consider that the evidence should exceptionally be admitted. This material relates to some of the key issues in this case, and the evidence of Mr Stephenson is responsive to questions that the Court had about the purported exercise by the Secretary of State of her inherent discretion.

52. On 17 September 2025, a read-out of the Secretary of State's decision in response to the Ministerial Submissions was as follows:

> "The Home Secretary has reviewed and agrees with **Option 1- to amend the reconsideration policy to set out that no reconsideration is permitted for individuals who receive a negative RG or CG where that individual is also liable for removal to a country that is a signatory to ECAT and ECHR.**
>
> This policy change should be implemented immediately."

53. On 18 September 2025, an email was sent from the Chief Caseworker at IECA to "All Staff". This stated that:

> "With immediate effect there is now a change to our reconsideration policy.
>
> . . .
>
> The addition to the reconsideration policy is [language set out at 14.216]
>
> What this means in essence for us, is that any individual that the Home Office intends to remove, where the intended **country of removal** (note,

> not nationality) is a ECAT+ECHR signatory country, will now no longer have a right to a reconsideration.
>
> . . .
>
> In order to facilitate this, negative decision letters on these cases must be tweaked to make it clear to the PV/their legal representatives.
>
> . . .
>
> This must now be changed before service for all relevant decision letters to the following . .
>
> Paragraphs 14.217 to 14.235 of the Modern Slavery statutory guidance do not apply to individuals who have received a negative RG or CG decision, and where the SSHD intends to remove that individual to a country that is a signatory to the Council of Europe Convention on Action Against Trafficking in Human Beings (ECAT) and European Convention on Human Rights (ECHR).
>
> *It is noted that the SSHD intends to remove you/your client to a signatory state of the Council of Europe Convention on Action Against Trafficking in Human Beings (ECAT) and European Convention on Human Rights (ECHR). As a result of this, you/your client are/is not entitled to a reconsideration of our decision. You/your client are/is entitled to seek legal advice.*
>
> . . .
>
> For any FOIs, disclosures, complaints or queries raised via Central Functions relating to Hillmore, or the new reconsideration policy please raise to Amy Burke and myself."

54. Before the reconsideration policy was amended, officials at the Home Office had drafted the document "Country Information Note France: Safe third country" ("the CIN", sometimes referred to in the documents as "the CPIN"). The Court was provided with various iterations of the document and correspondence between officials, and between Home Office officials and officials of the French Government, with respect to information to be contained in the CIN.

55. I was taken to a number of the references in the drafts of the CIN and the correspondence. I was referred to the draft of the CIN dated 22 May 2025, where there was a quote that "In 2023, the number of asylum seekers accommodated remained far below the number of persons registering an [asylum] application". A comment box associated with this quote called for "Follow up with GoF" (ie. Government of France), and that "We need to speak to GoF to understand whether there is sufficient accommodation available for those who need/want it . . . Important to understand the numbers so we don't miss anything here e.g. destitution or problems with France's monitoring of asylum seekers whereabouts."

56. In the updated draft of 17 June 2025, it was stated that "the French government did not record the number of VoT [Victims of Trafficking] who received support from NGOs but who were not cooperating with police investigations, in other words, the number of VoT who were not officially recognised but who still received support". A comment box associated with this quote called for follow up with the French Government as to whether the services provided to trafficking victims who were formally recognised differed from the support provided to 'informal' trafficking victims; that is, those recognised by NGOs. This comment box reflected internal correspondence between Home Office officials which referred to the distinction between 'official' and 'unofficial' victims of trafficking. In an email between officials dated 4 June 2025, it was stated that:

> "'Official' VoTs are recognised by the authorities because they've agreed to help the police in judicial proceedings against the traffickers. If you don't cooperate with the police then you're not officially recognised as a VoT but can still get assistance from NGOs, making you an 'unofficial' VoT. Other sources – including GoF – have been really vague on this distinction so if there is anything in the report that alludes to this please can you let me know. The difference between the 2 is critical from our point of view as I expect that the majority of people in the UK who claim to be VoT will not have been trafficked by people in France (they're more likely to be claiming to have been VoT in Libya, for example). This means that most of the VoT returnees to France from the UK will be assessed by the French as 'unofficial' VoT as they won't be involved in criminal investigations against traffickers."

57. On 17 June 2025, the Home Office sent an "Information request for the Government of France". A summary of the request was that it provided "A list of questions for the Government of France to assist the Home Office to better understand specific asylum provisions". One set of questions concerned the two 'types' of victims of trafficking and what services were provided to each of them: (i) the minority of whom were those recognised by the government of France due to their cooperation with law enforcement; and (ii) the majority of whom were victims who do not cooperate and are not recognised by the government, but are recognised and supported by NGOs. The response from the French Government was that (in translation): "The associations concerned would be better placed to answer this question, but to our knowledge there is no difference. On the question of access to rights in general, and access to specific accommodation in the DNA, no difference is made."

58. On 17 July 2025, the Home Office sent an "Information request for the National Network for the Assistance and Protection of Human Trafficking Victims (Ac.Sé)". The summary of the request was described as "Questions for Ac.Sé to assist the Home Office to understand the support and services available for asylum seekers and refugees who are victims of trafficking". Detailed questions were asked of Ac.Sé – an umbrella organisation consisting of members who provide support to victims of trafficking in France.

59. Further questions were sent via an "Information request for the Government of France" on 29 July 2025. A summary of the request was described as "Follow-up questions for the Government of France to assist the Home Office to better understand specific asylum provisions". Detailed questions were asked of the Government of France about

access to, and availability of, accommodation for asylum seekers; as well as what steps were taken to facilitate access to mental healthcare for asylum seekers.

60. A CIN was published in August 2025. The Executive Summary to the CIN stated that:

> "Asylum seekers are entitled to accommodation and receive an allowance. Accommodation is state-funded but managed through a semi-public company (Adoma) or awarded via tender to NGOs. France also provides an additional daily allowance paid to those who are not accommodated free of charge. There have been challenges with meeting demand for asylum accommodation. . . . However, limited instances of ECHR breaches in specific circumstances is not illustrative of a systemic failure in the provision of asylum accommodation.
>
> . . .
>
> Claimants are screened for vulnerabilities including health conditions, trauma and trafficking. Vulnerable people can request additional support during interviews and their needs are taken into account when assessing reception conditions.
>
> During the first 3 months of an adult's stay in France, they only have access to urgent health care. Children have access to full health care upon arrival. After this 3 month period, asylum seekers have full access to healthcare through the Universal Health Protection Scheme (PUMA).
>
> However, the threshold in Article 3 medical cases is very high. . . . a person needs to show there are substantial grounds for believing that they would face a real risk of being exposed to a serious, rapid and irreversible decline in their state of health resulting in intense suffering or a significant (substantial) reduction in life expectancy as a result of the absence of appropriate medical treatment or lack of access to such treatment in the country of return. Treatment for such a condition is almost certainly provided for under the initial urgent health care system.
>
> . . .
>
> Asylum seekers can benefit from public mental health care through PUMA. However, capacity and language barriers can hinder access in practice. A large number of NGOs provide support to asylum seekers and refugees, including assistance with refugee status determination, accommodation, employment, and access to medical care (including mental healthcare). Despite difficulties in accessing mental health care, there does not appear to be a general or systemic unwillingness or inability to provide support to those who need it.
>
> . . .
>
> There are two potential support networks for victims of trafficking (VoT) who make an asylum claim. During asylum interviews, potential VoT are informed of the possibility of cooperating with law enforcement

> efforts but are also told that this process is separate from their asylum application and not a prerequisite for granting of international protection. They can benefit from the range of support services available to asylum seekers, including enhanced support to VoT in specialist accommodation (where applicable), or by referrals to specialist organisations to receive social or psychosocial support. However, in practice, there is no material difference in the level of support provided or services available."

61. The CIN contained information derived from responses to the Home Office's requests. Thus, it was stated that the Government of France explained that:

> "The 2013 Reception Directive currently in force, like the 2024 Directive, allows for the provision of material reception conditions in kind or in the form of a financial allowance. France uses these two means of providing material reception conditions to cover accommodation needs, which explains the discrepancy between the number of asylum seekers and the number of accommodation places".

62. The CIN outlined the support that was provided by NGOs working with trafficking victims. Reference was made to Ac.Sé which was described as "a national network of shelters and organisations specialising in human trafficking which is financed by the Ministry of Women's Rights and the Ministry of Justice".

63. On 6 August 2025, an email between Home Office officials noted that a Minister (Jess Phillips MP, Parliamentary Under-Secretary of State for Safeguarding and Violence Against Women and Girls) did not have "a clear understanding" of what is offered in France for victims of trafficking. On 7 August 2025, an email between Home Office officials stated that:

> "An individual's status as a confirmed victim of trafficking will not be transferred upon their removal of France. This may influence the type of support an individual removed under the pilot can access. The information we currently hold is contained in the Country Information Note (see advice 1 August 2025) which sets out the legal framework and structure for the provision of support to victims of trafficking. However, in France, support to victims of trafficking is not delivered directly by the French government and is instead contracted out to a network of NGOs. **As the advice flags, there are still knowledge gaps in relation to support available and as such we are continuing to seek further information from the Government of France . . .** and a relevant NGO on the support available to individuals removed under the Pilot on this basis."
>
> (my emphasis).

64. The CIN was updated in February 2026. This reflected the expert report provided by Francois Zimeray, as well as the response from Ac.Sé to the correspondence from the Home Office. It appears that the latter response was provided on 17 September 2025.

65. The February 2026 CIN confirmed that there were two categories of victims of trafficking:

> "1. victims who are recognised by state authorities due to their cooperation with law enforcement (the minority).
>
> 2. victims who do not cooperate with law enforcement and who are not recognised by state authorities (the majority) but who are recognised and supported by NGOs."

66. The CIN also noted that:

> "17.9.5 Ac.Sé also noted the 3 eligibility criteria the organisation uses to decide which people to assist: 'The criteria for support are: 1. Adult 2. Victim of human trafficking or pimping 3. Locally endangered and requiring geographical removal, the danger being linked to the acts of exploitation.'
>
> 17.9.6 Regarding Ac.Sé's eligibility criteria, the February 2026 Z&F expert report commented: 'It is… my understanding that, the Ac.Sé scheme being limited to situations of VOTs facing a danger in France, it excludes VOTs having suffered a crime exclusively outside of France which does not continue on the French territory. I therefore gather that victims of human trafficking entirely outside of France would not be entitled to the scheme'."

67. In his witness statement dated 27 March 2026, Mr Hobbs set out what he says would have happened if information that has now come to light about conditions in France for alleged victims of human trafficking was known to the Secretary of State at time that she made the amendment to the Guidance:

> "39. I have been asked to consider whether information that has come to light since the decision to amend the MSA Guidance on 17 September 2025 would have changed that decision. In view of the Home Secretary's clear priorities, there was a clear policy imperative to ensure that removals to France could continue and given the terms of the Treaty discussed above (at 37), allowing 30 days for reconsideration to be a barrier to removal would have jeopardised that. In order for the policy to deliver a deterrent effect it is necessary that removals take place and are seen to take place.
>
> 40. In my assessment, therefore, had the Home Office known what is now known about the conditions in France in relation to support for victims of trafficking, the reconsideration policy would still have been amended to ensure that it did not operate as a barrier to the effective removal of individuals under this operation. The decision would have been a matter for the Secretary of State, but that would have been the advice I would have provided, and (without pre-empting the Secretary of State's decision) would have expected it to have been accepted noting the imperative ministers place on ensuring return of those with no right to be in the UK."

III. Submissions of the Parties

68. I will set out in some detail the key submissions that were made by the parties in respect of the different ways in which the amendment to the Guidance was challenged by the Claimants. I will then provide my reasoning with respect to the challenges.

(i) Was it lawful to remove the right to request consideration?

69. Mr Grodzinski KC submitted, on behalf of the Claimants, that a lawful system for the identification of victims of trafficking is one that is effective, recognising the paramount importance of identifying victims correctly. He submitted that this proposition was based on a proper understanding of ECAT and the Convention, which had been implemented domestically by the 2015 Act and the Guidance.

70. Mr Grodzinski KC referred to the Explanatory Notes to section 49 of the 2015 Act, which state at paragraph 235 that "The purpose of the guidance is to further support effective identification of potential victims of slavery and human trafficking . . . taking into account international requirements set out in the Convention on Action against Trafficking and the Directive on preventing and combating trafficking." (The Directive referred to is Directive 2011/36/ EU). That section 49(1)(c) of the 2015 Act (the provision for making arrangements for determining who is a trafficking victim) has to be construed compatibly with Article 10 of ECAT had been identified by the Supreme Court in MS (Pakistan) v Secretary of State for the Home Department [2020] 1 WLR 1373 at [20].

71. As for what Article 10 of ECAT requires, Mr Grodzinski KC placed reliance on the wording of that provision as well as on the *Explanatory Report on the Council of Europe Convention on Action against Trafficking in Human Beings,* and reports from GRETA. Mr Grodzinski KC highlighted that Article 10 of ECAT was headed "Identification of victims", and he noted that victim identification is the gateway to other protection measures under ECAT, including Article 12 (assistance to victims), Article 13 (recovery and reflection period).

72. From the Explanatory Report, Mr Grodzinski KC highlighted paragraph 127, which states that it is "crucial" and "of paramount importance" that member states identify victims "correctly". Victim identification is "often tricky, and necessitates detailed enquiries", and "is a process which takes time". Further, that the failure to "identify victims correctly will probably mean that victim's continuing to be denied his or her fundamental rights and the prosecution to be denied the necessary witness in criminal proceedings to gain a conviction of the perpetrator for trafficking in human beings.".

73. Mr Grodzinski KC also noted that paragraph 131 of the Explanatory Report addresses the bar to removal for those illegally present in a member state at Article 10(2) of ECAT. If victims of trafficking could be removed before they had been identified, the "*rights would be purely theoretical and illusory"*. Paragraph 132 notes that the threshold for the bar to removal is a low one -- "reasonable grounds to believe" – and does not require "*absolute certainty"*.

74. Mr Grodzinski KC submitted that the duty to identify a victim of trafficking cannot be delegated to another state party, as the duty at Article 10 applies to 'Each Party'. The duty was owed to those who are present in that state party's territory as they "shall not

be removed from [the party's] territory" until the identification process is complete if there are reasonable grounds to believe that they have been a victim of trafficking. That includes removal to another party to ECAT.

75. Whilst Mr Grodzinski KC acknowledged that Article 10 of ECAT did not explicitly provide for reconsideration of a trafficking decision, and he accepted that each signatory state may arrange its internal processes within its own margin of appreciation, that had to be done consistently with the paramount objective of identifying victims correctly. Mr Grodzinski KC submitted that if signatory states had a policy which embedded institutional disregard for evidence, that would be inconsistent with minimum standards for identification of trafficking victims.

76. Mr Grodzinski KC submitted that victim identification was also integral to the protection and investigative duties under Article 4 of the Convention. In this regard, Mr Grodzinski KC referred to Chowdury, where it had been held by the Strasbourg Court at [110] that "Protection measures include facilitating the identification of victims by qualified persons and assisting victims in their physical, psychological and social recovery".

77. Reference was made by Mr Grodzinski KC to VCL, where the Strasbourg Court specifically mentioned at [160] "early identification" as being of "paramount importance"; arising where there was "credible suspicion" that an individual may have been trafficked. Further, the assessment should be carried out "promptly by individuals trained and qualified to deal with victims of trafficking", based on the criteria identified in "the Palermo Protocol and the Anti-Trafficking Convention". (The Palermo Protocol is the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organised Crime).

78. Mr Grodzinski KC also referred to R (SF (St Lucia)) v Secretary of State for the Home Department [2016] 1 WLR 1439, where (in a case that preceded the introduction of the 2015 Act) Sir Stephen Silber described Article 4 of the Convention at [99] as being a "non-derogable" right of "such fundamental importance that gateway decisions… as to whether a person is a victim of trafficking and so entitled to the protection which the State affords to victims requires particular attention and rigorous scrutiny". Similarly, there was a "fundamental right" to have the trafficking claim "properly investigated": see [100].

79. Mr Grodzinski KC explained that a crucial component of how the United Kingdom has given effect to the victim identification obligation under Article 10 of ECAT was the process for reconsidering negative trafficking decisions within the NRM decision-making procedure, both at the negative reasonable grounds and conclusive grounds stages. This process had formed part of the NRM from the outset and was not a gold-plated add-on. It had been recognised to be important in the draft submissions prepared by Mr Hobbs in July 2025.

80. Mr Grodzinski KC contended that there were many features of the Secretary of State's system for identifying trafficking victims that required there to be a right to reconsideration. Mr Grodzinski KC highlighted that the referral threshold into the NRM is "very low . . . in reality, any suspicion or any claim": see (R) Hoang v Secretary of State for the Home Department [2016] Imm AR 6, per Burnett LJ at [36]. The

reasonable grounds decision is "one of suspicion falling short of proof" (see TDT [2018] 1 WLR 4922 at [28]); the conclusive grounds decision is determined on the balance of probabilities.

81. Mr Grodzinski KC pointed out that the Guidance recognised that victims may not self-identify, and that their vulnerabilities may impede disclosure. Particular reference was made to a number of paragraphs within Annex D of the Guidance. These provisions demonstrated the significance of reconsideration where there was fresh evidence or where there were representations to explain initial inconsistencies.

82. Mr Grodzinski KC referred to the statistics relating to reconsideration which emphasised the efficiency and effectiveness of the reconsideration stage. Reconsideration was not an overly burdensome exercise: of 23,411 potential victims referred to the Home Office in 2025, only 1,525 requests for reconsideration were made (6.5% of the total cohort); and 79% of reasonable grounds decisions which were reconsidered received a positive outcome, as did 77% of conclusive grounds decisions which were reconsidered. Mr Grodzinski KC submitted that these statistics (and those from the 2 previous years) shows that the reconsideration mechanism was highly effective in its aim of remedying previously incorrect decisions. It is likely to reflect several features of the initial process: (i) adverse decisions often place reliance on something that an individual has said or not said at their initial asylum interview which takes place within a few hours of their arrival; (ii) the interviewee may misunderstand the question whether they have been "exploited"; (iii) decisions are taken at pace; and (iv) initial trafficking decisions taken without an opportunity to explain gaps or inconsistencies. In this regard, Mr Grodzinski KC referred to the 2016 report from GRETA (Fifth General Report on GRETA's activities) which stated at [116] that "Due to their 'complex nature', claims based on the harms of human trafficking are particularly unsuited to accelerated processing and may limit the likelihood of identification of victims", and that in a number of country evaluations – including the United Kingdom – there were difficulties in decision-making processes "where a victim's testimony is not accepted as credible".

83. Mr Grodzinski KC submitted that the framework for removals under the Treaty was inconsistent with removing the right to request reconsideration: reasonable grounds decisions were due to be made in under 1 working day from referral; and conclusive grounds decisions within 50 calendar days from referral. The mean time for conclusive grounds decisions, 2025, was 372 days, and 76 days for cases dealt with by the IECA which deals with the vast majority of cases under Operation Hillmore.

84. Mr Grodzinski KC submitted that removal of the right to request reconsideration has rendered the victim identification process deficient and incompatible with Article 10 of ECAT and was in breach of section 49 of the 2015 Act. Whilst the identification process did not need to be "perfect", it had to be effective, and that included a proper mechanism for correcting mistakes.

85. Reliance was also placed on R (DS) v Secretary of State for the Home Department [2019] EWHC 3046, where Kerr J held that:

> "67. The NRM process plainly and correctly includes a discretionary power to reopen negative decisions. The discretion must be exercised in accordance with the duty to identify victims. I accept Ms Luh's

> submissions on the nature of that duty: it must be performed of the state's own motion; it is a continuing duty; and if there has been a prior negative decision, relevant evidence casting doubt on the correctness of that decision must not be disregarded.
>
> 68. To hold otherwise would be to dilute the content of the duty and water down the protection afforded to victims of trafficking by ECAT, the Anti-Trafficking Directive and article 4 of the ECHR, which is absolute and may not be subject to derogation even in time of war or other national emergency. If victims of trafficking could be denied that protection for administrative reasons, the NRM would not be operating in compliance with the international obligations of the United Kingdom."

86. Mr Grodzinski KC submitted that Parliament had not legislated to reduce or disapply the victim identification arrangements from persons who were subject to statutory consideration of asylum inadmissibility. Further, the important public interest of deterring small boat arrivals could not be used to avoid the Secretary of State's statutory obligation to allow a request for reconsideration. Nor was this a necessary legal consequence of entering into the Treaty. Yet further, judicial review was not an alternative remedy or replacement for the reconsideration process. Judicial review is not a merits review, and cannot take account of evidence that was not available to the decision-maker. Furthermore, the Administrative Court is not a part of the competent authority for the purposes of ECAT, and judicial review is not suspensive in its effect. In their decision refusing permission to appeal in CTK, the Court of Appeal stated at [48] that judicial review is not a substitute for reconsideration.

87. For the Secretary of State, Miss Grange KC acknowledged that both ECAT and the Convention establish obligations on signatory states to identify, protect and support potential victims of trafficking. Miss Grange KC submitted that ECAT prescribes outcomes, not specific mechanisms, and that Contracting States have a wide margin of discretion as to the structures through which they fulfil their duties. There is no obligation for a mandatory reconsideration framework, or any routes of appeal or review after decisions are taken. There is no requirement to create a perfect system, or to reach a correct decision in every case. There are trade-offs for the Contracting States between cost, speed and finality. The United Kingdom satisfies Article 10 through the two stage NRM process, supplemented by internal review safeguards, in some cases a reconsideration of negative decisions, and (in all cases) the possibility of judicial review (including interim relief).

88. Miss Grange KC submitted that Parliament had not imposed an absolute duty on the Secretary of State to create a perfect system. Section 49 of the 2015 Act confers a broad discretion on the Secretary of State as to the content of the guidance, and the availability of reconsideration is a matter of policy, which the Secretary of State is entitled to structure, amend or withdraw from time-to-time. Further, it was submitted that changing the identification mechanism by removing the right to request reconsideration is not precluded by ECAT.

89. Mr Brown KC added that the identification framework in the United Kingdom is effective as a domestic system: because of the NRM and common law safeguards, including judicial review. He submitted that section 49 of the 2015 Act does not require

a right to reconsideration, it says nothing about review or appeal. The choice of system is for the Secretary of State. Mr Brown KC submitted that if reconsideration was required, then this would potentially be endless, and there had to be finality.

90. With respect to Article 4 of the Convention, Miss Grange KC submitted that the Secretary of State accepted that human trafficking falls within its scope, and that Article 4 must be interpreted in harmony with relevant international instruments including ECAT. Miss Grange KC submitted that the failure to identify a person as a victim of trafficking outside of the specific context of potential prosecution will not contravene Article 4, relying on the decision of Stephen Morris J in R (ABW) v Secretary of State for the Home Department [2025] EWHC 3280 (Admin) at [128]-[130]; and Burnett LJ in Hoang at [29].

(ii) Fettering of Discretion

91. Mr Grodzinski KC, for the Claimants, submitted that the removal of the right to request reconsideration also amounted to an unlawful fetter of the Secretary of State's discretion to consider individual cases on their merits.

92. Whilst it had been suggested by the Secretary of State in the Detailed Grounds that she had not removed the discretion to conduct a reconsideration "in an appropriate case", and that had been done in a number of Operation Hillmore cases, this did not avoid the charge of unlawful fettering, especially given the unambiguous policy instruction given to decision-makers. Mr Grodzinski KC pointed out that there were no instructions disclosed to decision-makers to tell them about the discretion. Reliance was placed on R (Adath Yisroel Burial Society) v Inner North London Senior Coroner [2019] QB 251 at [47]-[48]: where it was held that a policy must be considered as it was published, what it says on its face, even if it is in fact intended to be operated flexibly.

93. Mr Brown KC submitted, on behalf of the Secretary of State, that the amended policy did not remove the Secretary of State's residual discretion to reconsider where appropriate. Mr Brown KC submitted that paragraph 14.216 of the Guidance does not create the impression that this discretion has been removed. Furthermore, Mr Brown KC observed that a policy is not required to state that decision-makers may depart from the policy when circumstances require it, referring to R (West Berkshire District Council) v Secretary of State for Communities and Local Government [2016] 1 WLR 3923 at [17].

94. Mr Brown KC relied on R (YC) v Secretary of State for the Home Department [2026] EWCA Civ 285 for judicial recognition of the implied power of the Secretary of State to withdraw a decision. In that case it was stated at [65] to be common ground that the Secretary of State possesses "a well-established implied power, under the IA 1971, to withdraw and reconsider decisions which are adverse to a claimant". Reference was made in YC at [66] to the Divisional Court's decision in R (Chichvarkin) v Secretary of State for the Home Department [2010] EWHC 1858 (Admin) that "it is routine in judicial review proceedings ("practically an everyday occurrence") for the SSHD to withdraw a challenged decision for reconsideration, sometimes leading to a favourable outcome for the claimant, but in many cases resulting in a further adverse decision, albeit one addressing the claimant's representations more fully." Also, Chichvarkin was authority for the general principle that "a decision-maker has an implied public law power to withdraw any statutory or prerogative decision, subject to public law

principles, unless the power is expressly excluded". In the instant case, Mr Brown KC submitted that the power was not excluded; and the Secretary of State was not *functus officio* having made the negative reasonable grounds decision or conclusive grounds decision.

95. Mr Brown KC submitted that whilst the policy right to request reconsideration had been removed from the Guidance this did not mean that the implied power to reconsider no longer existed. Reconsideration had taken place in a number of cases, including those of AYA and GIP. The approach to reconsideration was based on applying the common law: an open mind would be retained and decisions taken on a rational basis. Mr Brown KC submitted that if it is brought to the attention of the Secretary of State that something unlawful had occurred, that could not be allowed to stand, as part of the general principle of good decision-making. It is not necessary for the Secretary of State to explain when this will occur. Where there had been a refusal to exercise the implied power to reconsider, this could be challenged by way of judicial review.

(iii) Failure to comply with the *Tameside* duty

96. Ms Naik KC made submissions on behalf of the Claimants that the Secretary of State had acted unlawfully by amending the Guidance to remove the right to request reconsideration in contravention of the *Tameside* duty of inquiry: see Secretary of State for Education and Science v Tameside Metropolitan Borough Council [1977] AC 1014. See also R (DSD) v The Parole Board of England and Wales [2019] QB 285 at [141] for the proposition that it was unlawful if a public authority fails to consider any factor that is so "obviously material" that no rational decision-maker could have left it out of account.

97. Ms Naik KC submitted that no reasonable Secretary of State could have proceeded with the amendment without ensuring that she had made reasonable inquiries as to, and without taking account of, the likely consequences of the amendment for those affected and for the effective functioning of the domestic statutory scheme for the identification and protection of victims of trafficking: (a) without inquiring into the proportion of negative decisions which are reversed following reconsideration; (b) without further inquiring into and considering the identification processes and support provided to victims of trafficking in France, including that where the trafficking fell outside of France's criminal jurisdiction it would not be identified by the authorities; and (c) without consulting with relevant expert organisations as to the impact of removing the right to request reconsideration, especially if specific inquiries were not made as above. Ms Naik KC countered the Secretary of State's reliance on the CIN on France and the inquiries that were made of the French authorities, by saying that critical and known gaps as to what support would be available were not filled. Further, there was no evidence before the Court that the Secretary of State had looked at the CIN herself.

98. Ms Naik KC referred specifically to the witness statement provided by Lucy Vaughan to the Court of Appeal in CTK, which is evidence as to what was known by the Home Office at the time that the reconsideration policy was amended, which implies that the French authorities would identify trafficking victims where the trafficking took place outside of France and was perpetrated by non-French nationals.

99. Ms Naik KC also challenged the Secretary of State's attempted reliance on section 31(2A) of the Senior Courts Act 1981 that it is "highly likely" that the Guidance would have been amended absent the unlawful conduct.

100. For the Secretary of State, Mr Brown KC submitted that the Tameside duty was one of reasonable inquiry, not a duty to obtain perfect information. The Secretary of State decides what to investigate, subject to rationality. The context is important: here, whilst the change to the Guidance was done quickly, it was based on information that had been obtained previously. The Secretary of State had already made inquiries as to the support available for victims of trafficking (and asylum seekers) in France, as reflected in the CIN published in August 2025. When drafting the CIN, inquiries had been made of France and information was provided; the fact that there were "knowledge gaps" does not mean that reasonable inquiries were not made, as policy making does not require perfect knowledge. Furthermore, the focus of the Secretary of State's inquiry with respect to France was on the functional support available in the asylum system and not on the data for reconsiderations or the identification provisions in France.

101. Further, Mr Brown KC submitted that the Secretary of State did not consider it necessary to make further inquiries in connection with the amendment to the policy. The amendment only affected cases in which the Secretary of State had determined that a person had been found not to be a victim of trafficking. In addition, it was submitted that the Secretary of State reasonably considered that no further inquiry needed to be made, particularly in circumstances where it was considered that her policy was being given an effect that it had not been intended to have (i.e. acting as a barrier to removals under the Treaty).

102. It was further submitted that the Secretary of State was not required to obtain information as to the so-called "real-world impact" of amending the Guidance in circumstances where there was no right to reconsideration under the relevant framework, and no requirement for a system that would identify all victims of trafficking. There was also no requirement on the Secretary of State to consult with external bodies.

103. In any event, it was submitted that even if there had been a failure in respect of the *Tameside* duty at the time when the Guidance was amended, it is highly likely that the outcome would not have been different had further inquiry been made, and so section 31(2A) of the Senior Courts Act 1981 is engaged. This was supported by the witness statement of Mr Hobbs who, given his senior role in relation to the pilot and relevant policy decisions, was well placed to give evidence on this matter.

(iv) Breach of the *Padfield* principle

104. Ms Naik KC contended that the amendment to the Guidance also breached the principle set out in Padfield v Minister of Agriculture, Fisheries and Food [1968] AC 997. The purpose of the amendment to the Guidance was to facilitate removals to France under the Treaty as the reconsideration mechanism was seen as a barrier to effective implementation of the Treaty. This purpose did not fall within the scope of the statutory purpose of section 49(2) of the 2015 Act, which included the effective identification of victims. Further, there was no rational or proportionate connection between the statutory purpose of section 49(2) of the 2015 Act and the removal of the right to reconsideration for the Treaty cohort. To the contrary, removal to France will impede

or prevent effective identification of victims of trafficking, as France will not identify them as victims unless the trafficking fell within the criminal jurisdiction of France.

105. For the Secretary of State, Mr Brown KC submitted that the principle in Padfield is concerned with a public body not exercising a statutory power in a way that thwarts, runs counter to or frustrates the purpose of the statute. In R (Sathanantham) v Secretary of State for the Home Department [2016] 4 WLR 128, Edis J held that there is no breach of the principle in Padfield just because powers exercised to further the purpose of a statute could have been exercised better.

106. It was further submitted that the principle in Padfield does not mean that the pursuit of one purpose cannot be fulfilled in a manner that has regard to other purposes. Other objectives do not have to be ignored. Thus, the Secretary of State is not prevented from shaping her policy on reconsideration with regard to other policy goals, including ensuring that reconsideration is not a barrier to the effective implementation of the Treaty and the important public policy objectives it pursues. Further, it was submitted that amendments cannot be looked at in isolation from the Guidance as a whole. The question was whether the Secretary of State was putting in place an effective system of identification; not whether it is a worse, or less effective, system than before the amendment was made.

(v) Does the amended Guidance contravene the principles in R (*A*) v Secretary of State for the Home Department?

107. For the Claimants, Mr Robottom submitted that the amendment to the Guidance at paragraph 14.216 was unlawful in that it offered a complete decision-making policy to officials that, contrary to the test in R (*A*) v Secretary of State for the Home Department, directed officials to act in a way which contradicted the law and was therefore unlawful. A reasonable reading of the policy was to stop decision-makers considering requests for reconsideration. That was how Mr Hobbs understood it when he wrote his first witness statement in this case, and was consistent with the decision-making in KAG's case.

108. Miss Grange KC submitted, on behalf of the Secretary of State, that this ground of challenge did not add anything, as it was predicated on the assumption that the amendment to the Guidance was unlawful and that assumption was wrong.

IV. Discussion as to whether the Amendment to the Guidance was unlawful

(i) Was it lawful to remove the right to request reconsideration?

109. The first question for me to consider is whether it was lawful for the Secretary of State to introduce paragraph 14.216 of the Guidance and remove the right to request reconsideration for those people with a negative "reasonable grounds" or "conclusive grounds" decision who the Secretary of State intends to remove France, or to any other State which is a signatory to ECAT and the Convention.

110. Section 49(1) of the 2015 Act imposes an obligation on the Secretary of State to issue guidance as she considers appropriate about "(c) arrangements for determining whether there are reasonable grounds to believe that a person is a victim of slavery or human trafficking; (d) arrangements for determining whether a person is a victim of slavery or

human trafficking." I regard the reference to "arrangements for determining" as synonymous with "arrangements for identifying" trafficking victims.

111. An "identified potential victim" is defined at section 61(1) of the 2022 Act as a person in respect of whom "a decision is made by a competent authority that there are reasonable grounds to believe that the person is a victim of slavery or human trafficking". Section 65 of the 2022 Act refers to a person who has received a "positive conclusive grounds decision", which is defined as a decision made by a competent authority that "a person is a victim of slavery or human trafficking".

112. In making the arrangements for determining or identifying trafficking victims, subsections 49(1)(c) and (d) of the 2015 Act afford a discretion to the Secretary of State. That discretion is not unbounded, however, as the identification of trafficking victims is of real importance under the 2015 Act. Identification provides a gateway to important rights. Where a positive reasonable grounds decision is made, unless the individual concerned is a threat to public order or has made their trafficking claim in bad faith (section 63 of the 2022 Act), the individual cannot be removed from the United Kingdom during the recovery period, a period which lasts for at least 30 days: see section 61 of the 2022 Act. During that period, the individual is entitled to "necessary assistance and support": see section 50A of the 2015 Act. Where a conclusive grounds decision is made, the individual is entitled (subject to exceptions which will be dealt with later in this decision) to limited leave to remain where that it is necessary for the purpose of, among other things, assisting them in their recovery: see section 65 of the 2022 Act.

113. Necessarily, therefore, the process of identification has to be robust and effective, even if not perfect. Otherwise, the rights that flow from being identified as a trafficking victim under the arrangements made pursuant to section 49 of the 2015 Act will not be made available to those who should be entitled to them.

114. The same analysis applies when looking at the matter through the prism of ECAT. There was no dispute between the parties that in exercising her discretion as to the arrangements that are to be made for determining, or identifying, trafficking victims, pursuant to section 49 of the 2015 Act the Secretary of State must act consistently with ECAT as the statutory scheme is designed to give effect to ECAT. This is clear from the Explanatory Notes to the legislation, cited at paragraph 70 above.

115. ECAT does not, on its face, prescribe any particular arrangements that need to be made by a Contracting State for identifying trafficking victims (save that there is a requirement to establish a procedure which takes into account "the special situation of women and child victims"). Those arrangements must, however, be robust and effective, even if not infallible. This is clear from the Explanatory Report to the Treaty, which is permitted to be taken into account as an aid to construction pursuant to Articles 31-33 the Vienna Convention on the Law of Treaties. See paragraphs 71-3 above for relevant extracts from the Explanatory Report to ECAT.

116. It is also the required interpretation given the rights that identification as a trafficking victim provides. For instance, under ECAT, a "recovery and reflection period of at least 30 days" is owed where there are "reasonable grounds to believe that the person concerned is a victim", and that person cannot be removed from the country during that period and is entitled to the measures contained in Article 12 (Article 13(1)). Article 12

calls for measures as may be necessary "to assist victims in their physical, psychological and social recovery". Sir Stephen Silber described these rights in as "fundamental": see SF (St Lucia) at [99]. I agree.

117. As a matter of principle, there is no obligation on each Contracting State to ECAT to allow for a right to request reconsideration of a trafficking decision. This is not expressly called for by ECAT, and is not suggested by the Explanatory Report to ECAT. Whether or not it is required in the case of any Contracting State will depend on the particular arrangements that have been made for identifying trafficking victims, and whether they are sufficiently robust and effective without it.

118. One can easily imagine a situation where the process of identification involves a comprehensive mechanism for fact-finding, which is not taken at great pace, and which provides the affected person with considerable procedural safeguards, such as the right to see a 'minded to' decision and the opportunity to respond to any concerns or doubts expressed by the Contracting State before the trafficking decision is taken. In that scenario, a right to request reconsideration is unlikely to be necessary, as the arrangements are robust and effective without it.

119. Under the Guidance, however, there are no such procedural safeguards: there is no opportunity for the individual to know what conclusion the decision-maker is minded to make or why, and to respond to that provisional conclusion.

120. The reasonable grounds decision is taken by trained staff who are provided with detailed guidance as to how to consider questions of credibility, inconsistencies in accounts and so forth, and with the benefit of detailed reports about the existence, and types of, trafficking that takes place in different countries. The reasonable grounds decision is taken, however, at considerable pace – "within 5 working days, where possible, of the NRM referral being received" (paragraph 14.49 of Annex E to the Guidance).

121. In Operation Hillmore cases, those arriving by small boat will often have endured a very difficult journey across the English Channel. They will frequently be malnourished and deprived of sleep for several days. Their first interview – the asylum screening interview – may take place only hours after their arrival and in the middle of the night. There will often be language difficulties, which will not be resolved by the use of an interpreter. The questions posed about exploitation may not be fully understood. In these circumstances, it would not be surprising if incomplete accounts are given of alleged trafficking experiences or if none are given at all.

122. Furthermore, the referral into the NRM may be made before the individual has spoken about his experiences to a medical professional. The Guidance acknowledges at paragraph 13.11 of Annex D that "Victims of modern slavery may initially be unwilling to disclose details of their experience or identify themselves as a victim for a variety of reasons". The Guidance also recognises at paragraph 13.12 that "Victims may experience post-traumatic stress disorder, which can result in the following behaviours: . . . avoidance of reminders or triggers of the trauma – more extreme manifestations may include avoiding talking about the trauma they have experienced at all costs even when it would be in the victim's 'best interests' to do so, such as in a police or asylum interview". At paragraph 13.16, the Guidance notes that "Errors, omissions and inconsistencies . . . can also arise due to the impact of trauma, which can, for example,

lead to delayed disclosure or difficulty recalling facts." At paragraph 13.17, the Guidance states that: "Victims may have problems in dealing with direct interviewing, especially in contexts which seem to them to be adversarial." It is for this reason that the Guidance identifies at paragraph 14.224, as an example of further evidence that is likely to be relevant to a case, "Evidence that provides possible explanations for inconsistencies in a potential victim's account of modern slavery e.g., a medical report detailing inability to provide a coherent account of their experience of modern slavery".

123. In the instant case, the amendment to the reconsideration policy has the effect that in a certain category of cases – for individuals who may be removed to other ECAT and Convention countries, including those being removed to France under Operation Hillmore – relevant evidence casting doubt on the correctness of a reasonable grounds or conclusive grounds decision will be disregarded. That further evidence may include material contained in a report under Rule 35 of the Detention Centre Rules 2001[1], or a medico-legal report, following concerns about the mental or physical well-being of a detainee. That evidence might be in the process of being obtained at the time that the relevant trafficking decision is being taken, or may only be available after the decision is made.

124. Arrangements that deprive the decision-maker of such evidence means that there are bound to be many cases where a victim of trafficking will not be identified. This is supported by the evidence that 79% of reasonable grounds decisions which were reconsidered in 2025 received a positive outcome. As a result, the amendment to the Guidance means that (using the words of Mr Hobbs in the draft submission) the decision-making process will in many cases lead to identification decisions that are not "accurate and informed by appropriate evidence".

125. In my judgment, such a decision-making process cannot be regarded as robust and effective, and so could not have been within the contemplation of Parliament when conferring discretion on the Secretary of State to make "arrangements" under section 49(1) of the 2015 Act. As a result, I consider that the amendment to the Guidance was unlawful.

126. This conclusion is supported by the decision of Kerr J in DS. In that case, Kerr J was considering an earlier iteration of the Guidance which provided that a person whose claim to be a victim of human trafficking has been rejected could only have the decision reconsidered if one of a class of bodies interceded on their behalf: a first responder or a support provider. It was argued on behalf of the Secretary of State that the policy was a legitimate means of performing the state's duty in a manner that was efficient, swift and effective. Barring direct access by individuals and organisations, including legal representatives, to the remedy of reconsideration, was necessary to manage cases in an orderly way and use the state's resources effectively and efficiently.

127. The conclusion of Kerr J was that the reconsideration policy was unlawful as it involved an unlawful fettering by the Secretary of State of the discretion to reopen negative decisions, as the policy not to allow requests other than via first responders or support

[1] Rule 35 of the Detention Centre Rules 2001 provides for a report from a medical practitioner with respect to a detained person (1) whose health is likely to be injuriously affected by continued detention or any conditions of detention; (2) who is suspected of having suicidal intentions; and (3) where there is a concern that he may have been a victim of torture.

providers was applied rigidly. Nevertheless, Kerr J's analysis of why the availability of reconsideration was important is instructive in the present set of cases.

128. At [60], Kerr J held that the "spectre of disruption" to the administrative process for identifying trafficking victims did not justify the policy "if the policy is tainted with the vices of rigidity, institutional disregard of potentially relevant evidence and unlawful delegation of the state's duty to identify victims of human trafficking" (my emphasis).

129. Kerr J noted that the first responders or support providers could be asked to make the request for reconsideration on the individual's behalf, and this was made known to alleged victims or their representatives if they made a request for reconsideration. Nevertheless, Kerr J found that the first responders or support providers were not obliged to consider that request or give reasons for not doing so, and the competent authority might not even be made aware that the request had been refused. Kerr J analysed the situation as follows:

> "[67] The NRM process plainly and correctly includes a discretionary power to reopen negative decisions. The discretion must be exercised in accordance with the duty to identify victims. I accept Ms Luh's submissions on the nature of that duty: it must be performed of the state's own motion; it is a continuing duty; and if there has been a prior negative decision, relevant evidence casting doubt on the correctness of that decision must not be disregarded.
>
> [68] To hold otherwise would be to dilute the content of the duty and water down the protection afforded to victims of trafficking by ECAT, the Anti-Trafficking Directive and article 4 of the ECHR, which is absolute and may not be subject to derogation even in time of war or other national emergency. If victims of trafficking could be denied that protection for administrative reasons, the NRM would not be operating in compliance with the international obligations of the United Kingdom."

(I note in passing that the reference to "Anti-Trafficking Directive" – which the United Kingdom is no longer bound by following the departure from the European Union – was not determinative of the learned judge's reasoning)

130. Kerr J found at [72] that the policy entailed "an abdication of the state's responsibility to perform the identification duty, in cases where a negative decision needs reconsidering in the light of relevant new material" where the request for reconsideration was not made by a first responder or support provider.

131. It was argued that judicial review was available to challenge refusals to reconsider individual decisions where the policy was applied. Kerr J held, however, at [80] that:

> "The availability of judicial review does not make the policy lawful if it is otherwise unlawful. The evidence before me indicates willingness to depart from the policy under direct threat of litigation but I have no evidence of any broader willingness on the SCA's part to entertain reconsideration requests outside the

> policy, other than under threat of litigation. That does not surprise me because to do so would contradict the terms of the CA guidance."

At [84], Kerr J concluded that the policy was "rigid and does not admit of exceptions", and that:

> "However strong the merits of a case for reconsideration, the identity of the requesting person may determine whether the request is considered or ignored. In my judgment, that is an unlawful fetter on the discretion to reopen negative decisions."

132. Kerr J's analysis at [67]-[68] (see paragraph 129 above) has resonance in the present case. The removal of the right to request reconsideration for those being removed to France under the Treaty institutionalises a disregard for relevant evidence which may cast doubt on the correctness of the negative reasonable grounds decision. The same also applies to a negative conclusive grounds decision where further evidence is sought to be adduced after that decision has been made, although the failure is less acute given that the conclusive grounds decision is not taken at the same pace, or in the same circumstances facing the putative trafficking victim, as the reasonable grounds decision.

133. I do not consider that the unlawfulness of the removal of the right to request reconsideration is saved by the fact that the removal only applies where the alleged trafficking victim is removed to France, or another State that is a signatory to ECAT or the Convention. No such exception is suggested in any way by the domestic legislation. There is no indication that the Secretary of State's duty to make arrangements to identify trafficking victims is restricted in any way by the fact that the individual victim of trafficking might be identified as such in another country.

134. Nor is it consistent with ECAT. The obligation to identify a trafficking victim under ECAT applies to "Each Party". Whilst Article 10(2) of ECAT refers to "collaboration with other Parties" this does not mean that the obligation to identify can be delegated to another signatory. Rather, it is referring to the situation where it may be necessary to seek assistance or support from another signatory to determine whether or not an individual was a victim of trafficking as there may be evidence or information that the other Party can provide.

135. I do not consider that the difficulties associated with the removal of the right to request reconsideration is saved by the exercise of residual discretion, or the availability of judicial review and the Court's power to provide interim relief. It is clear that, in fact, the Secretary of State does reconsider some of her decisions. There is evidence of this occurring in the cases of GIP and KAG, discussed further below. Mr Hobbs has explained that where a reconsideration request is received "the content of the request will still be reviewed to some extent and where it is practical in all the circumstances".

136. There is a real possibility, however, that requests which might be worthy are not reviewed. Taking Mr Hobbs' evidence at face value, he is not saying that all reconsideration requests are reviewed. Furthermore, although Mr Hobbs has said the review is "completed by a HEO Technical Specialist. . . . If it is considered that the negative decision was fundamentally flawed or if new evidence is provided that renders

the initial negative finding untenable, a reconsideration will be undertaken", this evidence does not sit comfortably with the evidence of Mr Stephenson.

137. Mr Stephenson makes it clear that reconsideration decisions are only made when litigation is contemplated, and every case in which that had taken place involved an assessment made by the IECA that there was a fundamental error in the original decision, rather than merely because new evidence had become available. This chimes with the circumstances in which judicial review takes place: judicial review is concerned with examining the decision-making process based on the information available to the decision-maker and does not cater for evidence that was not before the decision-maker, whether it could have been adduced at that stage or was only available after the decision had been made.

138. Further, in any event, the clear words of paragraph 14.216, and of the communications that are put out by the IECA, will have a chilling effect on many alleged trafficking victims and their representatives if they have them. They will reasonably believe that there is no point in them seeking to request reconsideration and providing the additional evidence in support of that request or the detailed reasoning for why the original decision is flawed.

139. The amendment to the Guidance is also not saved merely because it is intended to assist with the process of removals under the Treaty. The Treaty has not been incorporated into domestic law and, as a matter of law, does not inform the content of the Secretary of State's duties under the 2015 Act.

140. I reach my conclusion that the amendment to the Guidance is unlawful without considering the territorial scope of ECAT or Article 4 of the Convention: that is, whether either or both of those instruments actually apply to victims where all of the trafficking took place outside of the United Kingdom and had no connection to the United Kingdom. Under domestic law, individuals who are present in the United Kingdom are treated as being victims of trafficking irrespective of where they have been trafficked and by whom, and irrespective of whether their trafficking occurred in the past.

141. That is how the Guidance has been applied and understood in the case law: in Hoang, Burnett LJ observed at [40] that:

> "the Guidance is concerned with a broader geographical consideration of trafficking than the procedural obligation which would arise [under Article 4 of the Convention] . . . For the purposes of the two stage decision under the Guidance it matters not where the trafficking may have occurred. By contrast, as already noted there is no obligation under article 4 ECHR for the United Kingdom to investigate allegations of trafficking from Vietnam to Russia, or forced labour within Russia, although both might be central to a consideration of whether the respondent was a victim of trafficking for the purposes of the Guidance, whatever the consequences which may flow from the finding".

142. This conclusion is entirely consistent with the definition of victims under the 2022 Regulations which expressly contemplates that trafficking may take place outside of the United Kingdom. Thus, I note that the definition of a "victim of slavery" is a person

"who has been subjected to slavery, servitude or forced or compulsory labour": see regulation 2(1). Furthermore, regulation 3 – which defines the term "victim of human trafficking" – plainly contemplates that the exploitation of that victim may take place outside of the United Kingdom. Regulation 3(6)(iii) includes within the definition of a person being exploited where that person is "encouraged, required or expected to "do anything outside the United Kingdom that, if it were done in any part of the United Kingdom, would involve the commission of an offence mentioned in paragraph (i) or (ii)" (that is, the commission of an offence prohibiting commercial dealings in organs and restrictions on the use of live donors). Regulation 3(8)(b) includes within the definition of a person who is "subject to sexual exploitation" if something is done to them "outside the United Kingdom that, if it were done in any part of the United Kingdom, would involve the commission of an offence mentioned in sub-paragraph (a)" (that is, the commission of various sexual offences).

143. In conclusion to this question, therefore, I consider that removal of the right to request reconsideration in the terms prescribed by paragraph 14.126 of the Guidance was unlawful.

(ii) Is paragraph 14.216 of the Guidance unlawful on common law grounds as constituting a fetter of the Secretary of State's discretion?

144. The statutory scheme does not necessitate that the initial decision is final, thereby exhausting the decision-maker's power to make a decision. In legal terms, the Secretary of State is not functus officio once a decision has been made. There is, therefore, an inherent or implied power to reopen the decision, and on the basis of Mr Hobbs' evidence this is the actual practice of the Secretary of State. Nevertheless, the evidence of Mr Hobbs and Mr Stephenson is that whilst the Secretary of State does not fetter her discretion entirely, there are real constraints on the circumstances in which that discretion is exercised.

145. My understanding of Mr Hobbs' evidence – where "practical" – is that requests for reconsideration are not always considered. This implies that in some cases the discretion to reconsider an earlier decision is not exercised, irrespective of the merits. Moreover, the evidence of Mr Stephenson is that the discretion to reconsider is only exercised where litigation is threatened and not merely where additional evidence is put forward. An example of this can be seen in the case of the individual Claimant *KAG*: see paragraph 425 below. There was limited reconsideration of the negative reasonable grounds decision, looking at the correctness of the decision based on the information that had been before the decision-maker but ignoring the evidence that had not previously been seen.

146. In my judgment, limiting the exercise of discretion to reopen negative decisions in this way constitutes an unlawful fetter on the Secretary of State's discretion to identify trafficking victims. As discussed in more detail above, the Secretary of State is depriving herself of considering evidence that could be decisive of an individual's claim to be a trafficking victim, and that is not lawful.

(iii) Was the decision to amend the Guidance taken in breach of the *Tameside* duty of inquiry?

147. There is no dispute between the parties as to the Tameside principles. They require a decision-maker to take reasonable steps to acquire relevant information to enable them to make the decision in question. In the absence of an express or implied statutory obligation as to what factors are to be taken into account, the selection of relevant factors are for the decision maker unless a matter is so obviously material that it would be irrational to disregard it: see R (Samuel Smith Old Brewery (Tadcaster)) v North Yorkshire County Council [2020] UKSC 3 at [30]-[33].

148. The question of what inquiries should be made (both as to the manner and intensity of inquiry to be undertaken) is a matter for the Secretary of State, subject only to review on *Wednesbury* rationality grounds: see R (Khatun) v Newham [2005] QB 37 at [35]. The court will not intervene "merely because it considers that further inquiries would have been sensible or desirable": R (Balajigari) v Secretary of State for the Home Department [2019] 1 WLR 4647 at [70].

149. Before making the amendment to the reconsideration policy, therefore, the Secretary of State was under the *Tameside* duty to take reasonable steps to obtain relevant information for her decision-making, and was required to consider information that was obviously material for that decision-making. In my judgment, the Secretary of State did not fail to comply with that duty.

150. The decision to make the amendment to the reconsideration policy was made by the Secretary of State herself. Whilst the mechanics of seeking further information could be carried out by officials working in the Home Office, it was necessary for the Secretary of State herself to consider information that was obviously material for her decision-making. It was submitted by Ms Naik KC that the contemporaneous documents in the period of 15 to 17 September 2025 do not show that there was any kind of consideration of the CIN or the identified gaps in information, and that there was no evidence to show that the Secretary of State knew about the gaps.

151. Whilst it is correct that the documents disclosed, including the Ministerial submission, makes no reference to the CIN, the evidence before the Court (through the witness statement of Mr Hobbs) is that:

> "At the time that the reconsideration policy was amended, the SSHD relied on the objective information contained within the CPIN, including reference to France's status as a Tier 1 country in the 2024 USSD TiP report, GRETA monitoring, French government produced documents and detail on provision of support (including details of government provision and NGOs)."

152. I take this to mean, and accept, that the Secretary of State was herself aware of the material contained in the CIN and that informed her decision-making. The Secretary of State was aware, therefore, that in France asylum seekers would have certain entitlement to accommodation and subsistence support, and would have certain entitlement to healthcare services.

153. The information contained in the CIN was clear that asylum seekers would be entitled to receive certain support and that this would be readily available throughout France.

The Secretary of State would have assumed that those being removed under Operation Hillmore would claim asylum in France. That would have been a reasonable assumption for her to make as those persons clearly sought asylum, and had claimed asylum in the United Kingdom before their removal. The Secretary of State was in a position to understand what support those removed under Operation Hillmore would receive, whether or not they were recognised as victims of trafficking in France, either formally or informally. That support would, at least in general, cover the mental health and other assistance that victims of trafficking would ordinarily require, even if it was not bespoke to them being trafficking victims: see paragraph 217 below for more details.

154. The Secretary of State was also aware that France was a signatory to ECAT and that provision was made available for trafficking victims through government entities and NGOs. Whilst there remained some gaps in the information about provision in France, as not all of the information that had been sought appears to have been provided, it cannot be said that the Tameside duty of inquiry was not complied with. Reasonable inquiries were plainly made by the Secretary of State, as evidenced in the formal information requests sent to the Government of France and to AcSé, and the knowledge gaps concerned information that was not so "obviously material" that it was irrational for the Secretary of State not to wait for it before making her decision.

155. It was submitted that the Secretary of State failed in her Tameside duty because she did not make inquiries as to how trafficking victims are identified in France, and did not realise that the Government of France appears to adopt a different approach to the definition of trafficking victims than in the United Kingdom which will have the effect that many of the Operation Hillmore cohort will not be formally identified as trafficking victims in France. Under the NRM, the competent authority will identify someone as a victim of trafficking wherever they have been trafficked and without consideration of the nationality of the trafficker. In France, however, official or formal recognition only applies to those victims whose trafficking would amount to a criminal offence: that is, subject to the French penal code. This will apply to those who have been trafficked in France, or have been trafficked by a French national in a foreign country. In addition, France will consider trafficking in the asylum-seeker's home country as relevant to their asylum claim: they will not be returned to a country where they are at risk of trafficking.

156. I do not consider that it was irrational for the Secretary of State not to make inquiries as to how trafficking victims were identified in France, or to obtain information from experts. As already explained, the key point for the Secretary of State was that support and assistance would be available to asylum seekers, whether they were victims of trafficking or not.

157. There is evidence that the prevailing view within the Home Office was that the Government of France adopted the same approach to defining trafficking as in the United Kingdom. In a witness statement made by Lucy Vaughan, a Deputy Director in Immigration Enforcement, who heads the National Returns Progression Command, on 18 September 2025, for the appeal in the case of CTK, issue was taken with the contention that the claimant in that case would not have an effective opportunity to present a trafficking claim in France on the basis that the French authorities would not consider evidence of trafficking of a foreigner committed by non-French nationals outside of France. That issue had arisen in the earlier case of AA (Sudan) v Secretary of State for the Home Department [2021] EWHC 1869 (Admin), which set out evidence

supplied by a French lawyer, Mr Christophe Pouly. Ms Vaughan's evidence was that Mr Pouly's view was not accurate now, even if it had been accurate previously.

158. In support of this position, it was stated that:

> "In the CPIN . . . no mention is made of French authorities disregarding evidence of trafficking of non-French nationals which occurred outside France and at the hands of non-French nationals. Indeed, at § 15.5.4, the CPIN notes that, in its February 2025 response to GRETA's questionnaire:
>
> *"[The French government] summarised the main trends in foreign national victims, explaining that foreign victims were exploited by highly structured transnational criminal networks. Networks from Latin America and the Caribbean, including the Dominican Republic, Paraguay, Brazil and Colombia, facilitated prostitution in France, whereas Nigerian nationals, who had previously made up a significant proportion of victims, had almost disappeared."*

159. This shows that French authorities identify non-French victims of trafficking, and further suggests that it does so based on evidence emanating from outside France and relating to 'transnational' criminal networks (with no suggestion that such networks are all made up of French nationals)."

160. At the hearing before the Court in the present case, the Secretary of State's legal representatives accepted that the view expressed by Ms Vaughan was not correct; that the French Government did not apply the same definition of trafficking as is applied by the United Kingdom Government. I do not consider, however, that this means that the Secretary of State failed to comply with her Tameside duty. The evidence explained above demonstrates that reasonable steps were taken to obtain relevant information, and in any event it did not matter what definition the French Government applied if, in substance, support and assistance was available to asylum seekers which would include the kind of treatment that victims of trafficking may require. Furthermore, although the Court raised the matter with the legal representatives of the Claimants, the decision of the Secretary of State was not challenged on the basis that she had made a mistake of fact.

161. I also reject the submission that the Secretary of State failed in her Tameside duty because she did not seek information about how many reconsideration requests reversed negative decisions, whether at the reasonable grounds or conclusive grounds stages. First, whilst there is no evidence that the particular figures were before the Secretary of State when she amended the reconsideration policy, it would be surprising if she did not know that at least some reconsideration requests were successful. Second, in any event, this was not "obviously material" to the decision that was being made in circumstances where the Secretary of State understood that those removed under Operation Hillmore would be entitled to support and assistance in France as asylum seekers.

162. In these circumstances, it is not necessary for me to consider whether section 31(2A) of the Senior Courts Act 1981 applies.

(iv) Did the amendment to the Guidance offend the *Padfield* principle?

163. The *Padfield* principle is that public authorities must exercise discretionary powers in a way that furthers the purpose and objects of the statute under which the power is granted, and not in a manner that frustrates them.

164. In the instant cases, the power exercised by the Secretary was that contained in section 49(2) of the 2015 Act, which empowered her to revise the guidance issued under subsection (1) from time to time. In light of my finding that the amendment to the reconsideration policy unlawfully dilutes the effectiveness of the arrangements for determining, or identifying, trafficking victims, I am bound to reach the conclusion that the *Padfield* principle was also breached. The purpose and objects of the 2015 Act are, among other things, to support and protect victims of trafficking. A precondition for those purposes is that trafficking victims are properly identified, which requires there to be an effective mechanism for identification. As the amendment to the reconsideration policy undermines the effectiveness of the mechanism for identification in a significant way, this cannot be said to further the purpose and objects of the 2015 Act and, in fact, frustrates them. The fact that other aspects of the Guidance for the Operation Hillmore cohort may be regarded as furthering the purpose and objects of the 2015 Act are not material in this connection.

165. The Claimants do not contend that the power to amend the Guidance was used for an improper purpose. The *Padfield* principle is not breached in this case merely because the Secretary of State made the amendment to the reconsideration policy for the purpose of making the Treaty work more smoothly, given the concern that allowing the right to reconsideration would serve as a barrier to removal in many cases. The *Padfield* principle is breached because the amendment renders the identification regime much less effective for a particular cohort of alleged trafficking victims.

(v) Is the policy contained in the amendment to the Guidance contrary to the principles in R (A) v Secretary of State for the Home Department?

166. The policy contained in the amendment to the Guidance is unlawful as it significantly dilutes the effectiveness of the identification mechanism for a certain cohort of alleged trafficking victims. Given that the Guidance is clearly designed to serve as a working document for decision-makers within the IECA, the amendment will induce decision-makers to act unlawfully in failing to reconsider cases which ought to be reconsidered. This contravenes the principles identified by the Supreme Court in R (A) at [46] where policies may be found to be unlawful.

V. The Territorial scope of ECAT and the Convention

(i) ECAT

167. As the issue of the territorial scope of ECAT was debated before me, I shall set out some observations on the matter.

168. Whether or not ECAT does, in fact, apply to persons who are present in France, but were not trafficked in or to that country is not totally clear. The Government of France does not officially recognise such persons as being victims of trafficking (unless there were trafficked by a French national) and, from the various reports that I have been

shown, GRETA has not criticised the Government of France for the failure to exclude such persons from official recognition. I find the absence of any such criticism, or even comment, by GRETA – whose role is to monitor the implementation of ECAT by the parties - as highly surprising if ECAT does apply in such circumstances.

169. There is, however, domestic case law from the Upper Tribunal (Immigration and Asylum Chamber) that directly addresses the scope of ECAT: see N v Secretary of State for the Home Department [2015] UKUT 00170 (IAC). At [47], it was held that:

> "Although Atamewan was concerned with the situation of an historical victim of trafficking into the United Kingdom, the analysis of the Convention, and, in particular what is said about Article 10(2), seems to us to favour an interpretation of the United Kingdom's responsibility which includes duties owed to a person in the appellant's position.
>
> The wording of the second sentence of Article 10(2): "Each party shall ensure that, if the competent authorities have reasonable grounds to believe that a person has been the victim of trafficking in human beings...." does not limit the obligation to a person who was a victim of trafficking into that particular state. The object of the Convention, at least in part, is to enable identification of and assistance to, trafficking victims and where, as in this case, that did not occur in the country into which the victim was trafficked, it would defeat the protective purpose of the Convention if the Article 10(2) duty did not extend to the state to which the victim subsequently moves".

(In R (Atamewan) v Secretary of State for the Home Department [2014] 1 WLR 1959, the Divisional Court held that a "victim of trafficking, for the purposes of ECAT, was anyone who was presently or who had been the victim of trafficking).

170. There is also language in Hoang which suggests that ECAT may apply to individuals who have been trafficked abroad. Burnett LJ observed at [30] that ECAT had a "wider scope" than Article 4 of the Convention and that:

> "It is concerned with the immediate treatment to be accorded to those in respect of whom there are reasonable grounds to believe that they are victims of trafficking. It is also concerned with their medium term treatment for immigration purposes in the event that it is accepted administratively that they have been trafficked. It is also concerned with the criminalisation of behaviour associated with trafficking and the need to investigate and prosecute offences."

I do not consider, however, that this observation is definitive of the question, as the issue before the Court of Appeal in Hoang was the scope of Article 4 of the Convention, and not that of ECAT.

171. In my judgment, it does not necessarily follow that because Article 10(2) of ECAT applies to a person who was previously trafficked it applies to trafficking that did not occur in the United Kingdom or by a United Kingdom national. Much of ECAT is focused on the "offence" of trafficking, and Article 31 obliges a Contracting State to establish jurisdiction over offences that are committed in their territory and, unless the

Contracting State decides otherwise, where the offence is committed by one of its nationals or habitual residents or is against one of its nationals. This is also consistent with the approach that is taken by Directive 2011/36/EU which is focused on the offence of trafficking, and primarily where the offence is committed within the territory of a Member State or by one of their nationals: see Article 10.1.

172. Mr Grodzinski KC took me to the Explanatory Report to ECAT which refers to trafficking "abroad" (paragraph 1); and to "transnational" trafficking (paragraph 36) which implies trafficking taking place abroad. At paragraph 148, the Explanatory Report stated that "the Party in whose territory the victim is located must ensure that the assistance measures specified in sub-paragraphs a. to f. are provided to him or her." Mr Grodzinski KC also made reference to the submission made by GRETA in April 2023 with respect to the United Kingdom's Illegal Migration Bill. At paragraph 9, GRETA had stated that the measures under Article 12 of ECAT "apply to all victims in a non-discriminatory manner, whether subjected to transnational or national trafficking, regardless of the form of exploitation and the country where they were exploited."

173. I do not consider that these references point persuasively in the direction of ECAT applying wherever the trafficking occurred, and even if there was no connection with the Contracting State where the putative victim was present. The references do not explicitly state that the trafficking to which ECAT relates can include trafficking which has no connection to the country in which the victim resides. If it was contemplated that ECAT would apply to trafficking wherever it occurred, by whoever, and against whoever, I would have expected to see something far more definitive in the Explanatory materials.

174. Nevertheless, I accept that there is a plainly a legitimate and plausible view that ECAT does apply even where trafficking took place outside of the territory of the Contracting State, and without any connection to the Contracting State for the purposes of criminal jurisdiction, where the purported victim is present in the territory of a contracting party to ECAT.

(ii) Article 4 of the Convention: Territorial scope

175. During the course of the hearing, Mr Grodzinski KC submitted that Article 4 of the Convention applied even where the trafficking had taken place outside of the territory of the relevant State party, referring to J v Austria (Application no. 58216/12; 17 January 2017), and that this was relevant to the duty to identify trafficking victims as well as to the provision to them of relevant support. I disagree.

176. The submission is contrary to the Strasbourg jurisprudence, as highlighted by the Court in Rantsev. That case involved a Russian national (Ms Rantseva) who arrived in Cyprus where she was granted a permit to work as an "artiste" in a cabaret and died in suspicious circumstances. It was argued, among other things, that Russia was in breach of Article 4 of the Convention for failing to investigate her alleged trafficking to Cyprus and to take steps to protect her from the risk of trafficking.

177. The Strasbourg Court observed at [289] that trafficking was a problem which is often not confined to the domestic arena, and that in addition to Member States being obliged "to conduct a domestic investigation into events occurring on their own territories, Member States are also subject to a duty in cross-border trafficking cases to co-operate

effectively with the relevant authorities of other states concerned in the investigation of events which occurred outside their territories".

178. At [301], the Strasbourg Court held that "the responsibility of Russia in the present case is limited to the acts which fell within its jurisdiction", and held that the legal and administrative framework in place in Russia at the material time did not fail to ensure practical and effective protection for Ms Rantseva.

179. At [304], under the heading "Positive obligation to take protective measures", the Strasbourg Court stated that:

> **"any positive obligation incumbent on Russia to take operational measures can only arise in respect of acts which occurred on Russian territory".**

(Emphasis added).

180. On the facts of Rantsev, the Strasbourg Court did not consider that there was a positive obligation to protect the applicant where there was no evidence that the Russian authorities were "aware of circumstances giving rise to a credible suspicion of a real and immediate risk to Ms Rantseva herself prior to her departure for Cyprus. It was insufficient, in order for an obligation to take urgent operational measures to arise, merely to show that there was a general risk in respect of young women travelling to Cyprus on artistes' visas": at [305].

181. Rantsev is clear authority, therefore, that a Member State's positive obligations under Article 4 to take "operational measures" only arise where the trafficking occurred in that State's territorial jurisdiction. Whilst the Strasbourg Court was dealing in that case with the operational measures to protect individuals from the risk of trafficking, the same principle must surely apply to other aspects of the operational duty: that is, the provision of material and other support to facilitate the putative trafficking victim's recovery. The latter aspects of the operational duty can only arise where the trafficking occurred within the jurisdiction of the particular State.

182. The approach in Rantsev to the limits of Article 4 is consistent with the Strasbourg Court's case law under Article 3. Indeed, in Rantsev at [304] reference was made to Al-Adsani v. United Kingdom (2002) 34 E.H.R.R. 11 at [38]–[39]. In that case, which was concerned with Article 3, the Strasbourg Court held that Contracting States were obliged to take measures to ensure that individuals *within their jurisdiction* are not subjected to torture or inhuman and degrading treatment.

183. In Al-Adsani, the Strasbourg Court acknowledged that there may also be some "limited, extraterritorial application" where removal of a person ran the real risk of that individual being subjected to ill-treatment abroad. The same would presumably apply to Article 4. That is, a Contracting State would have obligations under Article 4 where there was a real risk that an individual who would be subjected to trafficking and would not be protected from it if they were removed from the Particular State. The same would apply to Article 4, as is implicit in [305] of Rantsev. That is, a Contracting State would have obligations under Article 4 if it was aware of circumstances giving rise to a credible suspicion of a real and immediate risk that an individual would be subjected to trafficking if they were removed to a particular foreign country.

184. I do not consider that the decision of the Strasbourg Court in J v Austria, relied upon by Mr Grodzinski KC, involves any departure from Rantsev. The case of J v Austria involved three applicants who were nationals of the Philippines and alleged that they were subjected to ill-treatment and exploitation by their employers in Dubai (the United Arab Emirates). They came with their employers for a short holiday trip to Austria, and alleged that they were subjected to ill-treatment in Austria. Two or three days after their arrival, they escaped and found support within the Filipino community in Vienna. A year later, having had support from "a local NGO which was actively involved in the fight against trafficking in human beings in Austria" ([25]) they filed a criminal complaint against their employers. The NGO also supported the applicants in applying successfully for a special residence permit in Austria for victims of human trafficking. The public prosecutor discontinued proceedings on the basis that the offence had been committed abroad by non-nationals and did not engage Austrian interests. An application was made to reinstate the case on the basis that Austrian interests had been engaged as they had been exploited and abused in Austria. This application was dismissed. It was said, among other things, that under the relevant criminal code the relevant acts for the exploitation of labour had to occur over a longer period of time.

185. At [103]-[107], the Strasbourg Court set out the general principles governing the application of Article 4, referring to Rantsev, including the duty to investigate alleged trafficking offences and "in cross-border trafficking cases to cooperate effectively with the relevant authorities of other States concerned in the investigation of events which occurred outside their territories" ([105).

186. At [108], the Strasbourg Court stated that it considered that:

> "the applicants' allegations fall within the ambit of Article 4 of the Convention . . . The alleged treatment prohibited by Article 4 was not imputed to organs of the Austrian State, but to private individuals, namely the applicants' employers, over a period of several years in Dubai *and two to three days in Austria*. Therefore, the present case concerns the positive obligations arising under this provision, rather than the negative obligations."

(Emphasis added). The alleged trafficking in Austria itself was, therefore, a critical basis for the positive obligations under Article 4 to arise.

187. The Court was satisfied that "the duty to identify, protect and support the applicants as (potential) victims of human trafficking" was complied with: [110]-[111]. They were treated as potential victims; interviewed by specially trained police officers, granted residence and work permits to regularise their stay in Austria, were supported by the local NGO, and given legal representation, procedural guidance and assistance to facilitate their integration in Austria. The Court considered that "the legal and administrative framework in place concerning the protection of (potential) victims of human trafficking in Austria appears to have been sufficient, and that the Austrian authorities took all steps which could reasonably have been expected in the given situation".

188. The Court examined whether the Austrian authorities fulfilled their positive obligation to investigate the alleged crimes. With respect to the alleged events abroad (the United Arab Emirates), the Court stated at [114] that:

> "Article 4 of the Convention, under its procedural limb, does not require States to provide for universal jurisdiction over trafficking offences committed abroad . . . [T]he Anti-Trafficking Convention only requires States Parties to provide for jurisdiction over any trafficking offence committed on their own territory, or by or against one of their nationals . . . The Court therefore cannot but conclude that, in the present case, under the Convention, there was no obligation incumbent on Austria to investigate the applicants' recruitment in the Philippines or their alleged exploitation in the United Arab Emirates."

189. As for the events in Austria, the Court held that the investigation conducted by the Austrian authorities was sufficient for the purposes of Article 4. It was not unreasonable for the Austrian authorities to determine that the elements of the domestic criminal offence had not been fulfilled: [116]. The Court considered the applicants' argument that events in the Philippines, the United Arab Emirates and Austria could not be viewed in isolation. (It had been argued that the incidents in Austria were part of "an ongoing course of treatment"; that "the incidents prior to the applicants' arrival in Austria had been part of the trafficking chain relevant to the trafficking situation in Austria": [89]). The Court stated at [117] that "even if the alleged events were taken together", there was no indication that the authorities failed to comply with their duty of investigation.

190. From J v Austria, therefore, it can be seen that the duty to identify victims of trafficking, and to provide them with protection, only arises where at least some of the alleged trafficking occurred in the Member State. This has also been recognised in the domestic case law insofar as the duty to investigate is concerned.

191. In Hoang, Burnett LJ stated at [27] that:

> "The trafficking of human beings will frequently involve activity in two or more jurisdictions. This case illustrates the point. There is a suggestion that the respondent was trafficked from Vietnam to Russia. On any view, there is a suggestion that he was subjected to forced labour in Russia. There was then a suggestion that he might have been vulnerable to further exploitation in the United Kingdom were he to make contact with the individuals whose details he had been given. The ECHR does not impose procedural obligations upon States Parties to investigate matters which are outside their jurisdiction for the purposes of article 1 ECHR."

192. Burnett LJ referred to Rantsev at [289], and then said:

> "[28] In this part of its judgment the Strasbourg Court was careful to reflect the limits of the reach of the ECHR. The procedural obligation to investigate violations of article 4 ECHR, i.e. trafficking offences in this context, relates to such offences within a state's own jurisdiction. There is no obligation to investigate trafficking offences which might have occurred within the jurisdiction of other states (whether parties to the ECHR or not). The limit of the duty in those circumstances is to cooperate with other states, in particular through the use of international mutual legal assistance.

> [29] Thus, the focus of the procedural obligation under article 4 is to investigate cases of alleged trafficking and to identify those responsible for crimes committed within the jurisdiction of the State Party in question with a view to prosecution for offences which have occurred within that jurisdiction. It is also concerned with immediate relief for those suffering harm and coercion. This latter aspect of the investigative obligation would arise, for example, if a credible report were received that a factory of the sort in Russia described by the respondent were operating in this country."

193. At [32], Burnett LJ stated that:

> "the question whether someone had been a victim of trafficking, when under consideration by the Competent Authority, is not confined to the position in the United Kingdom. The decision maker in this case considered whether the respondent had been trafficked from Vietnam to Russia, and the circumstances of what had occurred in Russia over a period of almost four years. . . . Of course, what has happened to a person before he arrives in the United Kingdom may shed light on the question whether he has been trafficked to the United Kingdom. But it does not follow that article 4 ECHR imposed, in this case or similar cases, a duty to investigate the circumstances in which the respondent lived and worked in Russia."

194. Whilst the decision in Hoang was concerned with the duty to investigate, there is no hint in the judgment of the Court of Appeal that a different approach would apply to the operational duty. As a matter of principle, there is no basis for drawing any distinction.

195. In the circumstances, therefore, I consider that there can be no breach of Article 4 of the Convention if the United Kingdom Government fails to identify someone as a victim of trafficking where all of the alleged trafficking took place abroad. Nor is there a breach of Article 4 of the Convention for failing to provide such a person with material support where the trafficking took place exclusively abroad.

196. The only exception to this would be if (as explained at paragraph 183 above) the United Kingdom Government was aware of circumstances giving rise to a credible suspicion of a real and immediate risk that an individual would be subjected to trafficking in the country to which they were to be returned. The measures taken in that country to protect against trafficking would be of substantial relevance to the circumstances of which the United Kingdom Government was aware.

(iii) Article 4 of the Convention: The general scope of the positive duty to take operational measures

197. Mr Grodzinski KC submitted that the operational duty under Article 4 applied even where the trafficking had taken place in the past, and outside of the context of criminal investigation and prosecution, referring to Krachunova v Bulgaria (2024) 79 E.H.R.R 6 at [169] and [173].

198. Miss Grange KC contended that the scope of the operational duty was case and context specific. The operational duty was conditional on a person being in a situation of trafficking or of potentially being re-trafficked. It did not apply to someone who claimed that they had been trafficked at a point in the past, with no risk of re-trafficking: see TDT at [39]-[41].

199. In my judgment, it is clear that the positive duty to take operational measures, can arise even where the trafficking is in the past and there was no real and immediate risk of re-trafficking. In Krachunova, the applicant sought compensation for lost earnings from a trafficker who had kept her earnings for the sex work that she had performed. The trafficker had been imprisoned and there was no suggestion that the applicant was at risk of re-trafficking. Her application for compensation was dismissed by the domestic court on the basis that the earnings were obtained in an immoral manner. The Strasbourg Court held at [173] that Article 4 involved "a positive obligation on the part of the Contracting States to enable the victims of trafficking to claim compensation from their traffickers in respect of lost earnings."

200. In the Court's analysis, it had stated at [169] that:

> "To date, the Court's case-law relating to after-the-fact responses to trafficking has focused on investigation and punishment. However, although essential for deterrence, such measures cannot wipe away the material harm suffered by the victims of trafficking that has already taken place or practically assist their recovery from their experiences."

201. After referring at [170] to VCL where it had been found that criminal prosecution of trafficking victims could be problematic "on the grounds that it could be detrimental to their recovery, create an obstacle to their reintegration into society, and impede their access to the support and services envisaged by the Anti-Trafficking Convention", the Court stated at [171] that:

> "Similar considerations apply in respect of affording compensation to trafficking victims—particularly in respect of lost earnings. The possibility for them to seek compensation in respect of lost earnings, especially earnings withheld from them by their traffickers, would constitute one means of ensuring *restitutio in integrum* for those victims by making good the full extent of the harm suffered by them. It would also go a considerable way (by providing them with the financial means to rebuild their lives) towards upholding their dignity, assisting their recovery, and reducing the risks of their falling victim again to traffickers. This cannot therefore be seen as a secondary consideration; it must be considered an essential part of the integrated State response to trafficking required under Article 4 of the Convention. Moreover, redress for the victim should be the overarching consideration from a human-rights perspective."

202. I do not read this case as being inconsistent with what Underhill LJ had said in TDT. At [42], Underhill LJ stated that:

> "there will be other obligations, whether arising under article 4 or otherwise, which are triggered by a past history of trafficking alone -- ie

> in the absence of any real and immediate future risk to the victims. For example, victims may require support and treatment for the consequences of past ill-treatment; and the state is required where possible to bring criminal proceedings against traffickers. But obligations of that kind are outside the scope of the issues raised in these proceedings."

203. The fact is, therefore, that protection under Article 4 of the Convention might be provided to individuals who on arrival in the United Kingdom claim that they have been historical victims of trafficking even if they do not indicate a risk of re-trafficking. However, as indicated above, that will not be the case if all of the alleged trafficking fell outside of the territorial scope of Article 4.

VI. The Individual Claims

204. The Claimants challenge a variety of decisions made by the Secretary of State: decisions as to whether they were trafficking victims, whether their human rights claims were clearly unfounded, and whether their asylum claims were inadmissible. In this part of the judgment, I will set out the legal framework for the latter two matters, discuss some general points as to how the Court should examine the types of decisions that are under challenge, and then discuss the approach in France to identifying victims of trafficking and the situation in France for those who are returned there. I will then set out the background facts in each of the Claimants' cases and will go on to address the various grounds of challenge.

(a) General legal issues

(i) Certification of a Human Rights claim

205. Schedule 3 to the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 ("the 2004 Act") deals with the removal of an asylum seeker to a safe country. Paragraph 1 to Schedule 3 defines a "human rights claim" as "a claim by a person that to remove him from or require him to leave the United Kingdom would be unlawful under section 6 of the Human Rights Act 1998 (public authority not to act contrary to Convention) as being incompatible with his Convention rights". A human rights claim that is refused by the Secretary of State will attract a right of appeal from within the United Kingdom under section 82 of the Nationality, Immigration and Asylum Act 2002 ("the 2002 Act") unless it is certified. That is, if the Secretary of State "certifies that the claim is clearly unfounded": paragraph 5(4) of Schedule 3 to the 2004 Act. Where a right of appeal is not certified, the appellant cannot be removed from the United Kingdom while the appeal is pending: section 78(1) of the 2002 Act.

206. Paragraph 3(1A)(a) of Schedule 3 to the 2004 Act provides that there is a rebuttable presumption that no person removed to a safe third state in Part 2 of the schedule (which includes France) will be subject to ill-treatment contrary to Article 3 of the Convention. There is a further rebuttable presumption that no person removed to a safe third state will be removed to another state in breach of their Convention rights.

207. The statutory provisions on certification are supplemented by policy including the Secretary of State's guidance on 'Inadmissibility: safe third country cases' ("Inadmissibility Guidance").

(ii) Inadmissibility of an asylum claim

208. Pursuant to section 80B(1) of the 2002 Act, the Secretary of State may declare as "inadmissible" an asylum claim made by a person with a "connection" to a safe third State. A "safe third State" is one that, among other things, will not send the person to another State otherwise than in accordance with the Refugee Convention, or in contravention of their rights under Article 3 of the Convention, and is a State where the person can apply to be recognised as a refugee and receive protection under the Refugee Convention: section 80B(4) of the 2002 Act.

209. An asylum claim that has been declared inadmissible cannot in general be considered under the immigration rules (section 80B(2)), and no right of appeal arises (section 80B(3)). An asylum claim can be considered under the immigration rules if "there are exceptional circumstances in the particular case that mean the claim should be considered" (section 80B(7)(b)).

210. Section 80C of the 2002 Act defines the meaning of "connection" to a safe third State. Of most relevance to the present claims is Condition 4: see subsection (4). That is, "(a) the claimant was previously present in, and eligible to make a relevant claim to, the safe third State, (b) it would have been reasonable to expect them to make such a claim, and (c) they failed to do so."

211. The Inadmissibility Guidance sets out a two-stage test. Stage 1 involves asking whether, on the balance of the probabilities, the explanation given for not claiming asylum in the safe third country "is a true account of their reasons", in terms of what the person believed rather than whether the belief was sound. Stage 2 involves asking whether "it would nonetheless have been reasonable to expect" the person to have claimed asylum in that State.

(iii) The approach to decision-making

212. Ms Luh made submissions as to the proper approach that needed to be taken by the Secretary of State when making her decisions, and took me through the case law. I largely agreed with those submissions, and set out a number of propositions which apply to the decision-making in the individual claims of the Claimants:

(1) Given that trafficking decisions involve fundamental rights, a high standard of reasoning is required and expected from the decision-maker. Decisions should show by their reasoning that "every factor which tells in favour of the applicant has been properly taken into account": see R (YH) v Secretary of State for the Home Department [2010] EWCA Civ 116 at [24], per Carnwath LJ.

(2) The reasonable grounds decision is an initial filter to a fuller more conclusive decision and should not be treated as a detailed summary determination of the ultimate credibility of the case advanced. If there is "simply no basis on which a reasonable person could be of the opinion that there were reasonable grounds to believe that the individual concerned had been trafficked, they should be filtered out of the process at that stage to avoid diversion of resources into further enquiry": see R (HAM) v Secretary of State for the Home Department [2015] EWHC 1725 (Admin) at [74], per Helen Mountfield QC, sitting as a deputy judge of the High Court.

(3) At the initial reasonable grounds stage, there could be "both reasonable grounds upon which a reasonable person could believe that a person could be a victim of trafficking and reasonable grounds for believ[ing] that they might not be. (That may particularly be so in circumstances where there are inconsistencies or gaps in the evidence, but also features of the account which suggest possibly plausible psychological or other reasons to explain those lacunae.)" If so, the question as to whether there are reasonable grounds for suspecting that a person is a victim of trafficking should be answered in the affirmative, and whether there are reasonable grounds for disbelief is irrelevant. Weighing up the grounds for disbelief against the grounds for belief falls for determination at the conclusive grounds stage: see HAM at [70].

(4) There is no requirement on the potential victim to corroborate their account of trafficking experiences: see R (Mutesi) v Secretary of State for the Home Department [2015] EWHC 2467 (Admin) at [54].

(5) Caution needs to be applied in relying on the asylum screening interview, as these are conducted within hours of the individual's arrival in the United Kingdom, following a stressful journey and when the interviewee may be very tired and malnourished.

(6) People may not recognise themselves as victims and may be reluctant to be identified as victims of trafficking. There are various reasons why victims may be unwilling to disclose details of their experience or identify themselves, including being distrustful of authorities and not recognising that what they experienced was trafficking. The delay in disclosure may be because of trauma and not manipulation: see the Guidance at paragraphs 13.10-23.

(7) In assessing credibility there are reasons why an account may be incoherent, inconsistent or there are delays in giving details. The categorisation of these points as "mitigating circumstances" is inapt. It implies an approach of identifying defects in the given account and then deciding whether they can be excused, when what is required is a single process in which the decision maker assesses the credibility of the putative victim's core account: see R(MN) v Secretary of State for the Home Department [2021] 1 WLR 1956 at [126].

(8) Where there is a lack of information as to the putative victim's experiences, the decision maker should attempt to gather more information before making a determination: see Guidance at 14.37.

(9) Where there are inconsistencies in the potential victim's accounts, the decision maker should refer back to the First Responder, support provider, other expert witnesses, or the potential victim themselves to clarify any inconsistencies in the claim: see Guidance at 14.13.

(10) Whilst there is a rebuttable presumption that no person removed to a safe third state in Part 2 of Schedule 3 to the 2004 Act (which includes France) will be subject to ill-treatment contrary to Article 3 of the Convention, this rebuttable presumption does not apply to Article 4 claims. Nevertheless, as will be discussed, the Government of France takes seriously allegations of trafficking within France or by French nationals, and protections are provided to those who claim to have been trafficked in such circumstances.

(11) The decision to refuse a human rights claim and the decision to certify it as clearly unfounded are two separate decisions.

(12) The certification decision is a "draconian" one as the effect of it is that the asylum seeker can be removed from the United Kingdom before their appeal against the refusal of their claim can be pursued. Accordingly, the claim must be so clearly lacking in substance that it is bound to fail, and the matter must be subject to the most anxious scrutiny: see ZT (Kosovo) v Secretary of State for the Home Department [2009] 1 WLR 438 at [58] per Lord Carswell. If on at least one legitimate view of the facts or the law the claim may succeed, the claim will not be clearly unfounded. If the Court concludes that a claim has a realistic prospect of success it should find that the Secretary of State's view was irrational:: ZT at [22] –[23], per Lord Phillips.

(b) How does France treat trafficking victims, and what is available to them in France?

213. In her submissions for the Claimants, Ms Luh submitted that there were deficiencies in the support available in France to victims of trafficking who were not trafficked in France, or by a French perpetrator, or in their country of origin, relying on a variety of sources including the CIN, as well as the expert reports of Mr Pouly and François Zimeray. In summary, it was submitted that:

i) France does not have a NRM nor a competent authority which is responsible for conducting an assessment as to whether there are reasonable grounds or conclusive grounds to believe that someone is a victim of human trafficking in all cases of potential victims. Only the police, gendarmerie and judiciary can formally identify victims.

ii) The operational definition of trafficking in France is a narrow one, and the French authorities will only conduct victim identification processes in circumstances where the alleged crime was committed on French territory, the perpetrator or the victim holds French nationality, or the crime falls under the universal jurisdiction. If the case does not fall under one of those circumstances, "no investigation will be carried out by the French authorities", according to Mr Zimeray.

iii) Victims who fall outside the "official definition" of human trafficking do not access the state support system for victims. If a complaint is not filed, and prosecution not initiated, a potential victim cannot qualify for a residence permit in France.

iv) NGOs report that "formal recognition as a trafficking victim was difficult to achieve; such status offered additional protections and, in practice, was necessary to obtain asylum or a residence permit, healthcare, and housing": see CIN at paragraph 15.4.3.

v) Whilst some NGOs may be able to report individuals who declare themselves to be victims of trafficking, they cannot verify the factual accuracy of such claims, and there "is no statutory or enforceable obligation on the French state to provide trafficking-specific support to potential and confirmed victims of trafficking", according to Mr Pouly. In reality, therefore, the support that is provided to the victims is not with reference to a careful assessment of the

victim's experiences and the recovery support needs that arise from their experiences of past trafficking.

vi) Support from NGOs is in any event "generally ad hoc in nature" and, more importantly, "does not, in itself, produce any legal effect on the administrative status of the persons concerned" and "under no circumstances does the identification of an individual as a victim of trafficking by a private organisation directly confer rights upon that person": according to Mr Pouly.

214. For the Secretary of State, Miss Grange KC accepted that the Government of France officially identified as victims of trafficking those where the trafficking fell within the scope of the French Penal Code. Miss Grange KC submitted that if that framework did not correspond with France's obligations under ECAT, trafficking victims could obtain legal redress through the French Courts. France is a monist system, and Articles 10 and 12 of ECAT technically have direct effect (even according to the Claimants' expert witness, Mr Pouly), and there were examples of claimants relying on ECAT provisions in the French Courts.

215. Miss Grange KC submitted that, in practice, NGOs identify and support a significant number of victims, and that this system has become a key route through which victims of trafficking can access the help they need. Whilst it was recognised that identification by NGOs does not have any direct legal consequences, and that some of the NGOs have a focus on more vulnerable victims of trafficking such as women and children, Miss Grange KC submitted that there are NGOs who can support male victims of trafficking in practice even when their trafficking complaints have no connection with France.

216. In any event, Miss Grange KC submitted that even though a person might not be recognised officially as a victim of trafficking in France, or by NGOs in an unofficial manner, the Secretary of State was entitled to consider that the assistance needs of trafficking victims can be met through the healthcare system and the provision of accommodation. It was accepted by Miss Grange KC that there are operational imperfections in the French system: (i) women and children were prioritised by NGOs for trafficking support; (ii) whilst there was mental health support in each region, it was unevenly distributed; and (iii) there was a lack of specific accommodation for those who had been trafficked. There was, however, no systemic failure or substantial grounds to believe that there would be a breach of Articles 3 or 4 of the Convention. The assistance exists in practice and is available to undocumented migrants and asylum seekers.

217. There is, as can be seen, much common ground between the parties as to the situation in France. Based on those submissions and on the materials that were presented to me at the hearing, it seems to me that the general propositions that I set out in Interim Relief judgment at [97] represent a good summary of the situation in France. Those propositions were as follows:

> (1) Victims of trafficking who file a criminal complaint of trafficking within the jurisdiction of the French courts, or are involved as witnesses in proceedings in relation to such an offence, are entitled to a 30-day reflection period during which they cannot be removed and may be issued a temporary residence permit.

(2) The jurisdiction of the French courts with respect to victims of trafficking is limited to those where the offence of trafficking falls within the French Criminal Code: that is, it covers whose who are victims of an offence committed on French territory, or where the victim is a French national, or where the perpetrator of the acts is a French national.

(3) For those who claim asylum in France, they have the right to be accompanied by a lawyer and have a right to legal aid. They will be interviewed by an agent of the French Office for Immigration and Integration ("OFII"), and may be directed towards an association specialising in helping victims of trafficking. The OFII is responsible for assessing the vulnerability of asylum seekers in order to determine their specific needs, and victims of trafficking are amongst the categories recognised as vulnerable.

(4) In some circumstances, trafficking in a person's state of origin will itself give grounds to a fear of persecution such as to form the basis of a claim for asylum.

(5) Asylum seekers are entitled to accommodation and healthcare, including psychiatric healthcare, during the asylum determination process which includes any appeal.

(6) With respect to accommodation, there are very limited spaces reserved for victims of trafficking and they will generally be accommodated with asylum-seekers more broadly. Whilst there is a right to accommodation for asylum-seekers throughout their protection claim, including any subsequent appeal, there are significant shortages of accommodation. If there are no places available, an asylum-seeker would be placed on a waiting list and referred to temporary accommodation solutions, such as a "collective facility" or a hotel.

(7) Individuals who face a situation of danger on French territory can access accommodation, although capacity is limited. Accommodation is also available in the form of emergency accommodation: any homeless person in a situation of medical, psychological or social distress is entitled to such accommodation, which right may be enforced in court, although in practice there may be difficulties accessing accommodation.

(8) With respect to healthcare, asylum seekers may obtain access to healthcare under several schemes. For the first three months after making a claim, healthcare is mainly provided under the PASS system, but may also be available through exceptional medical assistance or the fund for urgent and vital care. Thereafter, asylum seekers are eligible for universal health coverage ("PUMA/CTC") and supplementary health insurance. There are 456 PASS units across France, of which 43 are psychiatric PASS units (but these are unevenly distributed geographically). Certain hospitals have specialised PASS services for psychiatric care, and there are also mobile psychiatric teams which work within PASS. Medical care may also be available via discretionary financial assistance, and, for certain types of care, through the fund for vital and urgent care.

(9) The PASS system is designed to offer only "temporary" or "transitional" care and, according to Mr Zimeray, "cannot be the general practice for patients in precarious situations". There are also a number of significant practical limitations to

the accessibility and efficacy of the PASS system: (a) not every hospital has a PASS unit; (b) they are not open every day, and appointment waiting times can be long; (c) the PASS services differ between units; (d) PASS does not cover hospitalisation or intensive, costly or long term care, and may generate bills after certain acts; (e) some PASS units require a passport as proof of identity, which asylum-seekers may not be able to provide.

(10) Non-documented migrants are entitled to healthcare under PASS for the first three months. Thereafter, they are entitled to the state medical assistance scheme, "Aide médicale d'Etat" ("AME"), subject to certain conditions.

(11) The availability of interpretation services is much lower than in the United Kingdom, and may impede effective access to healthcare. Returnees will not benefit from state-provided assistance in navigating the healthcare system as they would in the United Kingdom under the NRM.

(12) With respect to financial support, only those who seek asylum are entitled to financial support: for asylum-seekers in state-sponsored accommodation it is €6.80/day, and no additional support is available to victims of trafficking. Some supplement their financial support with funds from NGOs.

(13) Support is available from a number of NGOs to victims of trafficking, including individuals whose trafficking falls outside of the criminal definition. Identification as a victim by an NGO in the latter cases does not impact on the judicial or administrative protection afforded to the individual concerned.

(14) Women tend to be prioritised for support from NGOs, but some NGOs offer direct support to men. An individual may be able to access accommodation through the support of NGOs but, in practice, the available support is limited. The main support that is provided by NGOs – for men, in particular – is in signposting individuals to the support that is available from the French State and navigating the various arrangements that are on offer.

VII. The individual claim: AYA

218. AYA is no longer part of Operation Hillmore and will not be removed to France under the Treaty. Furthermore, the Secretary of State has stated that she will retake the decision to refuse VTS leave to AYA. I will, nevertheless, address the parties' submissions with respect to AYA as the parties are agreed that the decisions taken in his case will be relevant to any claim that his detention was unlawful; and the facts of AYA's case may provide helpful guidance for other situations that may arise, especially with regard to VTS leave.

219. AYA is an Eritrean national. He arrived in the United Kingdom in a small boat on 12 August 2025, and claimed asylum. At a screening interview conducted in the early hours of 13 August 2025, AYA stated that he had a fear of return to Eritrea where he said he would be in danger as he would be at risk of imprisonment due to his father's activities. AYA said that he left Eritrea because of his father's detention. AYA then lived in Ethiopia for 18 years and Sudan for 5 years, before travelling to Libya, where he stayed for 5 ½ years. In Libya, AYA said that he had been detained, and was sometimes paid for work and sometimes not paid. He travelled to Italy, then to France,

and finally to the United Kingdom. AYA said that he did not claim asylum in France because he saw people sleeping rough in the streets. He came to the United Kingdom because he was told that this was a better country.

220. At this point AYA was not referred into the NRM, but was selected for inclusion into Operation Hillmore. On 16 August 2025, he was informed by the Secretary of State that she intended to treat his protection claim as inadmissible on the grounds that he could be removed to France under the Treaty. On 19 September 2025, AYA's solicitors wrote to the Secretary of State asking that he be referred into the NRM as a result of what he had said in his initial interview. AYA was referred into the NRM on 21 September 2025.

221. On 20 October 2025, whilst AYA was in detention, a Rule 35(3) report was prepared by a doctor at the Immigration Removal Centre. The doctor expressed concern that AYA had been a victim of torture in Libya. On 3 November 2025, the Secretary of State made a positive reasonable grounds decision based on his experiences in Libya. On 10 December 2025, the Secretary of State found that there were conclusive grounds to accept that AYA was a victim of trafficking. The Secretary of State accepted AYA's account that he had been kidnapped and held for ransom in a prison in Tripoli, Libya for a week in 2022, and again for 40 days in Zuwarah, Libya between October 2024 to November 2024. During the latter period, AYA had said that, after failing to produce identity documents to members of a militia who stopped him at a checkpoint, he was beaten and then forced into a vehicle and taken to an underground detention facility. At that facility, AYA was forced to sleep on the floor in unsanitary and overcrowded conditions and was regularly beaten, verbally abused and psychologically intimidated. AYA was deprived of food and given limited water. He witnessed the systematic torture of other detainees, and was eventually released upon payment of a ransom.

222. In a psychiatric report prepared by Dr Syed on 17 October 2025, it was stated that AYA was suffering from chronic Post-Traumatic Stress Disorder ("PTSD") and depressive symptomatology, linked to his previous experience of violence, exploitation and captivity. Dr Syed described AYA's experiences in Libya as "significant traumatic stressors that have directly contributed to his current psychiatric presentation". Dr Syed said that AYA's outlook was potentially favourable with "stabilisation", release from detention and "access to trauma-focused therapy" in the form of 12-20 sessions of Cognitive Behaviour Therapy or Eye Movement Desensitisation and Reprocessing, over the course of 6-12 months once security and stability had been secured.

223. Following the conclusive grounds decision, an application was made for AYA to be granted VTS leave under section 65 of the 2022 Act (see paragraph 28 above). It was contended that AYA had a specific recovery need in the United Kingdom linked to his previous exploitation that required 6-12 months of targeted therapy that should begin once safety and stability had been established; and that the French authorities would not recognise AYA as a victim of trafficking and would not provide him with specific support or leave to remain as a victim of trafficking. The application was refused on the basis that "both pharmaceutical and psychiatric treatment for your medical conditions related to your exploitation can be accessed on your return to France".

224. On 31 December 2025, AYA's protection claim was declared to be inadmissible on the grounds that he had a "connection" to France pursuant to s.80C of the 2002 Act and

could be removed there. AYA's human rights claim was also refused. It was stated that although it was accepted that:

> "…removal from the UK will constitute an interference with your private life…it is not accepted that the consequences of your removal would be of such gravity as to engage Article 8. While you suffer from trauma-related symptoms, appropriate treatment and mental health support are available and accessible [in] France."

Further, it was stated that "Any interference resulting from your removal would be in accordance with the Immigration Acts and relevant statutory provisions governing inadmissibility and removal to safe third countries…".

225. The human rights claim was certified as clearly unfounded on the basis that AYA's claim was "so wholly lacking in substance that an appeal would be bound to fail". It was explained that AYA's claim "cannot succeed on any legitimate view and any immigration judge, properly directing him or herself and applying the law to the facts and the same evidence, would inevitably conclude the same. Therefore, your claim that your removal from the UK would be unlawful under section 6 of the Human Rights Act 1998 is wholly lacking in substance and any appeal would be bound to fail.'

226. Removal directions were set for 15 January 2026. These were cancelled following an application for interim relief. On 11 March 2026, I granted AYA interim relief staying his removal to France. On 12 March 2026, the Secretary of State notified AYA that it had been decided not to pursue inadmissibility action in his case. AYA was released from detention and he was removed from Operation Hillmore.

(i) <u>The decisions challenged by AYA</u>

227. At the hearing before me, AYA challenged: (i) the Secretary of State's decision of 22 December 2025 to refuse to grant him VTS leave; (ii) the Secretary of State's decision of 27 February 2026 to maintain her decision of 31 December 2025 to certify his asylum claim as inadmissible; (iii) the Secretary of State's decision of 31 December 2025 to certify his human rights claim as clearly unfounded, and the Secretary of State's decision of 27 February 2026 to refuse to treat AYA's further representations as a fresh human rights claim pursuant to paragraph 353 of the Immigration Rules.

(ii) <u>The parties' submissions</u>

228. It was submitted by Mr Lee on behalf of AYA that the Secretary of State had misinterpreted and not discharged her statutory duty to grant VTS leave. The test as to whether assistance and support was "capable" of being met in the country to which an individual would be removed meant that the assistance was both available and accessible. A decision-maker should therefore consider whether the evidence suggests that the victim of trafficking requires treatment; and then assess whether that treatment was both available and accessible in another country. There did not need to be a treatment plan for the individual being removed from the United Kingdom, but it was not sufficient to rely on generic statements of access to support where, as in France, formal identification of trafficking would not take place, and there were deficiencies in the access to healthcare in France.

229. Mr Lee submitted that access to treatment in France was patchy, difficult to navigate and contingent on AYA being able to stay in France for reasons other than trafficking, and yet Dr Syed, whose evidence was accepted by the Secretary of State, had identified a need for bespoke therapy "once safety and stability" were secured for AYA.

230. Mr Lee submitted that access to bespoke, specialist mental health support as a victim of trafficking would not be available to AYA. The provision of accommodation would be dependent on the progress of any asylum claim and entirely unrelated to AYA's status as a victim of trafficking and, if the asylum claim was refused, he would be at risk of homelessness and/or enforced return. Returnees to France, in general, struggle to meet other basic needs due to the low level of support generally.

231. With respect to the inadmissibility decision, Mr Lee submitted that the Secretary of State had failed to take into account all available evidence and relevant facts relating to AYA's case. In particular, when considering whether it was reasonable to expect AYA to have made a protection claim whilst in France, the Secretary of State did not take into account that AYA would not be officially recognised as a victim of trafficking in France and would not be entitled to leave to remain there on that basis; that was an obviously relevant factor for the Secretary of State to take into account but she had not done so. It was not realistic to expect AYA to bring a claim to assert his rights under ECAT.

232. With respect to the decision of the Secretary of State to certify AYA's human rights claim as being clearly unfounded, Mr Lee submitted that in circumstances where AYA's trafficking and modern slavery claim has been believed and accepted, as was his need to recover from psychological harm arising from exploitation, it could not rationally be said that AYA's human rights claim was so clearly without substance that it was bound to fail, or that no immigration judge properly directing themselves on the law and evidence would dismiss the claims under Articles 3, 4 or 8 of the Convention. Even more so, given that the immigration judge would be considering the human rights implications of the decision to refuse VTS leave.

233. The refusal of VTS leave was a breach of ECAT (Articles 10, 12, 14, 16 and 18), and consequently a breach of the United Kingdom Government's positive obligations under Article 4 of the Convention, and in any event it was clear that an immigration judge might come to a different conclusion than the Secretary of State as to whether AYA's assistance needs could be met in France. Mr Lee submitted that there was a real risk that AYA's recovery needs would not be identified or met in France, and this would violate Article 4.

234. With respect to AYA's claim under Article 8 of the Convention, reliance was placed by Mr Lee on the positive obligation on States to secure the right to effective respect for physical and psychological integrity: see Bensaid v United Kingdom (2001) 3 EHRR 10 at [47]. It was contended that forcing a migrant into a situation of "immigration limbo", which is the result of the refusal of VTS leave and the proposed removal to France, can of itself breach Article 8: see Aristemuno Mendizabel v France [2010] 50 EHRR 50. Reliance was also placed on XY v Secretary of State for the Home Department [2024] 1 WLR 2272, where Lane J concluded that the denial of VTS leave in that case engaged Article 8 of the Convention; and TZ (Pakistan) v Secretary of State for the Home Department [2018] EWCA Civ 1109, at [34].

235. For the Secretary of State, Miss McGahey KC submitted that it was lawful for the Secretary of State to conclude that VTS leave was not necessary for the purpose of assisting AYA in his recovery from any physical or psychological harm arising from the exploitation that he had suffered. Leave to remain is not necessary if the "need for assistance" is "capable of being met" in a relevant country.

236. Miss McGahey KC submitted that section 65(4) of the 2022 Act does not require either: (a) formal recognition of trafficking status in the other country; nor (b) equivalence in the assistance services provided in the other country as against the UK. The expression "capable of being met" sets a low threshold, not a guarantee of outcome. The test focuses on the availability of real systems, not precise treatment centres, programmes or facilities that might be accessed in an individual case. Furthermore, there is no requirement of equivalence with the assistance that is available in the United Kingdom; and the nature of the leave available in France is not a disqualifying condition for the purpose of section 65(4). Moreover, Parliament has not said that the receiving state must treat the individual as a victim of trafficking.

237. Miss McGahey KC contended that the key question was whether assistance was available to address the harm to AYA that arose from trafficking. The harm in AYA's case was reflected in the diagnoses of PTSD and depression; and Miss McGahey KC submitted that AYA's need for assistance to recover from those conditions was capable of being met in France when looking at the general availability of support in the French healthcare system.

238. With respect to the Inadmissibility Decision, Miss McGahey KC submitted that it was not reasonable for a person who could claim asylum in a safe country which would entitle them to accommodation, financial support, access to healthcare and an opportunity to present a claim for protection, to decline to make a claim simply because they would not also be recognised as a victim of trafficking or be eligible for consideration for a grant of leave under ECAT. It was submitted that the Refugee Convention does not entitle an asylum seeker to choose whichever state is most favourable with respect to other aspects of the immigration or support system. Further, the Secretary of State was not obliged to give express consideration to whether AYA would be recognised as a victim of trafficking in order to determine whether France was a safe state to which he could be removed.

239. With respect to the certification decision, Miss McGahey KC acknowledged that the Court needed to engage in an intensive review of the decision, however, it was necessary to bear in mind that the Court's role was supervisory: R (FR)(Albania) v SSHD [2016] EWCA Civ 605 at [62].

240. Miss McGahey KC submitted that AYA did not have an arguable claim based on private or family life in the United Kingdom. Any claim based on his mental health would be bound to fail, as this would be judged through the lens of Article 3 which applies the test in Paposhvili v Belgium [2017] Imm. A. R. 867. That is, was there a real risk of (i) a significant, meaning substantial, reduction in his life expectancy arising from a completed act of suicide and/or (ii) a serious, rapid and irreversible decline in his state of mental health resulting in intense suffering falling short of suicide, following return to the Receiving State. Miss McGahey KC submitted that that threshold cannot be met by AYA.

241. In any event, even if Article 8 was engaged, Miss McGahey KC submitted, that given the support available in France, and the important public interest served by removal in the context of the policy, a claim that the consequences of removal to France would be so severe as to amount to a breach of Article 8 would have been bound to fail.

242. Miss McGahey KC rejected the submission that AYA's claim could succeed before an immigration judge on the basis that the immigration judge could conclude that AYA was entitled to VTS leave. That would subvert the statutory framework, under which there is no appeal against a refusal of VTS leave, and the First-tier tribunal does not have a general jurisdiction to consider any other immigration rule that might be relied upon whenever Article 8 is raised. In any event, given the support available to AYA in France, the immigration judge could not conclude that a grant of leave in the United Kingdom was necessary for the purpose of assisting AYA's recovery. Nor could the immigration judge conclude that removal to France would force AYA into "immigration limbo", as he could claim asylum in France.

(iii) Was it unlawful for the Secretary of State to refuse to grant AYA temporary permission to stay in the UK ('VTS leave') under section 65 of the 2022 Act?

243. VTS leave is a temporary form of leave for persons who (i) are not British citizens, (ii) have received a positive conclusive grounds decision, and (iii) do not otherwise have leave to remain in the United Kingdom. There is a duty to grant limited leave to remain to these persons if, among other things, the Secretary of State considers it is necessary for the purpose of "assisting the person in their recovery from any physical or psychological harm arising from the relevant exploitation". Leave is not necessary for that purpose if the Secretary of State considers that their need for assistance is "capable of being met" in a country to which the person can be removed in accordance with an agreement between that country and the United Kingdom.

244. In determining whether VTS leave is required, the decision maker must consider (i) the individual's need for assistance and (ii) whether what the individual needs is "capable" of being provided in the country to which he can be removed. The first consideration will require an individual assessment as to the person's need for assistance.

245. The second consideration will require an examination as to whether that assistance is both available and accessible in the country to which he can be removed. This does not, in my judgment, require the Secretary of State to make arrangements with the receiving country as to the particular support that the person will actually receive. The language of "capable" suggests something far more general. It requires the Secretary of State to consider what support and assistance is generally available for someone with the person's particular characteristics (such as resourcefulness and language skills) and their circumstances; and then to consider whether that support and assistance is generally accessible to such a person.

246. With a country like France, where a broad range of healthcare services (including mental health services) are distributed widely and not concentrated in any particular location (such as a capital city), it is not necessary for the Secretary of State to ascertain precisely where the individual will reside or is likely to reside. Unless the individual faces a particular impediment in travelling, they should be able to gain access to the services that are generally available to persons in their situation.

247. In my judgment, the decision to refuse VTS leave to AYA was not unlawful. The decision-letter of 22 December 2025 made it clear that a wide range of information had been considered, including AYA's medical records, the psychiatric report from Dr Syed, the Rule 35 report, as well as Personal Circumstances Questionnaires that AYA had completed. The decision letter noted what Dr Syed had said about AYA's mental state, and his recommendation that he undergo "trauma focused therapy." It was also noted that AYA was not receiving medical treatment which would be "actively disrupted" should he be returned to France.

248. It was stated that:

> "No evidence has been received to indicate that you are in receipt of any medical treatment to assist with your recovery. It is noted that no medical treatment would be actively disrupted should you return to France.
>
> When considering current circumstances regards ongoing treatment, a holistic assessment is also undertaken regards what treatment is available and accessible in a victim's country of return – in your case, this consideration is based upon France.
>
> Country information for France demonstrates that treatment for PTSD and depression is available in your country of return:
>
> . . .
>
> Country information for France and Article 3 ECHR states France has mechanisms, facilities and treatments in place to aid people with mental health conditions, and therefore there will be suitable care and support available for you upon your return, should you require.
>
> You have raised concerns regarding your mental health and healthcare treatment, the CPIN demonstrates that you can access free medical consultations through the (PASS Psy) during the initial three-month period following your arrival in France and you may also benefit from the support of well-established NGOs that provide mental health services and assistance to asylum seekers. Therefore, it is considered you will have health support in France."

It was also stated that the evidence of his journey from Eritrea and life in various countries demonstrated his "independence and high level of resourcefulness". It was noted that he spoke some Arabic, and it was considered that he would be able to obtain language assistance in France if required. On the basis of various payments that had already been made on his behalf, it was considered he would have family support whilst resettling in France.

249. The decision continued:

> "France has a functioning healthcare system with a variety of healthcare providers, a language support system to facilitate any communication barriers, and financial assistance regarding your entitlement to receive

> subsistence allowances that are provided to asylum seekers in France. Having considered all the relevant evidence available to the IECA, it is considered that you are more likely than not to be able to access the required treatment in France. It is therefore considered that both pharmaceutical and psychiatric treatment for your medical conditions related to your exploitation, can be accessed on your return to France.
>
> To conclude, you are not currently receiving any ongoing medical treatment in relation to the relevant exploitation. The IECA has identified the recommended treatment in relation to the relevant exploitation is capable of being met on your return to France.
>
> Furthermore, as per VTS guidance, the above concludes there would be no disruption to your ongoing recovery in making this decision to refuse your VTS."

250. The main challenge to the VTS leave decision was that it failed to take into account that AYA would not be recognised officially as a victim of trafficking by the Government of France as his trafficking had taken place in Libya and, as a result, he would not receive bespoke support as a victim of trafficking. It is correct that this was not acknowledged by the Secretary of State in the decision letter, and so the references in the letter to the "Support for asylum seekers who are victims of trafficking" were not relevant to AYA's situation. That was an error of law. Nevertheless, the decision letter went on to consider the healthcare provision, including psychological care, that was provided for asylum seekers: a category that the Secretary of State could reasonably expect AYA to fall into given that he had sought asylum in the United Kingdom and there was no particular reason raised as to why it would not be reasonable to expect AYA to claim asylum in France.

251. Accordingly, the error was not material to the conclusion reached. If AYA did claim asylum, then he would have available to him the kind of treatment that he required, there being nothing to suggest that the only treatment that would assist him was that which was delivered to those who are officially recognised as victims of trafficking. Further, there was nothing to suggest that it would not be accessible to him, given the broad distribution of mental health services in France, the likely availability of Arabic speakers to assist him to navigate the healthcare systems, AYA's resourcefulness, as well as other support that may be available to him via his family as had previously been the case.

252. A further focus of the challenge was that it was contended that AYA's stay in France would be precarious as a result of France's approach to recognising trafficking victims and yet Dr Syed had recommended a treatment plan "once safety and stability are secured". I note that this particular argument was not made by AYA's solicitors in the representations for VTS leave on 19 December 2025: indeed, that letter referred to the difficulties that AYA would experience if he was removed to Eritrea, and not France. In any event, the contention proceeds on the assumption that the treatment plan recommended by Dr Syed had to be completed and that, if AYA's asylum claim was rejected, he might be removed from France before completion of that plan.

253. In my judgment that assumption does not accord with the obligation on the Secretary of State under section 65 of the 2022 Act. The obligation is to grant leave to remain if

it is necessary for the purpose of "*assisting* the person in their recovery" (my emphasis). The obligation is, therefore, one of assistance and not completion of a recovery. That is consistent with the language of Article 12 of ECAT which also refers to "measures as may be necessary *to assist* victims in their physical, psychological and social recovery" (emphasis added). This construction is also supported by the fact that individuals who benefit from the 30 day recovery and reflection period are also entitled to "measures as may be necessary to assist" them in their "physical, psychological and social recovery" (see Article 13(2)). It cannot reasonably be contemplated that their recovery will be completed in that period.

254. On the basis of the CIN materials referred to in the decision letter, it was open to the Secretary of State to conclude that the kind of therapy recommended by Dr Syed (trauma-based therapy) would be available and accessible to AYA, and so could assist him with his recovery. It was not necessary for the Secretary of State to be confident that the full "12–20 sessions over 6-12 months" would be delivered to AYA, given that there was a possibility that AYA might be removed from France if his asylum claim failed before the full treatment plan had been completed. That volume of sessions was recommended by Dr Syed to complete AYA's recovery, rather than merely to "assist" or help with that recovery.

255. The same analysis applies to Dr Syed's recommendation that the therapy should be delivered once "stability" had been obtained. That recommendation goes to the issue of completion of AYA's recovery, rather than whether assistance in AYA's recovery could be provided.

(iv) <u>AYA: The inadmissibility decision</u>

256. The Secretary of State made an inadmissibility decision on 31 December 2025. On 27 February 2026, the Secretary of State considered further representations made on behalf of AYA as to why there were "exceptional circumstances" for his protection claim to be considered in the United Kingdom.

257. With respect to the initial inadmissibility decision, AYA's challenge was focussed on the failure of the Secretary of State to take into account that he would not be officially identified or recognised as a victim of trafficking in France and would not be entitled to leave to remain there on that basis. It is said that that was an obviously relevant factor going to whether it was reasonable to expect AYA to have made a protection claim while in France.

258. In my judgment, this challenge fails at the first hurdle as AYA did not assert that the reason for him not claiming asylum in France was in any way connected to his status as a victim of trafficking and whether or not the Government of France would have formally recognised him as a trafficking victim. In accordance with the Secretary of State's "Inadmissibility: safe third country cases" guidance, a two-stage process is adopted in assessing whether it is reasonable to expect a person to make an asylum claim in a safe third country: (i) credibility; and (ii) reasonableness. It was not suggested that the two-stage process did not correctly conform with section 80C(4) of the 2002 Act.

259. The first stage – credibility – requires an assessment on the balance of probabilities as to whether the reason given for not claiming asylum is a true account of the reasons for

not doing so. The second stage only arises if the account given by the applicant is accepted as true.

260. Section 80(C)(4) – Condition 4 – concerns the situation of a person who "was previously present in, and eligible to make a relevant claim to, the safe third State' and 'failed to do so'. That begs the question 'why?'. In that context, the criterion that 'it would have been reasonable to expect them to make such a claim' calls for the application of an objective test for the reason why the individual failed to make the claim.

261. At the first stage, the Secretary of State found that AYA had not satisfied her on the balance of probabilities that he:

> "did not claim asylum in France because you did not have the opportunity to do so. It was your intention to come to the UK as you explicitly stated that you flew to France to come to the UK in order to claim asylum and potentially start your business here. Furthermore, you paid an agent by your own account to transport you from Calais to the UK and also contradicted yourself in regard to whether you did make an attempt to claim asylum in France or not."

That conclusion was clearly open to the Secretary of State on the basis of the evidence presented to the decision-maker. That included the comments made by AYA at the Asylum Screening Interview where he said he did not claim asylum in France because he "saw people sleeping rough in the streets". AYA also said that he had been told the United Kingdom "was a better country and this is why he came here".

262. It was not necessary, therefore, for the Secretary of State to go on to stage 2 of the assessment. The decision-maker did conduct that analysis, however, and concluded that it would have been reasonable to have expected AYA to claim asylum in France. In the decision, it was stated that none of the incidents of AYA's exploitation had occurred in France; he was present in France for around one month and therefore had adequate time to claim asylum there; AYA was provided with food from a charity shop and was therefore likely to have had contact with refugee support groups and charities that could have assisted him, as well as other individuals who could have supported and signposted him as to how to make a claim; France is considered a safe country; there was no evidence that AYA's movements were restricted or that he was prevented from contacting the French authorities; any restriction on his ability to make a claim in France arose from his own decision to pay an agent 1500 euros to take him from Calais to the United Kingdom. On its face, these reasons are unimpeachable.

263. The decision-maker did not consider at the second-stage whether it would have been reasonable to expect AYA to claim asylum in France as a result of the Government of France's approach to recognition of trafficking victims. That was not necessary in AYA's case as it was not a matter that he relied upon for his decision not to claim asylum in France. Even if AYA had relied upon it, however, I do not consider that it would have been irrational for the Secretary of State to conclude that it would have been reasonable for a person in AYA's circumstances to have claimed asylum when he was present in France. France is a safe third State for the purposes of section 80B, and it is clear from the evidence about provision in France that AYA could claim asylum in France and would be entitled to accommodation, financial support, and access to

healthcare in France, irrespective of his trafficking status. I have been shown no case law to support the proposition that the Refugee Convention entitles an asylum seeker to choose whichever state is most favourable with respect to other aspects of the immigration or support system.

264. It does not matter, therefore, that France appears to adopt a different interpretation of ECAT with respect to the persons who will fall to be identified as trafficking victims and will be provided with support and assistance as trafficking victims *per se* as compared to the United Kingdom.

265. With respect to the further inadmissibility decision made on 27 February 2026, it had been contended that the expert evidence established that France cannot provide AYA with effective protection: that AYA would be at high risk of homelessness, unable to access essential mental-health treatment, and legally incapable of being recognised or supported as a victim of trafficking. It was said that these factors create a real risk of inhuman or degrading treatment and undermine any assumption that France is a safe third country. Further, that AYA's case was wholly unsuitable for the inadmissibility process and that removal to France would be incompatible with the United Kingdom's obligations under the Convention, ECAT, and domestic protections for victims of modern slavery.

266. These submissions were rejected by the Secretary of State, who did not accept that the presumption of safety in relation to France had been rebutted. This conclusion is not impeachable given France's asylum system, healthcare and mental-health provision, accommodation framework, and anti-trafficking mechanisms, as reflected in an updated CIN (February 2026).

267. Furthermore, the decision-maker had expressly taken into account the different approach taken by the Government of France to identifying trafficking victims, and rejected this as demonstrating the unsuitability of inadmissibility action. It was stated that:

> "Although the Secretary of State recognises that persons trafficked outside France who do not engage French criminal jurisdiction may not be identified as victims of trafficking for certain purposes by the state, the CIN demonstrates that NGO-based identification and support operate independently of criminal jurisdiction and form a core part of France's anti-trafficking framework. Furthermore, if AYA claims asylum he will have access to support (including accommodation or other financial support) as an asylum seeker".
>
> In conclusion, it was stated that:
>
> "the Secretary of State is not satisfied that the evidence provided establishes that you would face a real risk of Article 3 harm on return to France, nor that France would fail to provide accommodation, healthcare, mental-health treatment or trafficking-related protection. The expert reports are outweighed by the comprehensive findings in the CIN, which confirm that France remains a safe third country with the administrative, practical and legal infrastructure necessary to protect vulnerable individuals, including victims trafficked outside its territory.

> Your submissions therefore do not rebut the statutory presumption of safety and do not demonstrate that your case is unsuitable for inadmissibility action".

This conclusion was not irrational.

(v) AYA: the certification decision

268. In a decision letter dated 31 December 2025, the Secretary of State rejected AYA's human rights claims and certified that those claims were unfounded. The human rights claims made by AYA related to Articles 2 and 3 of the Convention: it was said that France would not be safe for him and his life would be at risk and his health would be affected. AYA's claim also related to Article 4: based on previous incidents of exploitation and AYA's fear of being re-trafficked in France, and Article 8 based on his mental health.

269. Each of the human rights claims were refused, and this refusal is not challenged by AYA. The challenge is to the certification decision made by the Secretary of State that the claims were clearly unfounded. The reasons for certification were as follows:

> "Article 2 & 3
>
> 105. As set out above, you have not provided compelling evidence to suggest that removal to France would have a detriment effect on your overall life. Furthermore, France is a safe third country (being a signatory to the refugee convention and is a place where you could apply to be recognised as a refugee and, if eligible, receive protection accordingly.
>
> 106. You have not provided compelling evidence to suggest that your health condition could result in a serious, rapid and irreversible decline in your state of health resulting in intense suffering, or a significant reduction in life expectancy as a result of the absence or lack of access to appropriate treatment. This indicates that suitable healthcare and mental health services are available and accessible to asylum seekers in France.
>
> 107. Even if your health were to deteriorate, as outlined above, appropriate treatment will be available in France, free of charge, should you require it. You have not provided any credible evidence to suggest that you would be denied or excluded from such care. Therefore, it cannot be reasonably argued that you reach the threshold in AM (Zimbabwe), and consequently any Article 3 claim you may make on medical grounds cannot on any legitimate view succeed.
>
> Article 4
>
> 108. Furthermore, your rights under Article 4 would not be breached by your removal from the UK to France. France has a comprehensive legal framework criminalising human trafficking. Furthermore, France is a signatory to key international anti-trafficking conventions, and operates

> national protection systems offering accommodation, residence permits, and victim support. If you were to ask for further help from the French authorities, all the necessary support is in place to help you. Therefore, an Article 4 claim is also bound to fail.
>
> Article 8 – Mental Health
>
> 109. Your rights under Article 8 would not be breached by your removal from the UK to France. You have provided no evidence to suggest that your mental health is such that removal from the UK would interfere with your Article 8 rights, and in any case, removal would be both necessary and proportionate given the significant public interest in maintaining fair and effective immigration control. It is also considered that mental health treatment and psychological support are available to you in France and there is no indication that removal would cause a disproportionate impact on your wellbeing. Therefore, an Article 8 claim on medical grounds is also bound to fail.
>
> 110. It is also considered that your rights under Article 8 would not be breached by your removal from the UK to France.
>
> 111. You have not told us about a partner, parent or dependent children in the UK, therefore we have not considered the family life Rules under Appendix FM.
>
> 112. For the reasons above it is considered that your claim cannot succeed on any legitimate view and any immigration judge, properly directing him or herself and applying the law to the facts and the same evidence, would inevitably conclude the same. Therefore, your claim that your removal from the UK would be unlawful under section 6 of the Human Rights Act 1998 is wholly lacking in substance and any appeal would be bound to fail."

270. The Secretary of State made a further decision on 27 February 2026, following the making of further human rights submissions by AYA's legal representatives. The earlier decision was challenged on the basis that AYA feared homelessness and destitution if he was removed to France due to reception-capacity pressures; the inability to access essential healthcare and mental-health treatment (including PTSD-focused therapies); the linguistic and administrative barriers that would impede engagement with asylum, medical and support services; the non-recognition and lack of protection as a victim of trafficking because AYA's exploitation occurred outside France; and a resulting deterioration in his mental health.

271. The Secretary of State held that applying the Supreme Court's approach in R (EM (Eritrea)) v Secretary of State for the Home Department [2014] UKSC 12, there was not sufficient evidence to show that AYA arguably faced a real risk of serious harm or ill treatment in contravention of his rights under Article 3 of the Convention following his return to France.

272. The decision went on to consider the provision of healthcare in France and addressed Dr Syed's report of 17 October 2025:

> "It is clear from the CIN that appropriate medical treatment for psychiatric conditions, including PTSD and depression, is available in France. Nothing you have raised demonstrates that your particular conditions cannot be addressed and therefore it is considered that the required medical treatment is available. From the Secretary of State's position, while Dr Syed's report is noted, it does not undermine the central conclusion that France provides a functioning healthcare system capable of meeting the needs of asylum seekers. As set out in the CIN, urgent psychiatric care, mental health assessments, medication, and referral pathways are immediately accessible through PASS services, with full medical, psychiatric and psychological coverage available after three months under PUMA and CSS. The fact that Dr Syed recommends trauma focused therapy and medication does not demonstrate that such treatment would be unavailable in France, nor that you would be unable to access adequate care. Accordingly, the assertion that your condition would go untreated or deteriorate due to lack of access is not accepted."

Reference was also made to other trauma-specific pathways that were provided in France.

273. Consideration was also given to AYA's status as a recognised victim of trafficking, and it was noted that the statutory recovery and reflection period had elapsed. Consideration was also given to the Secretary of State's refusal of VTS leave "as the evidence did not demonstrate that removal would impede your recovery or create a real risk of re-traumatisation meeting the Article 3 threshold." The decision continued:

> "When assessing whether your concluded trafficking status prevents removal to France, the Secretary of State again refers to the CIN, which confirms that France operates dual trafficking-identification systems through both state and NGO pathways. Crucially, NGO identification is described as an "essential" element of victim protection and does not depend on French criminal jurisdiction or police cooperation. Victims trafficked outside France are routinely recognised: in 2024, 21% of trafficking victims supported in France had been exploited exclusively abroad, demonstrating that extra-territorial trafficking is not a barrier to identification or support. Victims may access secure accommodation, relocation and multi-agency support through the state-funded Ac.Sé network, as well as specialist NGO shelters such as AFJ Jorbalan and CCEM. None of these protections require a French criminal investigation or that the exploitation fall within French territorial jurisdiction.
>
> Taken together, the latest CIN demonstrates that, upon return, you would enter an asylum system specifically designed to identify vulnerabilities, provide material support, ensure healthcare and mental-health access, supply interpreter assistance, and protect victims of trafficking—including those exploited abroad. Your NRM outcome and the VTS refusal have been fully taken into account, but they do not establish that you would face a real risk of treatment contrary to Article 3 of the ECHR in France or that removal would be unlawful. On this basis, your

> individual circumstances do not demonstrate that you personally would be exposed to inhuman or degrading treatment on return."

274. As for the specific Article 3 claim, it was decided that AYA had not established:

> "a systemic failure or a real risk that you personally would be denied essential services to an Article 3 standard.
>
> You have not demonstrated that the care you require including psychological therapy is unavailable in France or that the health system is unwilling or unable to meet the needs of vulnerable applicants. The objective evidence does not indicate that asylum seekers face barriers so severe that they cannot obtain necessary medical treatment. Therefore, it is not accepted that your medical circumstances amount to exceptional circumstances preventing your removal to France or that they create a real risk of treatment contrary to Article 3 of the ECHR."

275. The Secretary of State concluded that the further submissions did not meet the requirements of paragraph 353(ii) of the Immigration Rules, because "the new information and evidence, taken together with the previously considered material, would not create a realistic prospect of success in an appeal before an Immigration Judge." The further submissions did not amount to a fresh claim, and the certification decision was maintained.

276. The decision to certify a human rights claim as clearly unfounded is one that requires anxious scrutiny given that the consequence of that decision is to deny the applicant an immigration appeal. The test that needs to be applied by the Secretary of State is whether on "at least one legitimate view of the facts or the law, the claim may succeed": see paragraph 212(12) above. In the instant case, I do not consider that there is a legitimate view of the facts and/or the law that the failure to recognise AYA officially as having been a victim of trafficking will breach his rights under Article 4 of the Convention on the basis that the Government of France will not treat AYA as being a trafficking victim under ECAT or under the Convention.

277. As already explained, AYA will have available and accessible to him in France the health support that he requires to assist him in recovering from the effects of the trafficking that he experienced, even if he is not formally recognised as having been a victim of trafficking. As a matter of substance, therefore, he will not be deprived of the support that Article 4 calls for with respect to trafficking victims. Insofar as AYA expressed a concern that may be re-trafficked in France, there is nothing to suggest that he would not receive protection from the French authorities, and so Article 4 of the Convention does not apply: see paragraph 196 above.

278. As for the other human rights claims, I consider that the Secretary of State was entitled to certify AYA's claim under Article 3 of the Convention as clearly unfounded. AYA would have available to him, and ought to be able to access, the kind of mental health treatment recommended by Dr Syed, and even if it was cut short by removal from France this would not leave AYA in a situation that could on any view be treated as him facing a real risk of being exposed to (i) a serious, rapid and irreversible decline in his state of health resulting in intense suffering; or (ii) a significant reduction in life

expectancy: see AM (Zimbabwe) v Secretary of State for the Home Department [2020] UKSC 17.

279. I do not consider that a certification decision can be challenged on the basis that an immigration judge could find that a trafficking victim might be entitled to VTS leave in circumstances where the Secretary of State has refused VTS leave. There is no statutory right of appeal from the Secretary of State's decision with respect to VTS leave. Any challenge would have to be by way of judicial review, and an immigration judge in the First-tier Tribunal has no jurisdiction to determine whether AYA might succeed on his claim for judicial review.

280. In any event, even if it was possible to regard the decision to refuse VTS leave as engaging Article 8 of the Convention on the basis that it deprived AYA of the opportunity to remain the United Kingdom for a period of time to receive treatment for his mental health condition (per Lane J in XY at [89]), and this was a matter which could be considered by an immigration judge on a human rights appeal, it has to be recalled that Article 8 is a qualified right.

281. It would only be possible to challenge the certification decision if, on a legitimate view of the facts and law, an immigration judge could decide that the Secretary of State's implementation of immigration controls did not justify the interference with AYA's Article 8 rights. Given the considerable weight that must be attached to the Secretary of State's immigration policies at a general level (see IA v Secretary of State for the Home Department [2026] 2 WLR 1001 at [167]), and in the present circumstances (as reflected in the Treaty) the weight to be attached to the Secretary of State's policy imperative to deter small boat crossings, as well as the availability and accessibility to asylum seekers of mental health support in France, I do not consider that that is a permissible view.

VIII. The individual claim: EXR

282. EXR is an Eritrean national. He claims to have been a child when he first arrived in the United Kingdom, and the dispute as to his age is being determined at a different hearing. EXR claims to have been the victim of four episodes of trafficking in Eritrea, Ethiopia, Belarus and France.

283. EXR says that he left school in 2021 to help his family after his father was conscripted into the Eritrean army and did not return. He was also targeted for conscription by the Eritrean authorities and started to receive letters about it in or around March 2023. In or around September 2023, EXR says that he was captured by the Eritrean authorities for the purpose of forced military conscription and forced labour. He was detained in a warehouse, kept in grossly unsanitary conditions, subjected to beatings and deprived of food. He was required to collect firewood, fetch water and prepare food. After around three months, EXR escaped, and then fled Eritrea into Ethiopia in December 2023.

284. EXR contends that shortly after crossing the border into Ethiopia, he was kidnapped and held captive for ransom, given little food, forced to work and beaten if he did not comply. He says that he was released in January 2024 after his uncle paid the ransom demand. EXR then stayed in Addis Ababa with people from his village until arrangements were made for him to travel to Europe in May 2025. EXR says that

several months prior to his departure, the Ethiopian authorities detained him for about two weeks which he believes was on account of his Tigray origin.

285. In May 2025, EXR travelled to Russia and then to Belarus; arrangements were made by his uncle through an agent. EXR says that, in Belarus, his uncle arranged for him to be met by a friend with whom he tried to cross into Poland. EXR says that they were detained by Belarussian soldiers several times in the zone between the two countries and forced to dig trenches, cut grass and clear the area. EXR says that he was beaten and hit with a spade, and that on several occasions he was pushed back from the Polish border with tear gas.

286. EXR says that he crossed into Poland and then travelled to France. He spent a few days sleeping rough in Paris, and then went to the "jungle" in Dunkirk. EXR says that he was forced to work for smugglers, putting up tents, collecting food from the market and picking up firewood. EXR says that they threatened him with beatings if he did not comply, and that he feared for his life. EXR says that the French police made no attempts to intervene or arrest the smugglers.

287. EXR arrived in the United Kingdom on 29 September 2025 by small boat. He was detained under immigration powers and taken to Manston Short-Term Holding Facility. On 30 September 2025, he was subject to an asylum screening interview which was conducted with a Tigrinya speaking interpreter via telephone. EXR says that he was exhausted, weak and had not eaten properly. EXR provided an account of conscription in Eritrea. The interview recorded "no" to Q2.5 on exploitation, but EXR says he does not recall being asked that question.

288. On 30 September 2025, EXR was transferred to Harmondsworth Immigration Removal Centre. On 2 October 2025, he was served with a Notice of Intent to deem his asylum claim to be inadmissible for examination in the United Kingdom. On the same date, at a Detention Induction Interview, EXR told an immigration officer about his experiences of trafficking in Eritrea, Ethiopia, Belarus and France. EXR was not provided with a copy of the induction interview record at the time. He says that he was not asked any follow-up questions beyond the pro forma.

289. On 3 October 2025 after another interview, EXR was referred to the NRM. The referral form specified EXR's experiences in Eritrea and Belarus in brief outline. EXR was not provided with a copy of the NRM form or given an opportunity to provide correction of any inaccuracies, clarification or further information. On the same day, the Secretary of State made a request for EXR's readmission to France.

290. On 7 October 2025, the First Responder was asked to clarify whether EXR was arrested in Russia or Belarus, and if there was "*anything else*" the First Responder wanted to add to the referral. EXR was not contacted to seek further information or clarification. On 10 October 2025, the First Responder stated they had nothing else to add.

291. On 10 October 2025, the Secretary of State issued a negative reasonable grounds decision in respect of EXR's experiences in Ethiopia and Belarus. With respect to Ethiopia, it was accepted that the trafficking definition was met in part – that EXR was subject to an "action" and there was "means" – but the "purpose" element of the definition was not made out. It was said that the kidnapping for ransom was opportunistic and not exploitation. With respect to trafficking in Belarus, it was

accepted that EXR's account disclosed a case that met all three elements of the trafficking definition. However, it was said that there were "some minor" inconsistencies; and a "poor level of detail", and the claim of exploitation was not raised promptly. It was concluded that the reasonable grounds RG threshold was not met because the information was based "on your own account".

292. During his time in detention, EXR was assessed by a General Practitioner, Dr Kim, on 13 October 2025 under Rule 35(3). Dr Kim found that EXR's scars and psychological symptoms (night-waking, flashbacks, low mood and anxiety) to be "consistent with" his post-traumatic stress disorder, and his account of violence in Eritrea, Ethiopia and Belarus. On 15 October 2025, the Secretary of State accepted the report to be evidence that EXR is an Adult at Risk Level 2, noting that prolonged detention "will adversely impact your mental health".

293. On 31 October 2025, EXR secured legal advice from Bindmans LLP. On 4 November 2025, Bindmans requested reconsideration of the reasonable grounds decision. This was refused. The decision from IECA Technical Specialists stated that:

> "The reconsiderations policy for negative Reasonable and Conclusive Grounds has been updated and is applicable from 8:20pm 17 September 2025. As your client has received a negative decision and is due to be removed to a country that is a signatory to ECAT and ECHR, they are not eligible to have their decision reconsidered under the reconsideration policy. ECAT and ECHR signatory countries are assessed to be safe and have relevant duties to prohibit modern slavery and trafficking."

The same response was provided on 6 November 2025, following a further request for reconsideration.

294. On 13 November 2025, Bindmans requested that the Secretary of State investigate EXR's alleged trafficking in Eritrea and France. On 14 November 2025, the Secretary of State responded to say that:

> "As an NRM referral and decision have previously been completed in relation to your client, and the newly submitted information concerns incidents predating the NRM referral noted above, this matter falls within the scope of the reconsideration process."

The Secretary of State then added the same language as had been included in the earlier responses about the updated Reconsiderations Policy.

295. On 9 December 2025, the Secretary of State declared EXR's asylum claim inadmissible for examination in the United Kingdom, and refused his claim that removal to France would breach his human rights, certifying it as clearly unfounded. In refusing EXR's claim under Article 4 of the Convention, the decision-maker relied on the negative reasonable grounds decision concerning the incidents of trafficking in Ethiopia and Belarus; and also relied on France having policies and programmes aimed at addressing trafficking and procedures for identifying victims of trafficking. The same reasons were relied upon to state that "any Article 4 claim you may make could not succeed."

296. In refusing EXR's Article 3 claim, it was stated that appropriate treatment would be available and accessible to EXR in France: and he would not be at risk of destitution. In certifying the Article 3 claim, it was stated that there was "insufficient evidence" to support EXR's account of forced labour in France.

297. EXR is no longer detained and lives in the United Kingdom with his cousin. After the first day of the hearing before me, the Secretary of State informed EXR that it was accepted that her decision contained an error with respect to his alleged trafficking claims in France and Eritrea and that a fresh decision with respect to those alleged incidents would be made. During the fourth day of the hearing, it was said on behalf of the Secretary of State that the certification decision would be withdrawn. The withdrawal was formally confirmed on 7 May 2026. Before me, the Secretary of State did not concede other aspects of the case; but I have been informed that, since the hearing, the Secretary of State has withdrawn the asylum inadmissibility decision and the decision to refuse EXR's human rights claim.

(i) Submissions of the parties

298. On behalf of EXR, Ms Luh, alleged that the decision-maker acted unlawfully in relying on a lack of detail and inconsistencies about his experiences as the basis for the negative reasonable grounds decision, without taking steps to seek information or clarification directly, or through the First Responder, from either EXR or his legal representative. It is said that this was contrary to the Guidance and was procedurally unfair.

299. Ms Luh submitted that the Secretary of State erred by failing to apply the statutory definition of trafficking to EXR's experiences in Ethiopia. Regulation 3(5) of the 2022 Regulations makes clear that kidnapping a person and subjecting them to force or threats to "induce" them to provide another person with a benefit or enable them to acquire a benefit (payment of a ransom) constitutes "being exploited". EXR's facts meet all parts of that statutory definition, and it was unlawful to find otherwise.

300. With respect to his experiences in Belarus, it was submitted by Ms Luh the rejection of EXR's account on the basis that "all other details that would reasonably be expected is lacking" was an error: the Secretary of State was requiring corroboration, when that was not necessary, and his own plausible account was sufficient to meet the threshold for a positive reasonable grounds decision.

301. Furthermore, Ms Luh submits that the initial decision (9 December 2025) was erroneous (as is now accepted) as it made no mention of EXR's alleged experiences in Eritrea and France. In a supplemental decision dated 17 March 2026, it was said that trafficking support is available in France, and what EXR says he experienced in France could not meet the definition of trafficking. This conclusion is said by Ms Luh to be irrational. In any event, in circumstances where the Secretary of State has yet to complete any victim identification of EXR's experiences in Eritrea and France it cannot be said that his Article 4 claim is bound to fail, as he might be identified as having been a victim of trafficking in those countries.

302. For the Secretary of State, Miss McGahey KC, resisted the challenge to the decision with respect to EXR's alleged experiences in Ethiopia and Belarus. With respect to Ethiopia, it was submitted that the decision-maker rationally understood EXR's account as not being an account of kidnap for ransom. EXR did not give an account of being

kidnapped for ransom in Ethiopia in the NRM Referral form. The decision-maker also had access to the record of EXR's screening interview which stated that EXR had never been exploited or had reason to believe that he was going to be exploited, and described a route that made no mention of Sudan. In his detention induction interview, EXR answered the question about exploitation by referring to his alleged experience in Belarus only. In answer to the question on torture (Q42) he was recorded as having answered that "I was tortured in Ethiopia. While I was in Ethiopia, the smugglers who transported me to Sudan demanded payment. During that time, they sexually assaulted me." Miss McGahey KC submitted that that was not, on its face, an account of a kidnap for ransom. It was reasonably understood to be an account that "while you were in Ethiopia, you were tortured and sexually assaulted by smugglers that demanded payment from you for taking you to Sudan", and this was viewed by the decision-maker as being an account of "opportunistic crimes perpetrated by smugglers" with nothing to indicate that he was trafficked for the purpose of sexual exploitation. Material that is now provided by EXR (of the traffickers demanding that he call his mother to ask for money and forcing him to work, and in which he was not sexually assaulted but witnessed others being sexually assaulted) were not before the decision-maker.

303. With respect to Belarus, Miss McGahey KC observed that the decision-maker did not consider it reasonable to expect supporting evidence from EXR given that the events occurred overseas. Nevertheless, Miss McGahey KC submitted that the decision-maker regarded the account given as not sufficient to meet the reasonable grounds threshold. That was entirely rational, applying the relevant threshold.

304. The parties made submissions about the certification decision but as it has been withdrawn I will not comment on it.

(ii) Discussion

305. In EXR's case, the Secretary of State has conceded that the negative reasonable grounds decision cannot stand in light of the failure to reach a decision with respect to the alleged trafficking in Eritrea and France, and that a fresh decision will be made with respect to these alleged incidents. Had that concession not been made, I would have reached the conclusion that there had been an error of law in the making of the negative reasonable grounds decision as two incidents of alleged trafficking had not been considered. Further, that this is a situation in which the amendment to the reconsideration policy made a real difference: the amendment deprived EXR of the opportunity to request the Secretary of State to reconsider the decision on the basis of the flaws that had been made with respect to Eritrea and France.

306. Furthermore, the request for reconsideration made by the solicitors Bindmans, on behalf of EXR, on 4 November 2025 included reference to the medical evidence in the Rule 35 assessment which found, among other things, that EXR was suffering from symptoms consistent with PTSD and that his narration of events and physical scar were consistent with his claimed torture. Preliminary findings from Medical Justice were also consistent with EXR suffering from PTSD. This is additional evidence that was not available at the time of the initial decision and would have satisfied the test for a request for reconsideration.

307. The Secretary of State has not conceded, however, that the negative reasonable grounds decision reached with respect to the alleged trafficking incidents in Ethiopia and Belarus was unlawful and so I need to determine their lawfulness.

308. With respect to Ethiopia, the decision-maker did not consider that the assertions made by EXR as to what had happened to him in that country fell within the definition of trafficking. In my judgment that was a conclusion that was open to the decision-maker on the material presented.

309. EXR had said a number of things about what had taken place in Ethiopia. At the asylum screening interview, he had said that he was arrested because he had a Tigrayan name. In the Detention Induction Interview, he said that he was tortured in Ethiopia; that smugglers who transported him to Sudan demanded payment from him and, during that time, they sexually assaulted him. It was accepted that EXR had been broadly consistent with his account. The question for the decision-maker was whether the test for trafficking had been made out. In EXR's case, it was accepted by the Secretary of State that the "action" and "means" elements of trafficking had been made out. It was not accepted, however, that the "purpose" element had been made out. That is, the Secretary of State had not accepted that EXR had been "recruited/transported/transferred/harboured/received for the purpose of exploitation".

310. The assessment made by the decision-maker was that:

> "It has been considered that after the smugglers took you to Sudan, they demanded payment from you in Ethiopia and in turn, they tortured you and sexually assaulted you. Although you may have been a victim of a violent and serious crime, and the severity and trauma of such a crime are duly acknowledged, the crime you were subjected to is indicative of isolated events and is therefore dissimilar to the definition of sexual exploitation as per the statutory framework.
>
> This is largely due to the fact that your account indicates you were subjected to an isolated, opportunistic crimes perpetrated by smugglers. While these factors are serious and taken into account there is no evidence that shows the offender groomed you, or profited monetarily, socially, or politically from this offence. Nor were there patterns or trends that indicate you were monetarily, trafficked with the sole purpose of being sexually exploited."

311. I consider that this analysis by the Secretary of State of what EXR was alleging was open to the decision-maker to make. It was not being asserted by EXR that the sexual assault by the smugglers was a means by which they were trying to demand payment from him. It was not understood that the smugglers arranged or facilitated EXR's travel to Sudan with a view to exploiting him. There was nothing to indicate that he was trafficked for the purpose of sexual exploitation. There was nothing to suggest that EXR had been kidnapped for ransom for the purpose of or with a view to their exploitation which can, in an appropriate case, amount to trafficking: see R (AAM) v Secretary of State for the Home Department [2025] 1 WLR 3297.

312. I do not consider that it was irrational, or otherwise unlawful, for the Secretary of State not to make any further enquiries of EXR with respect to what had taken place in Ethiopia. Paragraph 14.58(3) of the Guidance provides that:

> "Where it appears that the outcome of the Reasonable Grounds decision making process may be negative as the result of an incomplete referral, the relevant competent authority must consider whether to request more information from the First Responder or other sources, and give them a reasonable opportunity to provide any further information before taking the decision."

On the basis of the account provided by EXR with respect to Ethiopia as it was not obviously necessary to ask further questions of him. His account did not suggest the sexual assault was connected with a demand for payment.

313. With respect to Belarus, the decision-maker had set out the various accounts provided by EXR, which included him saying in the asylum screening interview that he had stayed with someone in Belarus for 3 months before travelling to Poland and had not said that he was exploited ; and saying in the NRM referral and detention induction interview that he had been imprisoned in Belarus; and saying in the NRM referral that he had been made to work while imprisoned in Belarus digging the ground, cooking and doing work for other prisoners, and had been beaten. The decision-maker considered, however, that EXR had provided "a poor level of detail"; that he had provided "some detail in relation to how you found yourself in the situation you described in Belarus, as well as some detail of what you had to do. However, all other detail that would reasonably be expected was lacking". There were some minor inconsistencies and when he was asked at the screening interview if he had ever been the victim of exploitation he had said no. He had not, therefore, raised his claim at the earliest opportunity.

314. Before making the decision, the decision-maker informed the First Responder that they needed "more information to help them reach" the reasonable grounds decision, and invited the First Responder to answer a specific question about whether EXR's arrest occurred in Belarus or Russia. The First Responder was also asked if they wished to add anything to the referral or had any additional information to submit on the case. The decision-maker did not, however, invite or direct the First Responder to go back to EXR to see if there was anything more that he wished to say about his experience in Belarus.

315. Whether or not the decision-maker should have asked EXR directly, or through the First Responder, for further information was a matter of judgment. It is not required by the Guidance – paragraph 14.58(3) obliges the decision-maker to consider whether request further information from the First Responder or other sources.

316. I do not find that it was irrational for the decision-maker not to have made a request of EXR (whether directly or indirectly). EXR had had several opportunities to provide details about what had happened to him in Belarus and it was open to the decision-maker to adjudge that he had said all that he wished to say about his experiences there, especially where he had made no mention of these experiences in his initial asylum screening interview and had answered negatively to the question as to whether there

had been exploitation, and had not therefore raised his trafficking allegation at the earliest opportunity.

317. The fact that specific information was requested from the First Responder and they were provided with the opportunity to provide any additional information did not mean that the same opportunity had to be offered to EXR as a matter of procedural fairness.

318. I do not consider that the decision with respect to Belarus is otherwise unlawful. The decision letter is clear that corroborating evidence for EXR's account was not expected: it was stated that "It was not considered reasonable to expect supporting evidence given that the events described occurred overseas". Furthermore, whilst it was accepted that EXR had "additional vulnerability", there was no "evidence available that indicates there are any prevalent factors that may have an impact on your ability to recall facts or recount experiences". This demonstrates that a holistic approach was taken by the decision-maker.

IX. The individual claim: HRE

319. HRE is an Eritrean national. The account that he has put forward is that his family fled to Ethiopia in 2012, after his father went missing. His father was outspoken and opposed to some of the ideas of the Eritrean government. In 2022, HRE was detained by the Ethiopian authorities in poor conditions on three occasions. On at least one occasion, he was threatened with being sent back to Eritrea if he did not pay a bribe. He was imprisoned for a month in poor conditions and only released after a bribe was paid. HRE decided to leave Ethiopia, and an agent arranged for him to travel to Sudan.

320. From there, HRE says that he was taken with others to Kufra, in Libya, where they were imprisoned in a compound, which contained two buildings, which were then split into four 'houses' with around 50 people in each 'house'. The conditions were filthy and HRE had to sleep on the floor. More money was demanded by the agents, but HRE's family could not afford it. HRE was repeatedly tortured. Most people in his 'house' did not survive. HRE and another person were made to dig their graves and bury their bodies at a location around 30 minutes' drive away. On many occasions, HRE was made to lie with the dead bodies in the back of a pickup truck for the journey. After approximately four months, HRE's family paid the agents. He was moved to another building in the compound, which also had poor conditions; he was no longer beaten but on some days he was not fed. This lasted for another three months, during which he was forced to work at a farm each day.

321. HRE says that he was then taken with others to Tripoli where he stayed for around 1 year and 2 months. He was then able to travel to Italy, and from there he moved with the assistance of agents to Dunkirk, France where he stayed for about three months. HRE's family paid the agents twice, but HRE was told that he was responsible for paying for others who travelled with him to Dunkirk before disappearing. They threatened to kill him if he did not pay. HRE managed to escape and got onto a boat to the United Kingdom on 6 August 2025.

322. HRE was detained on arrival. He claimed asylum and was subject to a screening interview that night. In that interview, he disclosed being in Libya and working there. The interview record reports that HRE speaks English but was not fluent; that on his journey to the United Kingdom he was in Libya for one year and nine months where he

worked for the first two months in a warehouse in Tripoli "after that I just stayed in a house with my friends and they give me everything I need." HRE answered 'no' to the question on exploitation.

323. On 9 August 2025, HRE was transferred to Brook House Immigration Removal Centre, where he attended a detention induction interview. He told the interviewing officer 'no' to the exploitation question, a question which he has said he did not understand. He was served with a Notice of Intent that he was being considered for removal to France. The Secretary of State made a readmission request to France which was accepted on 4 September 2025.

324. On 13 August 2025, HRE disclosed his experiences of being trafficked in Libya to the Gatwick Detainee Welfare Group. The Group requested that HRE be referred into the NRM as a potential victim of modern slavery. On 14 August 2025, HRE instructed legal representatives, Wilson Solicitors LLP.

325. On 20 August 2025, a GP produced a report under Rule 35(3). The GP identified that HRE was likely to have experienced torture which had significantly impacted his mental health, leading to symptoms of anxiety, fear, flashbacks, and insomnia. The GP expressed concern about HRE's mental health, 'as his current detention has triggered feelings similar to those he experienced during past physical torture. This situation could further deteriorate his mental health'.

326. On 21 August 2025, HRE was referred into the NRM after an interview. The referral form recorded in one part that HRE's exploitation in a 'compartment/house type' started in August 2023 and went on for around 3 months, ending in November 2023. In another part, it said around four months. It recorded HRE's account of living in poor conditions; being tortured; having to bury bodies; and having to work on a farm. It also recorded that HRE left the situation when his family paid the agents, so he could be moved to a better location. The form was not read back to HRE to check for accuracy or make clarifications. He was not given a copy of it.

327. On 26 August 2025, Wilson Solicitors LLP made representations to the Secretary of State in response to the Notice of Intent. On the same day, the Secretary of State recognised that HRE was an Adult at Risk Level 2, acknowledging that his account was in line with the definition of torture; but maintained his detention. On 28 August 2025, the Secretary of State made a negative reasonable grounds decision. That same day, Wilson Solicitors LLP sought reconsideration of the decision, pointing out what they said were flaws in the decision and they provided the Secretary of State with a witness statement from HRE.

328. On 3 September 2025, HRE drafted a handwritten letter in English to the Secretary of State. He stated that (i) he was sleep deprived, having not slept for 3 days and malnourished, having not eaten for 2 days before his interview, and this affected his ability to accurately recall information; (ii) he replied 'no' to the question about exploitation without having any awareness about some terms, like modern slavery; and (iii) there were issues with the interpreter during the interview, leading to part of his account being wrongly translated, including where, when and how he was exploited. He said that he had informed the Secretary of State of the error prior to his NRM interview. This letter was sent to the Secretary of State, along with a letter from Dr Elizabeth Hubbard which referred to HRE's worsening psychological symptoms; the

risk of deterioration in detention; the risk of suicide; and a concern as to his fitness to fly.

329. On 4 September 2025, the Secretary of State informed HRE that there were reasonable grounds to conclude that he was victim of modern slavery. Further representations were subsequently made by Wilson Solicitors LLP to the Secretary of State, including on human rights grounds.

330. On 13 September 2025, a Rule 35(2) report was completed. This noted that HRE suffered from serious mental health issues stemming from a history of trauma in Ethiopia, Eritrea and Libya, including modern slavery; that his mental health had worsened in detention, including fleeting suicidal ideation, and that he had hit and banged his head and was uncontrollable the day before. On 19 September 2025, a Rule 35(1) report was completed, expressing concern about HRE's worsening mental health, and that his health was likely to be injuriously affected by continued detention or conditions in detention. The report noted that HRE had declined medication multiple times and raised trust issues with everyone.

331. On 27 September 2025, a medico-legal report on HRE was completed by Dr Hubbard (a General Practitioner, who has had training and experience of working with patients suffering from mental health problems). This report was provided to the Secretary of State on 30 September 2025, along with representations as to why HRE should be recognised as a victim of modern slavery, providing explanations for apparent inconsistencies in HRE's account.

332. In her report, Dr Hubbard noted that HRE did not trust medication "because he was betrayed in the past by agents"; HRE would not drink the water provided during the assessment because of a lack of trust; and that he expressed significant mistrust and suspicion. Dr Hubbard diagnosed HRE with PTSD and found that this "corresponds" with his account of ill-treatment, and that his trauma symptoms "would be unexpected in an adult who had not had traumatic experiences". Dr Hubbard also diagnosed HRE with severe depression and concluded that his overall psychological picture is "highly consistent with his account" and unlikely to be fabricated. Dr Hubbard noted that HRE's PTSD, depression and anxiety were likely to affect memory, concentration and ability to recall information, particularly in stressful situations such as an interview. Dr Hubbard said that poor sleep, physical illness and malnutrition were also likely to have affected HRE's ability "to recall and provide an account of past events". Dr Hubbard stated that HRE's mental health problems, young age, insecure immigration status, and reported experience of trafficking, modern slavery and abuse by traffickers "mean that he may be particularly susceptible to exploitation".

333. On 1 October 2025, HRE was recognised as being an Adult at Risk, Level 3, and he was released from detention. On 16 October 2025, the Secretary of State sought a further explanation for apparent inconsistencies in HRE's account. This was responded to on 23 October 2025.

334. On 27 October 2025, the Secretary of State made a negative conclusive grounds decision. The decision letter set out HRE's various accounts and referred to the United States of America Department of State Trafficking in Persons Report for 2025. Libya was noted to be a "Special Case", and it was stated that "Human traffickers exploit domestic and foreign victims in Libya. Instability and lack of government oversight and

capacity in Libya continue to allow for human trafficking crimes to persist and be highly profitable for traffickers." The decision letter noted that the evidence "confirms that modern slavery occurs in Ethiopia, Sudan, Libya, Italy and United Kingdom and they are countries where individuals are subject to exploitation."

335. The decision letter stated that "Competent Authority guidance on credibility is contained in the attached Decision Annex. For the reasons outlined below, your account of events is not accepted." The decision letter addressed the inconsistencies in HRE's various accounts. With respect to an inconsistency as to the name of the agent who assisted with HRE's travel out of Ethiopia, it was stated that a reasonable explanation had been provided by HRE: the two names given at different times were similar, and the inconsistency could have been the result of the interpreter's misunderstanding. It was explained that no weight was applied to this inconsistency.

336. With respect to inconsistencies in the account of HRE's experiences in Libya, it was stated that "you have provided different accounts in relation to the location of where you worked in Libya, the duration of your work and to the duration of your stay at the compound." It was explained that:

> "While it has been taken into account that you were suffering from sleep deprivation and malnutrition at the time of your Asylum Screening Interview, a reason such as issues with the interpreter is not deemed sufficient to explain why you had given completely different accounts in relation to the inconsistency above, and simply indicating the correct account also fails to provide a reasonable justification. It is noted that in your screening interview, you confirmed that you had understood all of the questions asked. Further, it is noted that part of your SI was conducted in English, and your MLR was done in English, with occasional use of an interpreter. It is therefore considered that you were not solely reliant on the interpreter, and this is therefore not a sufficient explanation for this inconsistency. Therefore, as the location of where you worked in Libya, the duration of your work and the duration of your stay at the compound are considered core to your exploitation claim, significant weight has been applied to this inconsistency and your credibility has been damaged to the point that your entire account cannot be believed.
>
> In addition, in your Asylum Screening Interview Q. 2.5 dated 06/08/2025, in your Detention Induction Record Q. 23 you stated that you have never been exploited, nor you have had any reason to believe you were going to be exploited.
>
> . . .
>
> Whilst it is deemed reasonable that you might have not understood what 'modern slavery' meant at the time of your Screening Interview and Detention Induction Record, looking at the timeline of your entire case, the fact that you raised your NRM claim only after speaking to your Legal Representative and having been served with a Notice of Intent dated 09/08/2025, damages the credibility of your claim."

337. The decision-letter addressed whether there were any reasonable explanations in relation to HRE's account, taking into account the Rule 35 report, his diagnosis of PTSD, the medico-legal report, and a letter from Medical Justice. It was decided that:

> "looking at the available medical evidence, while it is acknowledged that you have experienced difficulties, the evidence does not suggest that your memory has been cognitively impaired to the extent of not being able to give a coherent narrative, nor does it explain why you have provided contradictory accounts regarding the core aspects of your claim. It is considered that there are no mitigating circumstances in your case to explain why you have given contradictory accounts within your claim."

338. The decision letter went on to say:

> "In summary, the information that is considered to support your case is the wider external evidence noted in the United States of America Department of State Trafficking in Persons Report for Ethiopia, Sudan, Libya, Italy and France of 2025, which notes that trafficking does occur.
>
> The information that is considered to go against your case is in the inconsistencies outlined above.
>
> Looking at the available evidence in the round of your case, it is considered that whilst there is some information that supports your account, looking at all the pieces of information cumulatively, the credibility issues outweigh the evidence in support of your account. As such, it is not considered that you have met the required evidentiary standard.
>
> **In regard to incident 3**. Due to the inconsistencies in your account, your credibility has been damaged to the extent that your claim to have been trafficked cannot be believed applying the standard of proof 'on the balance of probabilities' and is consequently rejected.
>
> **In regard to incident 1 and 2**. Whilst your account is not accepted for the reasons outlined above, even if your account were to be accepted, as outlined below, it is not considered that these events constitute modern slavery (human trafficking and or slavery, servitude or forced / compulsory labour)."

339. On 28 October 2025, Wilson Solicitors LLP requested reconsideration of the negative conclusive grounds decision. Wilson Solicitors LLP sought to address the alleged inconsistencies in HRE's accounts. Reference was made to mistakes made by the interpreter with respect to the time that he had spent at the warehouse in Libya; HRE's sleep deprivation, malnutrition and high levels of stress during the screening interview; an error in the NRM referral with respect to how long the exploitation had taken place; the evidence from Dr Hubbard (dated 27 September 2025) that HRE had a scar on his lower back that was "highly consistent" with the attributed cause, and a scar on his forehead that is "consistent" with the attributed cause, that HRE has PTSD which corresponds with his history of ill-treatment and that HRE's overall psychological

picture was "highly consistent" with his account; and that the timing of making the claim of trafficking was explained by HRE not recognising himself as being a victim until he met with his legal representatives.

340. The application for reconsideration was refused on 29 October 2025 in reliance on the new "reconsiderations policy". On 24 November 2025, the Secretary of State decided to treat HRE's asylum claim as inadmissible, and refused his human rights claim certifying it as clearly unfounded. HRE was re-detained on 25 November 2025, and was removed to France on 4 December 2025. The Court was told that HRE has not yet claimed asylum in France.

(ii) Submissions of the parties

341. HRE challenges the treatment by the Secretary of State in the negative conclusive grounds decision of "Incident 3": that is, the alleged trafficking in Libya.

342. On behalf of HRE, Mr Sellwood contended that the decision was irrational, in that: (i) there was an error in the decision-maker's approach: conducting a negative assessment of HRE's credibility and then asking whether that assessment could be "mitigated", contrary to the decision in MN at [126]; (ii) it was wrong to suggest there was no evidence that HRE's memory "has been cognitively impaired to the extent of not being able to give a coherent narrative, nor does it explain why you have provided contradictory accounts regarding the core aspects of your claim", and there had been a failure to take into account Dr Hubbard's report; (iii) the reports from Dr Hubbard and the Rule 35 report had corroborative value, finding that HRE's physical and mental health presentation to be consistent with an account of forced labour and slavery: this was not properly addressed and should have been taken into account as part of the holistic assessment of credibility and given significant weight; (iv) there was a failure to address the relevant circumstances of HRE's screening and NRM referral interviews, which was found to be inconsistent with his subsequent account; (v) there was a mistake of fact to assert that HRE only disclosed his account of trafficking after being served a Notice of Intent and speaking to lawyers, as he had already disclosed his account of trafficking to the Gatwick Detainees Welfare Group; (vi), the decision-maker had not addressed the clarifications that had been made, and the explanation for the apparent inconsistencies; and (vii) the decision-maker had failed to apply the Guidance. It was accepted by Mr Sellwood that the annex to the decision did refer to the Competent Authority guidance on credibility, but it was submitted that the annex only summarises some of the Guidance, and the Court should assume that the full terms of the Guidance were not properly taken into account.

343. The focus of the challenge to the certification decision was to the Secretary of State's treatment of HRE's Article 4 claim (Mr Sellwood told the Court that HRE's arguments about the Article 8 claim were not withdrawn; and that his Article 3 arguments were not being taken further). It was submitted by Mr Sellwood that the certification decision was irrational; that no separate consideration was given to whether the claim was clearly unfounded: it was not sufficient for the Secretary of State to rely on the fact that the human rights claim was rejected. Mr Sellwood submitted that the Secretary of State had already accepted that, on one legitimate view, HRE's account of trafficking could be capable of belief: that was why a positive reasonable grounds decision had been made. Having decided that, it was not possible for the Secretary of State to decide that an immigration judge could not reach the conclusion that HRE had been trafficked.

344. Mr Vinall resisted this challenge on behalf of the Secretary of State. Mr Vinall submitted that there were inconsistencies in HRE's account concerning Incident 3: there were inconsistencies as to location and duration, between the versions in HRE's screening interview, the NRM referral form and his witness statement. As a result, Mr Vinall submitted that the decision-maker was entitled to find, on the balance of probabilities, that HRE's credibility was damaged to the extent that his claim to have been trafficked could not be believed: the decision-maker adopted a fair procedure, putting the inconsistencies to HRE; and took into account his health issues including the diagnosis of PTSD. Mr Vinall argued that the decision reached by the Secretary of State was not irrational.

345. Mr Vinall submitted that the decision-maker was entitled to state that HRE had raised his trafficking claim only after speaking to a legal representative as that is what he had said in his NRM referral interview. In any event, even if HRE raised it after speaking to a member of the Gatwick Detainee Welfare Group, the real point was that HRE raised the claim only after being served with the Notice of Intent and after he had taken advice.

346. With respect to the certification decision, Mr Vinall submitted that the correct test was applied by the decision-maker, and the Court should only interfere if the decision was irrational. Mr Vinall submitted that if HRE's account of forced labour in Libya lacked credibility, then it cannot give rise to a breach of Article 4. In any event, the failure to identify a person as a victim of trafficking would not itself constitute a breach of Article 4. Further, insofar as his Article 4 claim was based on a fear of re-trafficking in France, there was no basis for questioning the sufficiency of protection in France from such re-trafficking.

(iii) Discussion

347. If the reconsideration policy had not been amended, this would not have made any difference in HRE's case. There would not have been proper grounds to reconsider HRE's negative conclusive grounds decision under the Guidance as no additional evidence was provided in the reconsideration request made by HRE's legal representatives on 28 October 2025 that had not been considered previously by the Secretary of State.

348. HRE's legal representatives, Wilson Solicitors LLP, asserted as part of their request for reconsideration that various provisions of the Guidance provided reasons for why inconsistencies may occur, why the timing of the claim may be affected by the victim's condition, and that expert evidence should be taken into account (reference was made to Dr Hubbard's evidence), but there is nothing to suggest that these matters were not properly taken account of by the Secretary of State in the initial decision.

349. Looking at the substance of the conclusive grounds decision made by the Secretary of State, I do not consider that it was unlawful. At the conclusive grounds stage, the standard of proof is the balance of probabilities. The decision letter addressed the various inconsistencies that had been made by HRE in his different accounts and it is clear that the decision maker was discerning about the inconsistencies: for instance, there was an acceptance that differences in the name of the agent did not carry any weight in the decision making.

350. As for the inconsistencies with respect to the location where HRE said he had worked in Libya, the duration of his work and the duration of his stay at the compound, these matters, which were regarded as core to his account, were all put to HRE for comment, and the explanations provided were considered. Procedural fairness was therefore applied to HRE's account.

351. I note also that the decision maker took into account HRE's sleep deprivation and malnutrition at the time of the Asylum Screening Interview, as well as the Rule 35 Report and the report of Dr Hubbard. The medical evidence did not suggest that HRE's memory was cognitively impaired to the extent that he could not give a coherent narrative, nor explain the contradictory accounts. The decision maker looked at all the evidence in the round and taking the information cumulatively decided that the credibility issues outweighed the evidence in support of HRE's account.

352. It was not unlawful for the decision-maker to have relied on HRE's delay in raising his trafficking claim as affecting his credibility. The decision letter did refer to HRE waiting until he had legal representation whereas, as Mr Sellwood pointed out, HRE had instructed legal representatives (14 August 2025) after he had been visited in detention by the Gatwick Detainee Welfare Group, and that group had sought to refer his case to the NRM. This error does not satisfy the test for a mistake of fact set out in E v Secretary of State for the Home Department [2004] QB 1044, as HRE was himself responsible for the mistake. The reference in the decision to legal representation was precisely what had been put on the NRM referral form: with respect to the question "Why are they reporting this now?", it was stated that "PV [potential victim] was advised to inform the home office by his legal rep." That answer can only have come from HRE.

353. Furthermore, the decision letter did not refer only to the NRM being raised after HRE had spoken to his legal representatives, it also referred to this occurring after HRE had been served with a Notice of Intent. In the circumstances, the mistake did not, in my judgment, play a material part in the decision-maker's reasoning.

354. Mr Sellwood contended that the decision-maker specifically underplayed the corroborating evidence contained in the US State Department's 2025 Trafficking in Persons Report, which states that the overwhelming majority of men transiting Libya will have indicators of being trafficked. I do not consider that the reference to Libya in the decision was erroneous. A summary of the US State Department report on Libya was set out in the decision letter, and it was stated that HRE's account was broadly consistent with what is said about trafficking in Libya and other places where he had resided. The issue for the decision-maker was not whether or not HRE's account was supported by what is said to take place generally in Libya, but whether his own account was to be believed based on the inconsistencies as to the core account of his trafficking that he had given.

355. Mr Sellwood criticised the decision for failing to make specific reference to aspects of the Guidance that deal with interviewing people who have experienced trauma, and that those interviewing potential victims should be alert to these factors as they may impact on credibility or consistency. Mr Sellwood submitted that rather than referring to the Guidance and taking them into account, the decision-maker specifically referred to a much shorter document (5 pages in total) which summarises some aspects of the Guidance. I do not consider that there was any material error in this regard.

356. There was no need for the decision-maker to refer specifically to paragraphs in the Guidance. Whilst, the Guidance is lengthy, I reject Mr Sellwood's submission that it is difficult for the decision-maker to remember its contents. The decision-makers are trained in making decisions of this kind. Further, in any event, the shorter document that was annexed to the decision in HRE's case, specifically states that "More information on how the relevant competent authority must consider credibility is available in the Modern Slavery: Statutory Guidance for England and Wales (under s49 of the Modern Slavery Act 2015) and Non-Statutory Guidance for Scotland and Northern Ireland." That reference makes it clear that the lengthier document "must" be taken into account. There is no basis to suggest that the provisions of the more detailed document were not taken into account.

357. As for the reference in the decision letter to "mitigating circumstances" this is not, in my view, a fatal error. Whilst the use of that language has been deprecated by the Court of Appeal in MN at [126], I do not read Underhill LJ's judgment to mean that the use of the language of mitigation necessarily renders the decision unlawful. At [126], Underhill LJ stated that:

> "As is made clear in *Mibanga*, what is required is a single process in which the decision maker assesses the credibility of the core account given by the putative victim. In doing so it will be necessary to take into account features which potentially call their credibility into question, such as incoherence, inconsistency or delay, alongside factors which may explain those features."

In my judgment, this is the proves that the decision-maker adopted in this case.

358. The decision-maker focused on the credibility of the core account provided by HRE, finding that had given different accounts in relation to "the location of where you worked in Libya, the duration of your work and the duration of your stay in the compound". The decision maker then went on to consider different explanations which may explain the inconsistencies and found that they did not. It was in that context that the decision-maker stated that "It is considered that there are *no mitigating circumstances* in your case to explain why you have given contradictory accounts within your claim" (emphasis added).

359. Moreover, the decision-maker concluded as follows:

> "Looking at the available evidence in the round of your case, it is considered that whilst there is some information that supports your account, looking at all the pieces of information cumulatively, the credibility issues outweigh the evidence in support of your account. As such, it is not considered that you have met the required evidentiary standard."

360. I do not consider that the decision of the Secretary of State to certify HRE's human rights claims as clearly unfounded was unlawful. The focus of the challenge was to the Secretary of State's treatment of HRE's Article 4 claim. Whilst the section of the decision letter dealing with "Reasons for certification of human rights claim" did not expressly refer to the Article 4 claim, that claim was dealt with as a matter of substance in a paragraph which stated that:

> "The outcome of your National Referral Mechanism (NRM) referral concluded that you do not meet the required threshold for Modern Slavery and Human Trafficking. You received a Negative Conclusive Grounds decision documenting the details for this on 27 October 2025. Your case was deemed negative on grounds of credibility. Due to inconsistencies in your accounts, your credibility was damaged to the point that your entire account could not be believed."

361. The decision letter went on to say with respect to each of the human rights claims, which must include HRE's claim under Article 4, that:

> "For the reasons above it is considered that your claim cannot succeed on any legitimate view and any immigration judge, properly directing him or herself and applying the law to the facts and the same evidence, would inevitably conclude the same. Therefore, your claim that your removal from the UK would be unlawful under section 6 of the Human Rights Act 1998 is wholly lacking in substance and any appeal would be bound to fail."

In other words, the decision-maker said that any immigration judge would inevitably conclude that HRE's account of trafficking could not be believed. That was the correct test to be applied to the question of the certification.

362. In my judgment, the conclusion reached by the decision-maker that HRE's appeal would be bound to fail was not irrational. There were inconsistencies with respect to the core account of trafficking given by HRE; and it was open to the decision-maker to find that this could not be explained by, for instance, the use of the interpreter. HRE clearly had some competency in English and had confirmed that he understood all of the questions asked in the screening interview. The evidence did not suggest that HRE's memory had been impaired to the extent of him not being able to provide a coherent and consistent narrative. It was open to the decision-maker to conclude that it was reasonable to expect that a potential victim who had experienced a trafficking event would be able to recount the central elements in a broadly consistent manner, and that the same view would inevitably be reached by an immigration judge.

363. Furthermore, the fact that a positive reasonable grounds decision had been made in HRE's favour at an earlier stage did not mean that, at the conclusive grounds stage, an immigration judge might be able to decide that HRE had been trafficked. The conclusive grounds decision is taken on the basis of further examination of the applicant's case and applies the test of balance of probabilities, rather than the lower credible suspicion test.

364. When making the conclusive grounds decision in HRE's case, the Secretary of State had considered further evidence and had given HRE the opportunity to explain any inconsistencies or lack of details in his earlier representations. The decision-maker formed the view on the basis of that additional material that, as a result of inconsistencies in HRE's accounts, his credibility was damaged to the point that his entire account could not be believed, and that an immigration judge would inevitably conclude the same. In any event, as the alleged trafficking all took place outside of the United Kingdom, there could be no breach of Article 4 of the Convention by the United

Kingdom Government for failing to identify HRE as having been a victim of trafficking.

365. Furthermore, in these circumstances, it did not matter that the Government of France would not treat HRE as having been a victim of trafficking. If HRE's account of forced labour in Libya lacked credibility, then it cannot give rise to a breach of Article 4 of the Convention on any view; and the fact that the trafficking took place abroad from France and not at the hands of French nationals also means that Article 4 is not engaged. Further, insofar as HRE's Article 4 claim was based on a fear of re-trafficking in France, there is no basis for questioning the sufficiency of protection in France from such re-trafficking and so Article 4 does not apply: see paragraph 196 above.

366. I also reject the challenge (not advanced orally by Mr Sellwood) to the certification of HRE's Article 8 claim. The decision contained the following:

> "It is also considered that your rights under Article 8 would not be breached by your removal from the UK to France. You have provided no evidence to suggest that your mental health is such that removal from the UK would interfere with your Article 8 rights, and in any case, removal would be both necessary and proportionate given the significant public interest in maintaining fair and effective immigration control. Therefore, an Article 8 claim on medical grounds is also bound to fail."

That conclusion was entirely rational. It had already been stated by the Secretary of State in rejecting the Article 8 claim that there was suitable medical treatment in France which would be accessible to HRE and, to the extent that his mental health deteriorated such that removal to the United Kingdom would interfere with his Article 8 rights, such interference would be in accordance with the law, necessary and proportionate in pursuit of the significant public interest in fair and effective immigration control. In light of the ability for asylum seekers – which would include HRE – to obtain mental health support, especially where there was no bespoke treatment plan that had been recommended for him or which he was undertaking at the time of removal, this conclusion is plainly correct.

367. Based on the findings already made with respect to HRE, therefore, I consider that his removal to France was not unlawful. Even though he was deprived of the right to request reconsideration of the negative conclusive grounds decision as a result of the amendment to the policy, this would have had no impact on his case as there was nothing that he had put forward that would have justified reconsideration in accordance with the Guidance. The decision to reject his claim for trafficking at the conclusive grounds stage was lawful, as was the certification decision.

X. The individual claim: GIP

368. GIP is from Sudan. He says that in April 2024, the Rapid Support Forces ("the RSF") (a paramilitary force) attacked his village. Members of his family were killed and his brother was shot. He escaped to a nearby city but was stopped by the RSF who imprisoned him in an old school, tortured him and exploited him in forced labour for around six weeks. GIP says that he was driven (with a blindfold on) to and from a place where he was forced to load and unload boxes from trucks for several hours. During

the night, he was frequently subjected to physical beatings, and received no medical attention. He was racially abused and was subject to threats to kill.

369. GIP says that he managed to escape and travelled to Egypt. He was subsequently deported back to Sudan, but after four months he travelled again to Egypt and then to Libya. GIP then made his way to Italy, and from there to France. He says that he spent a week street homeless in Paris, and travelled to "the Jungle" in Calais because he did not feel safe in Paris. He was detained by the French police for travelling on a train without a ticket, and told to return to "the Jungle" and claim asylum. GIP says he was not told how to do that.

370. GIP arrived in the United Kingdom on 24 August 2025 by small boat. He had not slept for two days and had not eaten for a long time, He was detained under immigration powers and taken to Manston Short-Term Holding Facility. In the early hours of 25 August 2025, he attended an asylum screening interview. GIP said that he left Sudan because he was a target of the RSF and that he would be killed if returned. He gave information about his journey and said that he did not want to return to any of the countries that he had been in because he did not feel safe there. GIP answered "no" to the question of whether he had been exploited. GIP has said that the interpreter used the Arabic word associated with sexual exploitation, which GIP had not experienced. GIP also said that the interpreter did not fully read out the pro forma Question 2.5:

> "By exploitation we mean things like being forced into prostitution or other forms of sexual exploitation, being forced to carry out work, or forced to commit a crime.
>
> Have you ever been exploited or reason to believe you were going to be exploited?"

371. On 25 August 2025, GIP was transferred to Harmondsworth Immigration Removal Centre; and on the following day he was issued with a Notice of Intent to declare his claim for asylum inadmissible for examination in the United Kingdom and to remove him to France. On 26 August 2025, GIP had a Detention Induction interview with an Arabic telephone interpreter. He says that he continued to understand the exploitation question as referring to sexual exploitation.

372. On 27 August 2025, the Secretary of State made a request for GIP's readmission to France. This was accepted on 19 September 2025. On 12 September 2025, GIP's immigration representatives, Philip Jones Legal had requested that the Secretary of State refer him into the NRM. On 19 September 2025, GIP was asked further questions about his experience in Sudan by an immigration enforcement officer. GIP says that he was not told, at the time, that this was for the purposes of completing an NRM referral. The referral form recorded how, during his detention by the RSF, he was taken from the place of detention to a market where he was asked to load and unload goods without pay. He was deprived of food and frequently beaten. GIP says that the contents of the form were not read back to him to check for accuracy or clarification.

373. On 22 September 2025, a request for further information was made to the First Responder. It was stated that "there is not enough information to make a decision. The Immigration Enforcement Competent Authority needs more information to help them reach a Reasonable Grounds decision on the NRM referral for" GIP. The First

Responder was asked whether they noted or were aware of "any physical or psychological indicators of modem slavery when you interviewed" GIP; and whether they had any further information regarding his trafficking claim. The First Responder replied to say that they had no further information to add. GIP was not contacted for further information.

374. On 24 September 2025, the Secretary of State issued a negative reasonable grounds decision. It was stated that:

> "You have given a limited level of detail in relation to your exploitation claim in Sudan and it is considered reasonable to expect a higher level of detail. Especially, as your claimed exploitation happened not so long ago, that is from 15/04/2025 to 30/05/2025, and occurred over a significant period of time, as much as 6 weeks or so."

375. GIP made requests for reconsideration. These were refused on the basis of the amended reconsideration policy. It was stated that:

> "As you have received a negative decision and are due to be removed to a country that is a signatory to ECAT and ECHR, you are not eligible to have your decision reconsidered under the reconsideration policy. ECAT and ECHR signatory countries are assessed to be safe and have relevant duties to prohibit modem slavery and trafficking."

376. On 3 October 2025, a Rule 35(3) report was made by a GP at the Immigration Removal Centre. The GP recorded the account of torture by the RSF and noted scarring and continued swelling of GIP's legs (after many months) which it was said was "consistent with a history of previous injury". GIP presented with "subdued mood, and looked anxious and stressed" and trauma symptoms including poor sleep due to recurring intrusive thoughts, nightmares and flashbacks. This was stated to be "consistent with the psychological effects of past trauma." The Secretary of State found GIP to be an Adult at Risk Level 2, as the GP had advised that he was experiencing symptoms consistent with past trauma and had been referred to the mental health and psychology team for further support.

377. GIP instructed legal representatives, Deighton Pierce Glynn. They sent pre-action letters challenging the negative reasonable grounds decision and the refusal to reconsider the decision. A letter from Dr Kamara was enclosed which expressed concerns about GIP's mental health.

378. On 21 October 2025, the Secretary of State declared GIP's asylum claim inadmissible for examination in the UK as it was reasonable to have expected him to have claimed asylum in France, which was a safe country. The Secretary of State also refused GIP's claim that removal to France would breach his human rights, certifying it as clearly unfounded. In refusing GIP's claim under Article 4 of the Convention, the Secretary of State relied on the negative reasonable grounds decision, and on the information from her CIN on France (August 2025) that support is generally available for victims of trafficking in France. In refusing his Article 3 claim, the Secretary of State stated that appropriate treatment would be available and accessible to GIP in France. It was stated that GIP's human rights claim was "so wholly lacking in substance that an appeal would be bound to fail". Under the heading, 'Reasons for certification of human rights claim',

details were provided in connection with the Article 3 claim, and an Article 8 claim, but not the Article 4 claim.

379. GIP was due to be removed to France on 30 October 2025. This was deferred following pre-action correspondence. On 29 October 2025, a medico-legal report from Dr Kamara (a doctor with experience in the healthcare of refugees and asylum seekers) was provided. Dr. Kamara's report identified scarring on GIP's body which she assessed to be "clinically compatible" overall with his account of ill-treatment. One of the scars was "typical" of its given attribution, one was "highly consistent", and three scars were "consistent", using the taxonomy provided under the Istanbul Protocol Rev.2 (2022).

380. Dr Kamara also diagnosed GIP with PTSD and depression. Dr Kamara concluded that her physical and psychological findings were overall "typical of" his account of ill treatment. In her opinion, "the onset of some of his symptoms whilst in Libya, in particular flashbacks and nightmares relating to his experience of detention, being forced to work, and torture in Sudan, suggest that this episode [in Sudan] has initially led to his post-traumatic stress disorder". Dr. Kamara raised the possibility of cognitive deficits arising from torture impacting his ability to "recall and recount events with complete accuracy or chronological detail". She also pointed to external circumstances, the impact of trauma, and PTSD and depression as providing a plausible explanation for GIP's difficulties in providing a chronological account or in recalling facts and details.

381. On 29 October 2025, the Secretary of State agreed to reconsider the negative reasonable grounds decision in light of the pre-action correspondence and Dr Kamara's report. On 30 October 2025, Deighton Pierce Glynn provided a witness statement from GIP, which described his account of trafficking and torture in Sudan. It was requested that this be taken into account in reconsidering the decision. The solicitors asked that if any material inconsistencies were identified in his account, GIP be provided with an opportunity to address them in a further interview.

382. On 31 October 2025, the IECA emailed the First Responder, asking her to elaborate on her comment in the NRM interview pro forma that GIP's "body language was all OK" and inviting the submission of any further information. The First Responder replied the same day stating, "I have no further information to add". No steps were taken to contact GIP or his solicitors for further information or clarification to inform the reconsideration of the decision.

383. On 3 November 2025, a further negative reasonable grounds decision was made. This stated that there were "inconsistencies" in GIP's account. It was said that there was no "sufficient mitigation" against the inconsistencies because there was no "confirmed diagnosis" of mental illness and a lack of evidence of any cognitive impairment that may explain the inconsistencies.

384. On 5 November 2025, Deighton Pierce Glynn requested reconsideration of this decision on grounds that it was legally flawed and failed to take into account Dr. Kamara's report, which was capable of explaining the perceived inconsistencies in his account, and that the decision had not been taken in line with the Guidance. This request was refused. In a pre-action letter sent by Deighton Pierce Glynn the following day, it was said that the IECA had failed to interview GIP when it had been requested; that Dr Kamara had diagnosed GIP with PTSD and depression, and no rational reason had been

advanced for considering that the inconsistencies were not outweighed by the medical evidence. It was also submitted that the Secretary of State had not complied with the Guidance. There had been a focus on minor and peripheral facts that were not material to the claim to determine that GIP was not credible, and that he had not been asked to clarify inconsistencies. It was asserted that medical evidence demonstrated that GIP had clinical features of PTSD and depression arising from his experiences, which can be plausible reasons for long term cognitive or neurological effects, including difficulties with concentration or memories.

385. On 17 November 2025, GIP was served with a further letter which maintained the declaration of inadmissibility in respect of his asylum claim and the certification of his human rights claim under Article 3 of the Convention. It was said that in the light of the second negative reasonable grounds decision, "it is not considered necessary to review Article 4 further". On inadmissibility and Article 3 of the Convention, the decision stated that if GIP claimed asylum in France, he would receive accommodation and support.

386. On 27 November 2025, GIP was removed to France. He says that he was taken to a tent near to the airport in Paris and was advised that he was very likely to be removed to Italy under the *Dublin III Regulation* (for Italy to examine his asylum application). GIP did not want to be returned to Italy and left the airport tent after two days and slept rough in Paris. GIP says that other asylum seekers told him that claiming asylum did not result in the provision of support. He is currently living in "the Jungle" in Calais in a tent and sleeping bag given to him by a charity. He has not yet claimed asylum. He has also not been identified as a victim of trafficking by French authorities. He depends on charities for food, water and hygiene facilities. He says that his mental health has deteriorated significantly since he was removed to France.

387. On 15 April 2026, two further decisions were made by the Secretary of State. The first, which was said to be in response to the application for judicial review, accepted that the second reasonable grounds decision was factually incorrect in saying that no documentation had been provided to show he had a confirmed diagnosis: this was set out in Dr Kamara's letter. However, it was said that this "does not change the overall decision".

388. The second letter stated that its purpose was "to clarify" that although the letter of 21 October 2025 did not address Article 4 of the Convention within the reasons for certification decision, this "had no material impact on the decision". It was explained that upon reconsidering GIP's claim a number of inconsistencies had been identified in his account, leading to his credibility being damaged to the extent that his claim of trafficking was rejected. Further, that it was considered that he could raise any claim that he would face a risk of re-trafficking if returned to Sudan as part of his asylum claim in France, and that this would be considered by the French authorities. France was treated as a safe country, and there was:

> "no basis on which a properly directed Immigration Judge could find that there was a real risk that you would be sent back to Sudan to face a real risk of re-trafficking there. France has a functioning asylum system which will consider your claim that you face such a risk and would not remove you to Sudan if it found such a risk to be established."

(i) Submissions on the trafficking decision

389. Miss Capel made a number of submissions on behalf of GIP as to why the negative reasonable grounds decision was unlawful. Miss Capel submitted that: (i) the approach of conducting a negative assessment of credibility and then asking whether that assessment could be "mitigated" was flawed, relying on MN at [126]; (ii) the credibility assessment could not stand alongside Dr Kamara's evidence of a confirmed diagnosis of PTSD and depression (which the Secretary of State now accepts she got wrong) and evidence of GIP's cognitive impairment and other difficulties for GIP in recalling events with complete accuracy, as well as the corroboration of GIP's account: Dr Kamara expressed the view that the psychological impact on GIP and his scars were "clinically compatible with his description of his experiences. Overall, his presentation is typical of his account of ill treatment and a period of detention". Dr Kamara found that one of GIP's scars was "typical" of its given attribution, one was "highly consistent" and three were "consistent", applying the taxonomy of the Istanbul Protocol. Miss Capel relied on the observations of Helen Mountfield QC (sitting as a deputy judge) in HAM at [70] that "there could be both reasonable grounds upon which a reasonable person could believe that a person could be a victim of trafficking and reasonable grounds for believing that they might not be", and this means that the reasonable grounds test should be answered in the affirmative; (iii) anxious scrutiny was not applied when considering the alleged inconsistencies, none of which were material to the core trafficking claim (exploitation by the RSF), and those inconsistencies which depend on what was said at GIP's screening interview should have been treated with caution given the circumstances in which that interview took place; (iv) it was unfair not to seek clarification or further information from GIP if the inconsistencies were so concerning, but the request to do this was rejected. Miss Capel pointed out that in a letter from Dr Kamara dated 24 November 2025, she explained that she had made an error in her report – about GIP being shot in the leg. This would have made a difference to the outcome if reconsideration had been permitted.

390. Mr Vinall resisted the challenge on behalf of the Secretary of State. Mr Vinall submitted that the decision-maker was entitled to treat the inconsistencies in GIP's account as damaging his credibility; some of the inconsistencies related to the periods of time in which GIP claimed he was in captivity and subject to forced labour, and when he left Sudan. It was open to the decision-maker rationally to conclude that the consistency and credibility of GIP's account of his journey was relevant to the credibility of the entire narrative, including his account of forced labour. There were serious and significant inconsistencies concerning the core trafficking experience. It was not irrational for the decision-maker to place weight on GIP's failure to make any allegation of exploitation in the screening interview or the Detention Induction interview. The Home Office requires all questions to an interviewee to be read in full and, where necessary, interpreted in full.

391. With respect to the criticisms of the reasoning provided by the decision-maker Mr Vinall submitted that, reading the decision as a whole, it is clear that the decision-maker was applying the reasonable grounds threshold and not some other threshold. The use of the expression "sufficient mitigation" was not inconsistent with that and does not indicate a compartmentalised reasoning process or a rigid sequential test. The decision-maker assessed the account as a whole in light of the claimant's vulnerabilities, trauma and contextual factors.

392. As for the alleged failure to seek further information or clarification from GIP, it was unrealistic to expect the decision-maker to go back to him. The initial negative reasonable grounds decision was taken in September 2025. A detailed letter of claim was submitted by GIP's solicitors, Deighton Pierce Glynn, explaining his account. The Secretary of State agreed to reconsider the decision after the submission of the medico-legal evidence, and a long witness statement from GIP was provided at a time when he was assisted by lawyers. After this, a further decision was made by the Secretary of State.

393. Furthermore, Mr Vinall submitted that the Guidance, properly understood, is not designed to provide applicants with iterative opportunities to reformulate their account or to elect which of several irreconcilable versions should be treated as true. In GIP's case, there was no stable core narrative, and asking for clarification of the inconsistencies could not have overridden or neutralised that difficulty. Accordingly, it was lawful and reasonable for the request for further information to focus on whether there were any physical or psychological indications of modern slavery, including by reference to GIP's body language, rather than seeking a point-by-point explanation of the inconsistencies.

394. With respect to the expert evidence, Mr Vinall submitted that the conclusion that the medical reports did not hold sufficient weight as against the inconsistencies was open to the decision-maker. Mr Vinall acknowledged that it was an error for the decision to say that "no documentation has been provided to show that you have a confirmed diagnosis" of PTSD and depression, but he pointed out that in the previous sentence the decision-maker had referred to Dr Kamara's finding that the diagnostic criteria were met. In any event, the error was acknowledged in a supplementary letter and it was lawful to conclude that that additional information did not demonstrate reasonable grounds. Mr Vinall argued that the vast array of inconsistencies were unexplained, and it is highly likely that the same outcome would have been reached if the error had not been made in the decision. Further, Mr Vinall observed that Dr Kamara set out GIP's own account of head injuries, but did not herself observe any signs of cognitive defects. The fundamental point, said Mr Vinall, was that there were serious problems with GIP's account and the medical evidence from Dr Kamara would not overcome that.

(ii) Discussion of the trafficking decisions

395. There have been a series of negative reasonable grounds decisions made in this case. The latest decision is that set out in the letter of 16 April 2026, which upheld the earlier negative reasonable grounds decision of 3 November 2025. In my judgment, both of these decisions were made in error as they failed to apply the approach laid out by Helen Mountfield QC, sitting as a deputy judge in HAM at [70]. The medico-legal report of Dr Kamara provided reasonable grounds for believing that GIP might have been a victim of trafficking even if there were reasonable grounds for believing that GIP might not have been a victim as a result of the inconsistencies in the accounts given by GIP over time, and the lateness of making his claim of exploitation.

396. Dr Kamara found that GIP met the ICD-11 criteria for PTSD. She explained that this condition "develops after exposure to an extremely threatening or horrific event or series of events". Dr Kamara ascribed the condition to GIP's experiences in Sudan, noting that GIP's experiences "include many difficult and frightening experiences, but his time detained in Sudan, where he described being tied up, blindfolded, denied basic

provisions and sanitation, forced to work, interrogated, humiliated, and physically tortured, is likely to be the main cause of his PTSD." In addition, Dr Kamara observed that her physical findings supported GIP's account, noting that "1 of his scars was typical of its given attribution. 1 scar was highly consistent. 3 scars were consistent." Further, that she found no scars which were "inconsistent" with GIP's account.

397. Rather than accepting that this gave rise to reasonable grounds, in the decision of 3 November 2025, the decision-maker sought to lessen the effect of Dr Kamara's report, not in terms of countering the observations set out above, but in saying that her report did not refer to "any cognitive impairment based on these physical incapacitations which would be considered as a reasonable explanation for the inconsistencies within your account". This approach of the decision-maker was closer to one that would be expected on a conclusive grounds decision than at the earlier, filter, stage of reasonable grounds, and that was an error.

398. There was also a further error in the decision of 3 November 2025. Having noted that within the medico-legal report, GIP was said to meet "the ICD-11 criteria for PTSD and depression", the decision letter went on to say "However, there has been no documentation provided to show that you have a confirmed diagnosis for either of these conditions". This error calls into question the robustness of the decision.

399. This error has been acknowledged by the Technical Specialist at the IECA in a letter dated 16 April 2026, written in response to the application for judicial review. In that letter, it was stated as follows:

> "Having considered the Medico-Legal Report (MLR) dated 28 October 2025 and authored by Dr M D Kamara, the Reasonable Grounds decision correctly accepted that you meet the ICD-11 criteria for Post Traumatic Stress Disorder (PTSD) and depression. However, the decision proceeds to state that 'no documentation has been provided to show that you have a confirmed diagnosis for either condition'. It is acknowledged that this latter statement is factually incorrect in light of the MLR.
>
> Notwithstanding the above, this error does not change the overall decision for the following reasons highlighted below.
>
> Whilst the IECA accepts that inclusion of the above referenced statement had been done so in error, the additional information when taken with all the available evidence already considered, does not demonstrate that there are reasonable grounds to believe that you are a victim of modern slavery and does not make a material difference to the outcome of the Reasonable Grounds decision.
>
> Within the Reasonable Grounds decision dated 03 November 2025, the IECA identified a significant number of inconsistencies within your account. These inconsistencies concern contradictory information regarding: the circumstances in which you travelled to Mellit; the nature of your brother's injuries; the start date of your claimed exploitation, the location of your detention during this time; whether or not you were arrested and sent to prison; the timeline provided and route of travel as

> well as the method of transit. You also answered 'no' on multiple occasions when asked if you had ever been exploited. You did not raise your account of exploitation at the earliest opportunity and did so only once removal action was brought against you.
>
> Within the MLR dated 28 October 2025, the author notes that they believe your memory is poor (7.19). However, as part of their findings and insight, the author provides:
>
> "[GIP] demonstrated logical and coherent thinking, with no evidence of a formal thought disorder. I found no evidence of delusional beliefs, or other psychotic features. (7.13)
>
> …
>
> I did not objectively assess cognition, but I noted good engagement with the consultation, and coherent, relevant answers to questions. There was no overt confusion, and a good grasp of my role, and of chronology. (7.18)
>
> …
>
> Clinically it is likely that external circumstances will affect [GIP's] ability to give a detailed chronological account. I noted that his own account to me was chronological and relatively detailed- for example he remembered many place names along the route of his journey… (11.5)"
>
> The report states that the episodes/ beatings which you described "suggest a possible concussion" which more generally "could reasonably be expected to affect [your] ability to recall and recount events with complete accuracy or chronological detail", however this assessment was based solely on your own account. Whilst the author of the report notes that your ability to recall could "reasonably be expected" to be affected they did not note any specific cognitive deficiencies or particular causes for concern in this regard.
>
> It is noted that the author of the report did not objectively assess cognition and the author was further unable to give any conclusive indication of a degree of cognitive impairment that would explain the numerous inconsistencies identified within your account. Therefore, limited weight has been applied to the contents of the MLR.
>
> Consequently, the MLR does not attract sufficient weight to be considered as circumstances which would provide mitigation to explain the vast array of inconsistencies within your account, coupled with the poor timing of your disclosure."

400. This reasoning, which could be treated as constituting a reconsideration of the initial negative reasonable grounds decision, repeats the earlier error made in the decision of 3 November 2025. It does not counter the core findings of Dr Kamara's report, but seeks to analyse why her report does not explain the inconsistencies in GIP's account.

As a result of these errors, the negative reasonable grounds decisions in GIP's case cannot stand.

401. I should point out, however, that I do not decide that the negative reasonable grounds decision can be faulted for the use of the specific language "mitigation to explain the inconsistencies within your account". I note that the language of "mitigation" was also referred to in the letter from the Technical Specialist. Whilst the use of that language has been deprecated by the Court of Appeal in MN at [126] (see paragraph 212(7) above), I do not read Underhill LJ's judgment to mean that the use of the language of mitigation necessarily renders the decision unlawful.

402. I also do not decide that there was an error in the Secretary of State not seeking further clarification from GIP of the inconsistencies in his accounts at the negative reasonable grounds stage. The initial negative reasonable grounds decision had already been reconsidered once, following the provision to the Secretary of State of a witness statement from GIP which sought to address the inconsistencies in the earlier accounts. In those circumstances, it cannot be said it was irrational for the Secretary of State not to ask GIP once again for any information to explain the inconsistencies.

403. I also do not consider that the amendment to the Secretary of State's Guidance with respect to reconsideration would have made a difference in GIP's case, as there have in fact been two further reconsiderations of the trafficking decisions.

404. As already explained, the initial negative reasonable grounds decision for GIP was reconsidered on 3 November 2025: a further negative reasonable grounds decision was made. A request was made for that decision to be reconsidered, but that was rejected applying the amended policy. Had the policy not been amended, the Guidance explains that "[g]enerally only one reconsideration request will be considered by the relevant competent authority on the basis of specific concerns that a decision is not in line with guidance or on the basis of new available evidence": (paragraph 14.232). Good reasons would need to be provided; these would usually include additional new material (paragraph 14.233). In the instant case, the basis for the further request for reconsideration, as articulated in a letter before claim sent on 6 November 2025, included the failure properly to take into account Dr Kamara's evidence as to the inconsistencies in GIP's account, including a challenge to the comment in the decision letter that there was "no documentation provided to show that you have a confirmed diagnosis of either of these conditions" in spite of "the diagnosis of Dr Kamara" would have satisfied the "good reasons" test for reconsideration. These further matters would, therefore, have called for a further reconsideration under the policy as it stood before the amendment to the Guidance. This has actually taken place, as the letter of 16 April 2026 constitutes a further reconsideration of GIP's case.

(iii) GIP: Submissions on the certification decision

405. With respect to the certification decision, Miss Capel submits that the Secretary of State erred by failing to consider separately the decision to refuse the human rights claim with respect to Article 4 and then the decision to certify that claim as being clearly unfounded.

406. In addition, Miss Capel submitted that it was not sufficient for the Secretary of State to rely on the negative reasonable grounds decision to answer the separate certification

decision: a human rights claim can only be certified on credibility grounds if only one right answer is possible, that it is incapable of belief. Miss Capel contended that that was not the case here: Dr Kamara's report and the Rule 35(3) report provide explanations for the apparent inconsistencies in GIP's account and are potentially corroborative of his account. The reliance (in the letter of 15 April 2026) on whether there was a real risk of re-trafficking upon removal from France to Sudan does not address the question of whether removal of GIP to France would breach his Article 4 rights, given that there was no process in France by which his experiences as a victim of trafficking can be identified as such, and there is no mechanism by which the nature and extent of his needs for recovery and protection can be assessed and met.

407. Mr Vinall resisted the challenge to the certification decision on behalf of the Secretary of State. A supplemental decision had been provided on 16 April 2026, and although Article 4 of the Convention had not been addressed within the reasons of the certification decision of 21 October 2025, that had no material impact on the decision. There was no basis for the Article 4 claim that there was a risk that GIP would be removed from France to Sudan where he will face a risk of re-trafficking. GIP could claim asylum in France and the Secretary of State was entitled to rely on the presumption that France would not remove GIP to a country with a real risk of treatment contrary to Article 3. Article 4 adds nothing to this analysis.

408. As for the contention that there was no process in France by which GIP's experiences as a trafficking victim could be identified as such, so that his needs for recovery and assistance could be assessed and met, Mr Vinall submitted that that was not required by Article 4 of the Convention.

(iv) Discussion of the Certification decision

409. The Secretary of State rejected GIP's human rights claim. With respect to the claim under Article 4 of the Convention, it was stated that GIP had not "established evidence that you are a victim of modern slavery/trafficking". Based on my findings above, the conclusion that GIP was not a victim of modern slavery/trafficking cannot stand. Nevertheless, given that the trafficking experience complained about by GIP occurred outside of the United Kingdom and did not involve United Kingdom nationals, I do not (for reasons already given at paragraph 195 above) consider that Article 4 was breached in failing to identify GIP as a victim of trafficking abroad, and in circumstances where there was no suggestion that he would be removed to Sudan whether by the United Kingdom or French Governments.

410. The decision letter on the human rights claim did contain an error in that no reason was given for certification of the Article 4 claim. The certification decision requires the decision-maker to consider separately the test of whether a human rights claim is clearly unfounded and not rely simply on the fact that they have rejected the human rights claim in substance. Where no detail is provided, that is strongly suggestive that the separate and distinct decision-making process has not taken place.

411. Under the heading "Reasons for certification of human rights claims", reference was made to GIP's Article 3 and 8 claims, but not to his Article 4 claim. There is also no indication that the certification decision was designed to cover the Article 4 claim in the concluding paragraph that "For the reasons above, it is considered that your claim cannot succeed on any legitimate view and any immigration judge, properly directing

him or herself and applying the law to the facts and the same evidence, would inevitably conclude the same".

412. This matter has now been corrected by the Secretary of State in a letter dated 16 April 2026. The Secretary of State has said that she wished to "clarify that … this had no material impact on the decision". Two points were made: first, that GIP's credibility was damaged to the extent that his trafficking claim was rejected; second, that the trafficking claim related to Sudan and it was considered that GIP:

> "could raise any claim that you would face a risk of re-trafficking if returned to Sudan as part of your asylum claim in France, and that this would be considered by the French authorities. As confirmed at paragraph 31 of the inadmissibility decision of 21 October 2025, you did not submit any representations regarding the risk of a breach of your rights under Article 3 of the ECHR in France by onward refoulement to Sudan (or anywhere else) and in the absence of you having shown otherwise, France is treated as a safe country for you in this context. Consequently, there is no basis on which a properly directed Immigration Judge could find that there was a real risk that you would be sent back to Sudan to face a real risk of re-trafficking there. France has a functioning asylum system which will consider your claim that you face such a risk and would not remove you to Sudan if it found such a risk to be established."

413. With respect to the first point – that the trafficking claim was rejected – this cannot stand in light of my finding above. Nevertheless, the second point is a sound one and cannot be faulted. As the second point is independent of the first point, the same outcome would have been arrived at that the human rights claim was clearly unfounded.

414. GIP's allegations relate to what he says he experienced in Sudan, his country of origin. Accordingly, GIP's claim to have been trafficked would form part of the analysis that the French Government would consider when determining his asylum claim if (as would be reasonable for him to do) he made that claim in France. If the risk of GIP being re-trafficked in Sudan was established, he would not be returned to Sudan by the Government of France. In the meantime, GIP would receive the support and treatment available to all asylum seekers, which would include support and assistance to recover from the alleged exploitation. In these circumstances, it is clear that GIP's claim under Article 4 of the Convention would be bound to fail, and the certification decision would be upheld.

XI. The individual claim: KAG

415. KAG is an Eritrean national. He says that, as a child, he fled with his mother to Ethiopia in 2006 following his father's death at the hands of the Eritrean government. KAG says that he travelled to Sudan in 2023 and was taken to Libya where he was handed over to traffickers and moved into a warehouse. He stayed there for two years, without adequate food or sanitation. The traffickers demanded money from KAG and, when he could not provide this, he received physical beatings on a daily basis. KAG says he was only released when Eritrean friends who had also been in the warehouse paid half of the ransom demanded.

416. KAG left Libya and travelled to Italy by boat and then made his way to France. He stayed in "the Jungle" in Calais for two months. He felt unsafe there, and came to the United Kingdom with his Eritrean friends on 12 August 2025. He was detained and, in the morning of 13 August 2025, had an asylum screening interview and was then taken to the Harmondsworth Immigration Removal Centre.

417. On 15 August 2025, KAG was served with a Notice of Intent, reflecting the Secretary of State's intention to declare his protection claim as inadmissible. On the same day, the Secretary of State applied for KAG's readmission to France; this was accepted on 4 September 2025. On 22 August 2025, KAG had instructed solicitors: Duncan Lewis. The solicitors requested the Secretary of State to refer KAG to the NRM on the basis that he had been subject to human trafficking in Libya between April 2023 and May 2025. On 7 September 2025, KAG had an NRM interview. At that interview, KAG said that he was held and tortured in Libya and Ethiopia but not forced to work or commit a crime. KAG showed the interviewers scars on his right arm and left side of his forehead. An NRM referral was not completed due to KAG "clarifying that his claim is only one of torture and not exploitation".

418. On 9 September 2025, KAG was assessed by Dr Kamara, who expressed grave concerns about the impact of immigration detention on KAG. On 18 September 2025, KAG was interviewed for the purpose of referral to the NRM. The interview was conducted in English and KAG says that he was not asked if he wanted an interpreter present. KAG told the interviewer that he had been held in a warehouse in Libya by smugglers who demanded money and had been beaten by them.

419. On 20 September 2025, KAG was referred into the NRM. The referral form recorded 'yes' in answer to the question whether KAG was "Forced to work for nothing or almost nothing"; it records that this happened in Libya between April 2023 and May 2025.

420. On 22 September 2025, a Rule 35(3) report was produced by a GP, noting that KAG had reported a history of torture in Ethiopia and Libya, and that he had multiple scars that were consistent with his reported account. It was the GP's view that "On the basis of the consistency between his reported history, the physical findings, and the psychological symptoms, there is strong support that he may have been subjected to torture". It was also stated that KAG's mental health had deteriorated significantly in detention and he had been commenced on anti-depressant medication.

421. On 24 September 2025, a negative reasonable grounds decision was made. The decision noted that:

> **"**Consideration has been given to how you were referred into the NRM and the timing of the claim. You have provided an account in where you state that you were exploited in Libya between 2023 and 2025. In your Screening Interview (SI) dated 13/08/2025, you have the opportunity to raise the claim of exploitation in Q2.5, yet you state that have never been exploited, you the outline the journey to the UK and include staying in Libya for 2 years, but you do not raise a claim of exploitation. In your Detention Engagement Team Induction (DET) dated 15/08/2025, you are asked if you have ever been subject to exploitation and like your previous answer in the SI, you confirm that you were not a victim of exploitation and do not raise a claim of modern slavery. The SI and DET

> were both carried out with interpreters in the interview, to ensure that you understood the questions being asked. It is also noted that on 28/08/2025 your Legal Representatives (LR) submitted an NRM request, but this was cancelled on 30/08/2025, when you stated, 'you believed that the Home Office are responsible and forced you into being a victim of modern slavery'. Your LRs then submitted some Further Submissions (FS) dated 01/09/2025, where there is a basic overview of an exploitational incident. On 03/09/2025 your LRs submitted an NRM request, but this cancelled on 07/09/2025, due to not being a victim of exploitation. You are subsequently referred into the NRM on 20/09/2025, where you gave your account of the exploitation. It is also noted that in your Rule 35 Medical Report (R35) dated 22/09/2025, that you add additional detail regarding the exploitation, that was never mentioned previously, regarding the injuries you sustained."

422. It was considered that KAG had provided:

> "a limited level of detail. The account you have provided is notably lacking in fundamental details. It does not include information that would be reasonably expected when recounting such an experience. You gave basic details of one of the exploiters, brief details about how the exploitation started, and the conditions in which you were kept in. You have provided a limited description of what you were required to do. However, you offered no explanation for why you could not provide some details but not others."

It was considered that KAG's account contained some inconsistencies, and that he did not raise the claim of exploitation at the earliest opportunity. It was considered by the decision-maker that KAG had some "added levels of vulnerability", and reference was made to the Rule 35 report where it was noted that the author had "provided a response in relation to the consistency of physical and/or mental symptoms with the applicant's given account as a possible victim of torture". It was also noted that the First Responder had identified "indicators of [modern slavery] within the account" that KAG had provided.

423. The decision-maker concluded that:

> "in your case it is considered that you have provided a limited level of detail in your account of exploitation, and the lack of supporting evidence needs to be assessed against any potential mitigating factors that may explain this lack of detail. Taking into consideration the recency and length of exploitation, and with no information to demonstrate any extenuating circumstances as to why there is a lack of detail within your account, it is considered reasonable to expect a higher level of detail within your referral. Having taken all the information available on your case in the round. It is considered that the information provided has not met the required threshold".

424. On 15 October 2025, Duncan Lewis sent a pre-action letter, and requested that the reasonable grounds decision be reconsidered, enclosing what was described as "Evidence not previously considered by the IECA": an expert report from Dr McQuade

about trafficking in Libya, a report from Medical Justice (an assessment by Dr Kamara); as well as documents that had previously been seen such as the Rule 35 report.

425. On 28 October 2025, the Secretary of State replied to the pre-action letter and maintained her decision. Various alleged flaws in the initial decision were looked at, but no mention was made of the new material provided by Duncan Lewis. It was stated that "the Competent Authority correctly made their assessments and determinations on the basis of information available to them at the time of making the decision. It is noted that the Claimant does not have a right to reconsideration." A further request to reconsider was refused on 4 November 2025.

426. On 3 November 2025, the Secretary of State decided that KAG's asylum and international protection claims were inadmissible, and certified his human rights claim in respect of removal to France as "clearly unfounded".

427. The inadmissibility decision was based on KAG having a relevant connection to France: KAG had asserted that he "did not claim asylum in France due to concerns about poor treatment of asylum seekers and lack of support. [He] expressed a desire to claim asylum in the UK to pursue education and because [he] believe[s] it is safer".

428. The decision letter stated that consideration had been given to all the evidence relating to his claim including the pre-action protocol letter of 15 October 2025 and the Rule 35 report. It was found that KAG had previously been in a safe third country where he was eligible to make a relevant claim and it would be have been reasonable to expect him to make such a claim but he failed to do so. He had lived in the "jungle" in Calais for over two months, supported by the Red Cross; his trip to the United Kingdom was financed through money that he had earned and from friends, and he did not report that he was under the control or influence of agents.

429. It was found that at stage 1 of the inadmissibility decision process the reason KAG gave for not claiming asylum was that he wanted to come to the United Kingdom. At stage 2, the decision-maker was satisfied that it would have been reasonable for KAG to claim asylum in France, where he had adequate time, opportunity and resourcefulness to make such a claim. It was said to be KAG's choice to come to the United Kingdom to claim asylum and not to claim asylum in France. France was found to be a safe third country.

430. With respect to KAG's human rights claim, it was found that he had not shown compelling evidence of a medical condition that creates a real risk of serious harm if returned to France. Reference was made to the Rule 35 report which mentioned that KAG had been on anti-depressant medication for the treatment of PTSD. The availability in France to asylum seekers of medical and mental health support was described, and it was stated that KAG had provided no evidence to indicate that treatment was unavailable or that he would not be able to access it. As a result, his Article 3 claim was rejected. Similarly, KAG's Article 8 claim was rejected: it was said that there was suitable medical treatment available in France which would be accessible to him.

431. With respect to certification, the Secretary of State stated that KAG's claim could not "succeed on any legitimate view and any immigration judge, properly directing him or herself and applying the law to the facts and the same evidence, would inevitably conclude the same". With respect to Article 3, it was stated that:

> "Whilst your Rule 35 report records that you described nightmares and flashbacks, you have not provided compelling medical evidence to suggest that your physical or mental health conditions could result in a serious, rapid and irreversible decline in your state of health resulting in intense suffering, or a significant reduction in intense suffering, or a significant reduction in life expectancy as a result of the absence or lack of access to appropriate treatment. Even if your physical and mental health were to deteriorate, as outlined above, appropriate treatment will be available in France, free of charge, should you require it.
>
> Your Rule 35 report also suggests you are on anti-depressant medication ; this will also be available to you in France."

Similarly for his Article 8 claim.

432. On 4 November 2025, KAG was issued with removal directions, and the Secretary of State refused to reconsider the reasonable grounds decision, following a further request that she do so. The refusal referred to the amended reconsideration policy.

433. On 11 November 2025, the Secretary of State made further inadmissibility and human rights decisions in which she considered Duncan Lewis' earlier representations and pre-action submissions, and specifically addressed a medico-legal report from Dr Kamara. The decisions were maintained, and it was said that although Dr Kamara's report had not been considered in the initial inadmissibility decision it would not arguably have changed the outcome of the asylum claim.

434. It was noted that "The evidence provided fails to demonstrate, that you would be denied access to accommodation, financial support, food and any of the other basic requirements available from the French authorities". With respect to KAG's health condition, and the evidence (which was taken at this highest) that he suffered from PTSD and depression and required medication and other treatment, it was said to be:

> "not arguable that you would be returned to France to face a real risk of inhuman and degrading treatment, or torture, based on your health conditions . . .
>
> The assessments made by Dr Shyangdan and Dr Kamara fail to demonstrate that you require treatment to prevent intense suffering or a substantial reduction in your life expectancy and that treatment is either not available or not accessible in France."

435. With respect to KAG's Article 4 claim, it was stated that a decision had been made that there were no reasonable grounds to believe he was a victim of trafficking. The decision-maker referred to the fact that during asylum screening, vulnerable victims including victims of trafficking were identified and offered tailored safeguards. It was not considered that KAG's removal would breach his Article 4 rights.

436. KAG was removed to France on 12 November 2025. On 11 February 2026, the Secretary of State made new inadmissibility and certification decisions, concluding that KAG's asylum claim was inadmissible and certifying his human rights claim as "clearly unfounded".

437. With respect to the inadmissibility decision, it was stated that KAG had had adequate time when he had previously been in France (2 months) in which to claim asylum and was in contact with friends and charities during that time, and was housed with other individuals in "the Jungle" area who would have been able to advise and assist him on how to proceed with an asylum claim; and that rather than doing so, he chose instead to travel to the United Kingdom. His "failure to claim asylum in France prior to entering the UK appears to have been a matter of choice rather than necessity"; and KAG had failed to satisfy the decision-maker that he had not claimed asylum "because you experienced destitution, that you did not wish to approach the authorities for assistance, that you were under the control of agents or that your vulnerabilities prevented you from doing so." It was not necessary, therefore, for the Stage 2 test to be looked at as the reason for not claiming asylum was not found to be true.

438. The decision-maker did go onto consider stage 2, however, and found that it would have been reasonable to have expected KAG to claim asylum in France during the 2 months that he was there. The decision-maker went on to consider the safety of France and noted that KAG had not made submissions regarding the risk of Article 3 being breached in France by onward *refoulement*. With respect to the Secretary of State's discretion, the submission that KAG risked being exposed to degrading treatment in France "due to systemic failings within the asylum system in France, your personal experiences with destitution, and your vulnerabilities" was rejected.

439. With respect to KAG's human rights claims, the Article 3 claim based on fear of harm in France was rejected, as was a claim of breach of Article 3 based on destitution. The decision-maker observed that that had not been the case following KAG's return to France: he had been placed initially in asylum accommodation and then accommodated at the Centre d'Accueil pour Demandeurs d'Asile ("CADA") (that is, asylum accommodation) in Aubagne since December 2025. With respect to KAG's medical conditions – PTSD and depression – the decision-maker found that there was "satisfactory medical assistance in France".

440. The decision-maker addressed KAG's evidence that he had requested mental health support but none had been provided; and that he had been told by his social worker to wait for an appointment. It was stated that:

> "Although you have stated that you are still awaiting a medical appointment, you have not provided any evidence to demonstrate that you have been denied access to medical care. Your social worker has told you that you will need to wait for your appointment and that you have the opportunity to repeat your request at the CADA's office. It is not considered that it would be unreasonable for you to wait for your appointment to access healthcare or that it would be unreasonable to expect you to travel by bus for 20 minutes to access any services that you may require. It is noted that access to NHS England mental health services in the UK may also involve wait times, therefore, it is not considered that you are at any disadvantage in France, as you would potentially experience delays in accessing treatment if you were to attempt to access this in the UK. Whilst it is considered that you may have experienced some delay in accessing treatment, you have provided no evidence which indicates that you have been denied access to healthcare or that you are currently in need of any urgent medical care.

> As highlighted within the CIN, should you consider that you require urgent care, you would be able to access this via a hospital".

The decision-maker also found that suitable treatment for his conditions were available and accessible in France. Further, that he did not meet the requirements or threshold of the six-part test for those at risk of suicide in J v Secretary of State for the Home Department [2005] EWCA Civ 629. It was stated that: "Your case is not exceptional, nor has it been substantiated that your removal would place you at serious risk of suicide or self harm".

441. With respect to Article 4, it was said that substantial weight was given to the conclusion that a negative reasonable grounds decision had been made with respect to trafficking. Further, KAG could get the necessary medical support for treatment of his medical conditions in France. With respect to how trafficking claims were dealt with in France, it was stated that:

> "The Secretary of State recognises that criminal investigation in France into trafficking offences is limited to those cases in which the alleged trafficking took place into or within France and/or in which either victims or perpetrators were French nationals. However, the Secretary of State notes that, in practical terms, through the various mechanisms available in France, you are receiving both housing and medical assistance, and therefore are receiving appropriate support. The Secretary of State highlights again her own conclusion that you are not, in any event, a victim of trafficking.
>
> . . .
>
> Although you have provided evidence which concludes that you have medical conditions, as highlighted above, these can be managed via the healthcare system in France. You have been provided with accommodation in France. You have provided no evidence to demonstrate that you require specialised trafficking support that could not be, and is not being, provided in France in relation to your claim that you are a victim of trafficking."

442. With respect to certification, the decision-maker stated that the human rights claim was "so wholly lacking in substance that an appeal would be bound to fail, and it is therefore certified as clearly unfounded". Reasons were given for each of the human rights claims. With respect to the Article 4, it was stated that:

> "You have said that you were a victim of modern slavery outside France. The Secretary of State's position is that you are not a victim of trafficking as the IECA has investigated your claim and assessed that your account does not meet the required threshold. The outcome of your NRM referral concluded that there are no Reasonable Grounds for believing that you are a victim of modern slavery, and substantial weight is given to this conclusion. Your healthcare needs (either in your capacity as a victim of trafficking or otherwise) can be managed via the healthcare system in France and you have been provided with accommodation. Therefore, the Secretary of State is satisfied that

> removal to France will not interfere with your rights including under Article 4 of the European Convention on Human Rights given the support which is available in France."

(i) KAG: Submissions

443. KAG challenges the negative reasonable grounds decision. It is contended by Mr Robottom that there was no issue between the parties as to whether the facts of KAG's account, if correct, met the definition of trafficking. The issue was whether the decision-maker was entitled to reject KAG's account. Mr Robottom submitted that the correct legal threshold was not applied by the decision-maker. The decision-maker had identified a number of grounds for believing that KAG was a victim of trafficking and this should have been sufficient. There was also corroborative evidence from the Rule 35 report, as well as the US State Department report on Libya. In addition, KAG had some added levels of vulnerability which may explain his accounts; and the First Responder had identified indicators of modern slavery within the account that KAG had provided.

444. It was also contended by Mr Robottom that the Secretary of State had failed to adhere to her own Guidance with respect to dealing with a perceived lack of detail: the decision-maker should have sought to understand why that was, and for which there was an explanation (trauma), rendering the decision irrational. There was also a failure to make further inquiries of KAG's legal representatives or from KAG himself; it was not sufficient just to ask the First Responder: that was a Tameside failure. Mr Robottom also submitted that the inconsistencies identified by the decision-maker were not sufficient to knock out KAG's account at the reasonable grounds stage.

445. Mr Robottom contended that the refusal to reconsider was based on the amendment to the policy as set out in the Guidance. Further, the failure to reconsider outside of the confines of the amended policy (a possibility suggested by Mr Hobbs) was irrational, as there was an unusually compelling basis for reconsideration with new evidence presented to the Secretary of State which rendered the original finding untenable. There was no evidence that the decision-maker asked the question as to whether there should have been reconsideration outside of the policy even though the Secretary of State was specifically asked to take that approach.

446. Mr Robottom referred to the evidence of an official at the IECA, Amy Burke. She had been copied into the decision of the Secretary of State of 17 September 2025, and was referred to in the email to all IECA staff on 18 September 2025 as the person to raise "FOIs, disclosures, complaints or queries relating to . . . the new reconsideration policy" with. Amy Burke was also the person who signed off the Secretary of State's response to the Claimants' Part 18 request on 9 April 2026, as Head of Operations at IECA. Question 11 asked:

> "Please provide all internal instructions, template decision letters, training material, internal communications (including both within the Home Office and between the Home Office and Ministers / special advisors), and standard operating procedures that concern the consideration and approach to reconsideration requests following the above-mentioned policy change."

> The response provided was:
>
> "A copy of the instruction that went out to IECA staff was disclosed on 8 April 2026 to all Claimants in the lead litigation. There are no other internal instructions, guidance or policies on the approach to reconsideration requests following the noted policy change. The approach to the application of paragraph 14.216 of the Modern Slavery Guidance is detailed in the witness statement of Daniel Hobbs dated 27 March 2026."

447. In the instant case, therefore, Mr Robottom submitted that there was no evidence that KAG's request for reconsideration was actually considered. The evidence of Mr Hobbs was, at its highest, that decisions will be reconsidered if litigation is threatened.

448. With respect to the Secretary of State's inadmissibility decision, Mr Robottom submitted that this was unlawful. The decision-maker did not carry out the Two-Stage test called for by the Secretary of State's Inadmissibility Guidance. At Stage 1, the decision-maker's approach was essentially to consider the reasonableness of what KAG was saying for not claiming asylum in France. At Stage 2, the decision-maker adopted an improper approach: whether the failure to claim asylum was "a matter of choice rather than necessity". This approach was said to increase the statutory threshold. Furthermore, the risk that Article 3 would be breached in France meant that it was not reasonable to expect KAG to claim asylum there.

449. With respect to the certification decision, Mr Robottom submitted that the Secretary of State erred in concluding that KAG was not a potential victim of trafficking as, if he was, that would engage Article 4 of the Convention, and KAG had a realistic prospect of establishing that there was a real risk that removal to France would breach the United Kingdom's positive obligations. It is also submitted that the Secretary of State erred in concluding that KAG's Article 3 claim could not succeed on any legitimate view: the available evidence shows that an immigration judge could decide that suitable treatment for KAG's mental health condition would not be available or accessible to him in France.

450. Miss McGahey KC, for the Secretary of State, accepted in general terms the proposition that if there are reasonable grounds for a belief in either direction then the reasonable grounds decision should usually be positive. However, it was submitted that there is no rule to this effect and all will depend on the individual circumstances. The Secretary of State also rejected the suggestion that where a person gives an account of events which – if accepted – would be capable of amounting to trafficking, the Secretary of State is bound to make a positive reasonable grounds decision even if there are good grounds not to believe the truthfulness of the account.

451. In KAG's case, Miss McGahey KC contended that the decision maker had assessed that KAG had provided only a limited level of detail about the traffickers and the nature of the exploitation suffered. There were clear and repeated inconsistencies in his accounts: (i) whether KAG had been exploited. In his Detention Engagement Team induction and in his Screening Interview, KAG had denied having ever been exploited or having any reason to fear such exploitation. That is inconsistent with his later account of exploitation in Libya; (ii) whether KAG had been a victim of torture. This was denied in the Detention Engagement Team induction, but in his NRM referral, Rule 35 report

and further submissions, KAG claimed to have suffered extensive physical abuse at the hands of his traffickers; (iii) who paid for KAG to travel from Libya to Italy. In the referral form by which KAG was referred into the NRM it is said that a friend paid $1500 for KAG to be taken to Italy. In the Rule 35 report, KAG is recorded as saying that he was held hostage for nearly two years before his family paid for him to be released; (iv) Whether KAG had ever been detained. In his Screening Interview, KAG denied ever having been detained. However in the Referral Form into the NRM, he claimed to have been detained by Italian authorities in Lampedusa.

452. Although there was a Rule 35 report, there was nothing to suggest KAG suffered from memory impairment. The medico-legal report did not identify a cognitive impairment. Further, it was a proportionate and reasonable approach for the decision-maker to seek information from the First Responder rather than KAG or his solicitor.

453. With respect to the refusal to reconsider the request even outside of the amended Guidance, Miss McGahey KC submitted that the IECA knows that they have discretion to do this, although she accepted that there was no internal note to say why that was not done in KAG's case.

454. With respect to the inadmissibility decision, it was submitted that the two stage test was correctly set out and applied. The decision-maker concluded that KAG's claimed fear of the authorities in France was not true, and then went on to consider in detail the factors that could have contributed to a reasonable decision not to claim asylum in France.

455. There was also no reasonable prospect of an immigration judge finding that KAG's rights under Article 3 would be breached if he was removed to France. Indeed, KAG has not been denied access to healthcare; but is being assisted to access it. This applied both to the inadmissibility decision and the certification decision.

456. Miss McGahey KC submitted that, on the assumption that the Secretary of State was wrong and KAG is a victim of trafficking, it was submitted that France was capable of providing the assistance that he needs. KAG has been living in Aubagne and is now in the town of Gap. Both of these towns have PASS centres in their hospitals. KAG is entitled to primary care, and doctors can refer to specialist centres. It would take KAG an hour by bus to get to hospital. KAG has previously navigated around a number of countries and there was no reason why he could not do the same in France and make his way to a PASS centre. Whilst KAG had asked to see a doctor, he had been told to wait for an appointment, and one had been granted within 4 months, with another appointment one month later. There was no evidence that KAG suffered from an acute condition requiring emergency or urgent treatment.

(ii) KAG: Discussion

457. In my judgment, the negative reasonable grounds decision for KAG made on 24 September 2025 was not reconsidered comprehensively by the Secretary of State. Although it appears that, in the exercise of her inherent discretion, the Secretary of State did look again at the reasoning and analysis of the initial decision, there was no reconsideration in accordance with the Guidance which would have included examining the new material that had been provided.

458. Had the reconsideration policy not been amended by the Secretary of State, it is clear that there was a basis for KAG to have made a request within the terms of the Guidance: further evidence was provided, including from a medico-legal expert, which had not previously been available and this evidence could arguably have made a difference in the outcome. I find, therefore, that the amendment to the reconsideration policy clearly made a difference in KAG's case, as it would not have been confined to the rather limited reconsideration that did take place.

459. I will examine the lawfulness of the negative reasonable grounds decision on the basis of the materials that were before the decision-maker on 24 September 2025, as this may be helpful in other cases. I consider that the conclusion reached was entirely rational.

460. The decision letter identified some factors that supported KAG's account (including observations in the Rule 35 report) and acknowledged that he had given brief details about some aspects of the alleged exploitation. Nevertheless, the decision-maker found that the required threshold was not met given that the alleged exploitation was recent and lengthy, and so more details were to be expected from KAG, and yet there was "no information to demonstrate any extenuating circumstances as to why there is a lack of detail within your account".

461. The context in which this decision was reached is particularly telling. At the asylum screening interview and at the detention engagement team induction, KAG had said that he was not the victim of exploitation even though he was asked about it, and had mentioned his staying in Libya for 2 years. There were interpreters present on both occasions. Nearly two weeks later, KAG's legal representatives submitted an NRM request but this was cancelled as KAG replied "yes" to a question asking whether he believed the Home Office were forcing him into being "a victim of modern slavery". A few days later, a request was made for referral by his legal representatives and then an interview was cancelled on the basis that KAG was not the victim of exploitation. Two weeks later (on 20 September 2025), KAG gave his account of exploitation. There had, therefore, been plenty of opportunities for KAG to set out the details of the alleged trafficking; on several occasions he had denied being a victim of trafficking. The decision-maker rightly found that KAG "had multiple opportunities to raise the claim of your exploitation, and you did not".

462. Furthermore, by the time that KAG gave his account of exploitation, he had been in the United Kingdom for more than one month. By then, KAG had had the benefit of legal representation. In the circumstances, a reasonable decision-maker could expect that a detailed and comprehensive account of the alleged trafficking would be provided when KAG had finally decided to be interviewed. That did not happen.

463. In these circumstances, where KAG had had ample opportunity to give his account, it was not unreasonable in a Tameside sense for the Secretary of State not to ask him to provide further information before the decision was taken. It was open to the decision-maker to consider that KAG had given all the details that he wished to provide about his exploitation.

464. Furthermore, the approach adopted by the decision-maker is not inconsistent with that described by Helen Mountfield QC in HAM at [70] (see paragraph 212(3) above). In KAG's case there were not "both reasonable grounds upon which a reasonable person could believe that a person could be a victim of trafficking and reasonable grounds for

believe[ing] that they might not be". The factors that supported KAG's account did not reach the reasonable grounds threshold given the "limited level of detail" that was provided, in circumstances where the alleged trafficking was relatively recent and there was no explanation for why some details could be provided but not others. The fact that there may be some grounds to support a trafficking claim (here, the observations made in the Rule 35 report) does not mean that the appropriate threshold is met.

465. I consider that the Secretary of State's decision to certify KAG's human rights claim as being unfounded was not unlawful. The initial certification decision was made on 3 November 2025, and this has been maintained subsequently, including by a decision made on 11 February 2026. The latter decision stated with respect to the substantive human rights claim under Article 4 that:

> "Following consideration of the arguments made in the PAP letter, the response of 28 October 2025 confirmed that the negative Reasonable Grounds decision of 24 September 2025 was maintained. There are not currently reasonable grounds to conclude you are a victim of modern slavery."

466. With respect to the certification decision, it was stated that:

> "You have said that you were a victim of modern slavery outside France. The Secretary of State's position is that you are not a victim of trafficking as the IECA has investigated your claim and assessed that your account does not meet the required threshold. The outcome of your NRM referral concluded that there are no Reasonable Grounds for believing that you are a victim of modern slavery, and substantial weight is given to this conclusion. Your healthcare needs (either in your capacity as a victim of trafficking or otherwise) can be managed via the healthcare system in France and you have been provided with accommodation. Therefore, the Secretary of State is satisfied that removal to France will not interfere with your rights including under Article 4 of the European Convention on Human Rights given the support which is available in France."

467. The decision of 11 February 2026, as well as the initial certification decision cannot be impugned. A separate decision was made for the human rights claim and then for the certification decision. Furthermore, given that the alleged trafficking took place outside of the United Kingdom, and did not involve a United Kingdom national, and there was no indication that KAG would be removed to Libya where it was alleged that the trafficking took place, there is no basis for a finding that Article 4 is engaged even if a fresh reasonable grounds decision is positive.

468. In addition, I note that there is no legitimate view on the facts that KAG's Article 4 rights would be breached in France as KAG is most likely to have available and accessible to him the medical treatment that he requires to address any mental health needs that arise from his alleged exploitation. This is borne out by the actual evidence of what has taken place for KAG since his removal to France.

469. If KAG was trafficked outside of France, not by a French national, and not in KAG's country of origin, the Government of France would not identify him as a trafficking

victim under ECAT, and so he would not be provided with the rights that arise under ECAT. In my judgment, it is not realistic to expect KAG to be able to claim those rights through the French courts. Nevertheless, the rights that arise under ECAT are not called for by Article 4 of the Convention. The Strasbourg Court has not interpreted Article 4 as being coextensive with ECAT. There is no Strasbourg case law which states that Article 4 requires a potential victim of trafficking to have a 30 day recovery period after being identified, or that they cannot be removed in that period. There is no basis to suggest that the Strasbourg Court will recognise these rights if the matter came before it.

470. I do not consider that the certification decision with respect to KAG's Article 3 claims are unlawful. There is no basis, in my judgment, for an immigration judge to conclude that KAG's Article 3 rights would be contravened in France, even if KAG is not officially recognised as a trafficking victim. It is clear from the evidence that although it may have taken some time for KAG to obtain the necessary treatment for his mental health conditions, the absence of that treatment thus far has not led to a serious, rapid and irreversible decline in KAG's state of health resulting in intense suffering; or a significant reduction in life expectancy; and there does not appear to be evidence that there is any risk of such a consequence.

471. As for the inadmissibility decision, I also consider that this was lawful. The approach adopted by the Secretary of State to the inadmissibility decision in KAG's case was in accordance with the two-stage test set out in the Inadmissibility Guidance. At Stage 1, the decision-maker did not accept the argument made by KAG that he "did not claim asylum in France because you experienced destitution, that you did not wish to approach the authorities for assistance, that you were under the control of agents or that your vulnerabilities prevented you from doing so"; rather, it was a matter of choice made by KAG not to claim asylum in France but to do so as soon as he arrived in the United Kingdom. The decision-maker gave ample reasons for why KAG's account was not correct: KAG maintained himself with the support of the Red Cross who could have assisted him in making an asylum claim; KAG's statement it was "unthinkable" for him to approach the French authorities for assistance as result of his previous experiences of authority figures in Ethiopia did not sit comfortably with KAG claiming asylum with the United Kingdom authorities "immediately upon your arrival here"; KAG made no assertion that agents used force against him or in any way prevented him from claiming asylum, and he financed his transport with the agents directly; and KAG had no experience of serious deficiencies in the asylum support regime in France as he did not seek asylum or access to support.

472. Furthermore, even though it was not necessary for the decision-maker to go on to consider Stage 2, that analysis was carried out and the conclusion reached was that it would have been reasonable for KAG to have claimed asylum in France. That conclusion cannot be impugned. KAG had adequate time and opportunity to make such a claim in a safe third state. It would be reasonable to expect KAG to claim asylum in France, even if the Government of France might not recognise KAG officially as a victim of trafficking.

XII. Conclusion

473. I grant permission to the Claimants to proceed with their claims. As a matter of substance, I find that:

(a) the decision to amend the Guidance by removing the right to request reconsideration of trafficking decisions for those being removed to a State that is a signatory to ECAT and the Convention was unlawful;

(b) that unlawful decision made a real difference in the cases of *EXR* and *KAG*; but not in the cases of *HRE* and *GIP* (there had, in fact, been two reconsiderations in GIP's case);

(c) with respect to *AYA*: (a) the decision to refuse VTS leave was not unlawful; (b) the inadmissibility decision was not unlawful; and (c) the certification claim was not unlawful;

(d) with respect to *EXR*: the decision to refuse his trafficking claim at the reasonable grounds stage with respect to alleged incidents in Ethiopia and Belarus was not unlawful;

(e) with respect to *HRE*: (a) the decision to refuse his trafficking claim at the conclusive grounds stage was not unlawful; (b) the decision to certify his human rights claim as clearly unfounded was not unlawful;

(f) with respect to *GIP*: (a) the decision to refuse his trafficking claim at the reasonable grounds stage was unlawful; (b) the decision to certify his human rights claim as clearly unfounded was not unlawful;

(g) with respect to *KAG*: (a) the decision to certify his human rights claim as clearly unfounded was not unlawful; (b) the inadmissibility decision was not unlawful.

474. I shall consider representations from the parties as to the appropriate orders in these cases.