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Case Nos: CO/2032/2022, CO/2056/2022, CO/2077/2022, CO/2080/2022, CO/2072/2022,
CO/2094/2022, CO/2095/2022, CO/2098/2022, CO/2104/2022

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 20 July 2022

Before

LORD JUSTICE LEWIS
MR JUSTICE SWIFT

Between

AAA AND OTHERS

Claimants

-and-

**SECRETARY OF STATE FOR THE HOME
DEPARTMENT**

Defendant

-and-

**UNITED NATIONS HIGH COMMISSIONER FOR
REFUGEES**

Intervener

**Raza Husain QC, Phillippa Kaufmann QC, Tom de La Mare QC, Paul Luckhurst,
Emmeline Plews, Emma Mockford, Anirudh Mathur** (instructed by **Duncan Lewis**) for the
Claimants in CO/2032/2022

Charlotte Kilroy QC and Sarah Dobbie (instructed by **Leigh Day**) for the Claimant in
CO/2056/2022

Alasdair Mackenzie and David Sellwood (instructed by **Wilson Solicitors LLP**) for the
Claimant in CO/2077/2022

Richard Drabble QC, Leonie Hirst and Angelina Nicolaou (instructed by **Wilson Solicitors
LLP**) for the Claimant in CO/2080/2022

Sharaz Ahmed (instructed by No.12 Chambers) for the Claimant in CO/2072/2022

Manjit Gill QC, Ramby de Mello, Tony Muman and Harjot Singh (instructed by
Twinwood Law Practice) for the Claimant in CO/2094/2022

Sonali Naik QC, Adrian Berry and Ella Gunn (instructed by **Barnes Harrild and Dyer**) for the Claimant in CO/2095/2022

Amanda Weston QC, Mark Symes, Eva Doerr and Isaac Ricca-Richardson (instructed by **Barnes Harrild and Dyer**) for the Claimant in CO/2098/2022

Alex Grigg (instructed by **Duncan Lewis**) for the Claimant in CO/2104/2022

Angus McCullough QC, Laura Dubinski QC, David Chirico, Jennifer MacLeod, Agata Patyna, and Benjamin Bundock (instructed by **Baker McKenzie**) for the Intervener

Rory Dunlop QC, Neil Sheldon QC, Matthew Gullick QC, Simon Murray, Mark Vinall, Sian Reeves and Natasha Barnes (instructed by **Government Legal Department**) for the **Defendant**

Hearing date: 19 July 2022

APPROVED JUDGMENT

LORD JUSTICE LEWIS handed down the following judgment of the Court:

INTRODUCTION

1. This is the judgment of the court. This application concerns a number of claims, involving 15 individuals, who have applied for permission to bring a claim for judicial review to challenge decisions to the effect that their claims for asylum would not be processed in the United Kingdom but they would or might be removed to Rwanda and their claims dealt with there. They also seek permission to challenge the lawfulness of the arrangements under which claimants for asylum can be removed to Rwanda. The claimants also include one trade union and three non-governmental organisations.
2. The claims were listed to be heard this week beginning on Tuesday 19 July 2022. A detailed timetable governing the submission of further evidence and other matters such as the provision of written skeleton arguments in advance of the hearing was set out in an order of Swift J following a directions hearing on 22 June 2022.
3. On 5 July 2022, the defendant, the Secretary of State for the Home Department, took fresh (or at least supplemental) inadmissibility and other decisions, giving further reasons, in the case of some of the individual claimants. It seems that the defendant wanted the Court to concentrate on the most recent decisions given in the individual cases. The claimants were concerned, particularly given the timetable already established, that they would be unable fairly to present their challenges to the new or supplemental decisions.

4. By an application notice dated 6 July 2022 in case CO/2032/2022, the 11 claimants (eight individuals a trade union, and two non-governmental organisations) applied for an order adjourning the substantive hearing listed for 19 July 2022, and for the hearing to be re-listed for the first available date after Thursday 1 September 2022 with a time estimate of seven days. They asked that the application be put before a Divisional Court.

5. A Divisional Court comprising Lewis LJ and Swift J. did consider that application. By an e-mail sent on 11 July 2022, the parties were informed that the Divisional Court did not require the parties to prepare for a substantive hearing on 19 July 2022. Rather the Court was minded to order that the hearing commence on Monday 5 September 2022. The Court indicated that it would sit on Tuesday 19 July 2022 to consider what further directions were needed. The parties were asked to make submissions on the proposal to start the hearing on 5 September 2022, and on the time estimate for the hearing. In addition, there were two other respects in which circumstances appeared to have changed since the directions hearing on 22 June 2022 and on which submissions were sought. First, a number of claimants had been referred to the relevant authority for considering claims that they had been the subject of trafficking and a decision taken that there were reasonable grounds for considering that they had been trafficked. They would not be removed to Rwanda pending the outcome of that process (and, if they were found to have been trafficked might be granted discretionary leave to remain in the United Kingdom rather than being removed to Rwanda). Secondly, at the time that the claims were issued, individual claimants were in detention and some sought to challenge the lawfulness of their detention. All those detained have now been released on bail and the only

substantive remedy sought on the detention claims is damages for the period of alleged unlawful detention. There appeared, therefore, to be no urgent need to deal with the detention claims as the claimants have all been released.

6. In a skeleton argument served on Friday 15 July 2022, running to 27 pages, and bearing the names of two leading counsel and seven junior counsel, the claimants in Case CO/2032/2022 invited what they described as a fundamental re-think of the approach to the case management of the claims. They sought to adjourn the hearing to 10 October 2022, rather than the first available date after 1 September 2022, with a time estimate of 3 weeks not seven days as originally sought. Other claimants supported them or left the matter to the Court. The defendant submitted a written skeleton argument bearing the names of nine counsel, three leading and six junior counsel, and running to 19 pages. She wished to adhere to the proposed date of 5 September 2022, but with a time estimate of five days rather than the original three days. There are other ancillary matters to be considered. We have considered carefully all the points made in writing and all the oral submissions made at the hearing.

7. In the light of that, the issues to be resolved at the hearing on 19 July 2022 were, principally:

- (1) The date on which the hearing is to begin;
- (2) Whether to include at the hearing (a) the claims involving those alleging that they have trafficked, and (b) the claims for damages for alleged unlawful detention;
- (3) The length of the hearing;

- (4) Ancillary matters including in particular, the timetable for amendments to the grounds, service of further evidence, service of written skeleton arguments and the preparation of bundles of pleadings, evidence and legislation and legal cases.

THE APPLICATION FOR AN ADJOURNMENT

8. First, the focus in the claims for judicial review brought by individual claimants should be on whether, on the facts of their case, the decisions on removal to Rwanda would or would not be unlawful. That involves consideration of the particular decisions, the facts of their case and arguments about the legality of removing asylum claimants to Rwanda. We stress that we have not yet considered any evidence, or heard any argument, about the details of those claims. We are only dealing at this stage with procedural matters setting out a timetable when those issues will be addressed. This judgment does not, therefore, express any view on whether the arrangements are lawful or unlawful, or whether the removal of any particular individual would be lawful or unlawful.
9. It is important, however, that the Court focusses so far as possible on the latest decisions affecting individual claimants, rather than looking at earlier decisions that may have been overtaken by events. To that end, we do consider that it is right to consider the decision letters of 5 and 7 July 2022 rather than the earlier decision letters.
10. Secondly, however, since the more recent decisions are to be the focus of attention, it is important to ensure that the claimants do have the opportunity fairly to present their challenges to those decisions. The need for flexibility in

taking account of later decision letters needs to be reconciled with the need to ensure that a party is not treated unfairly. See, in that context, the observations of the Court of Appeal in *Caroopen v Secretary of State for the Home Department* [2016] EWCA Civ 1307, [2017] 1 W.L.R. 2339, especially per Beatson LJ at paragraph 101. Counsel for all the claimants repeatedly emphasised the importance of fairness, and the importance of not allowing expediency to undermine fairness. We fully recognise the importance of ensuring that any timetable enables the claimants fairly to advance their case in a reasonable and proportionate fashion. We are satisfied that the decisions we have reached, and which are described in this judgment strike a fair and proportionate balance.

11. Against that background it seemed to us when we considered the application to adjourn, that fairness to the claimants would require an adjournment of the hearing scheduled on 19 July 2022. They needed to have the opportunity to consider the Secretary of State's new decision letters in their case and to amend their grounds of challenge if necessary to identify alleged deficiencies. We remain of that view. For that reason, and that reason only, we will order that the hearing of the claims listed for 19 July is adjourned.
12. For completeness, we note that there are four other grounds for seeking an adjournment set out in the application notice, and further written submissions were made. None of those arguments, either individually or cumulatively, would have persuaded us that there was a sufficient change of circumstances such as to justify adjourning the hearing fixed for 19 July 2022. It is not necessary to deal with those other grounds as the hearing will be adjourned

anyway, because of the making of new or supplementary decisions on 5 or 7 July 2022.

THE SCOPE OF THE HEARING

13. We considered that, broadly, two sets of issues do not need to be dealt with at the new hearing and, indeed, it is more appropriate if they were dealt with later. First, there are two claimants whose principal claim raises issues of alleged trafficking and whose alleged claims have been referred to the relevant authority. Those claims have not yet reached a final, or conclusive, decision. They will not be removed to Rwanda until that process is finally concluded. It seems to us that the sensible thing to do is to direct that those claims are not heard along with the other claims and that they be listed for a case management hearing seven days after the final decision in the referral process, or, if later, seven days after final judgment in this case. That applies to MYM and MOM in case CO/2032/2022.

14. Three other cases raise those issues but also raise other issues that do need to be covered. The issues dealing with trafficking in those three cases will not be dealt with at the hearing but the other issues will be. They are ASM in case CO/2030/2022, AB in case CO/2072/2022, and SAA in case CO/2094/2022. Consequently, the claims so far as the grounds of claim relate to the ability to make representations and discrimination under Article 14 ECHR and the Equality Act 2010 in AB's case; procedural and substantive unfairness, the lawfulness of the scheme and discrimination in ASM's case; and data protection and discrimination under Article 14 ECHR and the Equality Act 2010 in SAA's case will be considered at the substantive hearing. Those grounds correspond to

issues 31 to 32 (in *AB*'s case); issues 12 to 14 and 34 in *ASM*'s case; and issue 38 in *SAA*'s case (on the list of issues prepared by the parties, filed on 28 June 2022).

15. *AHA* (CO/2032/2022), has not received a positive reasonable grounds decision, although we were told that such a decision was pending. In those circumstances, it is not appropriate at present to stay his case. If such a decision is taken before the hearing, it may be appropriate to stay should the claimant or defendant make an application to do so.
16. Further, some claimants may receive conclusive grounds decisions that they have been the victim of trafficking, in which case the defendant may decide to grant them discretionary leave and may decide not to remove them to Rwanda for the purposes of their asylum claims. It may be that these cases will either not be ready for consideration in time for a hearing or their claims may become academic. *JM*, case CO/2032/2022, has received a conclusive grounds decision. That may lead to a decision that he be granted discretionary leave. If so, his claim may become academic and it may be appropriate to stay or adjourn his case if the claimant or defendant makes an application.
17. Secondly, the claims arising out of the alleged unlawful detention are stayed pending the outcome of the hearing before the Divisional Court. They are then to be listed within 14 days before Swift J. if available, or another judge if not, to consider (a) transferring the claims for damages and any related issues (either to continue as claims in the Queen's Bench Division, or to the County Court) and, if appropriate, (b) listing for a case management conference. The relevant

claims are *RM* (CO/2077/2022), *ASM* (CO/2080/2022), *SAA* (CO/2094/2022), *NA* (CO/2095/2022), and *AS* (CO/2098/2022).

18. We note in passing that those changes to the scope of the hearing will reduce the time needed both in terms of preparation and time taken at the hearing. There will be fewer claimants' cases to consider and fewer issues.

THE DATE AND LENGTH OF THE HEARING

19. The next issues are the date and length of the hearing.
20. We accept that there is a strong public interest in hearing this claim as soon as reasonably possible. The challenge is to arrangements adopted by the government to give effect to a policy which it regards as in the public interest and which it considers may impact on the ability and willingness of persons to risk dangerous journeys by lorry or small boats across the English Channel. There is a public interest in hearing the challenge as soon as reasonably and fairly possibly. All parties have agreed on the need for expedition. In deciding on the appropriate dates, we have borne well in mind the need for the claimants to have the opportunity of fairly presenting their claims. We are satisfied after careful consideration that the timetable that we have settled on will ensure that all claimants can present their claims fairly.
21. We are satisfied that the hearing should begin on 5 September 2022 for all cases (but for Asylum Aid's case) with a time estimate of 5 days. The claimants will have had sufficient time to prepare their cases by 5 September 2022.

22. We are satisfied that the issues that will be considered in the hearing could be accommodated within five days. That is an increase on the time previously allocated. It reflects the fact that there will be fewer issues and claimants involved, and the linked but conceptually separate case of Asylum Aid will be dealt with at a separate hearing. We anticipate that counsel will ensure that time is allocated efficiently, for example so counsel address separate issues and do not duplicate each other. We anticipate that a great deal will be set out in the written skeleton arguments and evidence in any event and cross-referencing will help reduce the time needed for oral argument. That is particularly likely to be the case as it is anticipated that the members of the Court will have done a great deal of pre-reading. The claimants will have three days, including a reply, and the defendant two days. We anticipate that the claimants will want to divide that into up to one to one and a half days for the general issues and up to one and a half days on the individual cases (but bearing in mind that they will presumably want to allocate up to half a day for reply). The defendant will have less time than the claimants will have. She will have up to two days.
23. We have decided that Asylum Aid's case should be listed for two days starting on 10 October 2022. Conceptually, that case is a different case from the others as it involves what is said to be inherent unfairness in the system rather than looking at individual cases. We consider that case is better heard separately from the other cases. To the extent that there is an overlap between the issues in Asylum Aid's case and any of the individual claimants' cases, we anticipate that the same constitution That hears the cases in September will also hear the Asylum Aid case and judgment will be handed down in both at the same time. Asylum Aid will have had sufficient time to prepare their case by that date. We

considered the submissions of all counsel, including in particular specific concerns made by Ms Kilroy for Asylum Aid and Mr Mackenzie about what they said could be potential disadvantages of separate hearings. We are satisfied that the approach we prefer will, overall, be a better way of managing the cases and the issues that arise and will ensure fairness for all parties. We also consider that the timetable proposed will be fair. It actually reflects the original application for re-listing for seven days. We bear in mind that the revised estimate was for 3 weeks (i.e., 15 days). We considered that that would be entirely disproportionate and unnecessary. We recognise proceeding in this way will mean that the judgment in the other cases may be handed down a few days later than, ideally, would be the case but that disadvantage is outweighed by the benefits of proceeding in this way.

ANCILLARY MATTERS

The Intervener

24. The Intervener raised the issue of seeking permission to adduce evidence in reply. That is not necessary. The Intervener is not a party seeking to respond to the case put against it. It was granted permission to put in evidence to assist the court and it has lodged extensive evidence. The UNHCR wishes to put in evidence to respond to the Secretary of State's evidence responding to the UNHCR's evidence. We grant permission to the UNHCR to put in evidence, limited to 25 pages, replying to those parts of the Secretary of State's evidence dealing with the UNHCR evidence, that evidence to be filed by 4 p.m. on 27 July 2022.

25. The UNHCR also wished to put in further evidence considering all evidence, and all material that might be disclosed at some date in August and all pleadings. We do not consider that it is the role of an intervener to provide what is said to be evidence commenting on those matters. Nor do we think it necessary for a fair resolution of these challenges that further evidence be put in to supplement the UNHCR's original evidence.

Possible future interlocutory applications

26. Suggestions have been made about applications for specific disclosure, applications for permission to cross-examine one or more witnesses, and applications to adduce expert evidence. No applications in proper form are currently before the court. Any such application is to be made in accordance with the requirements of the CPR by 4 p.m. on 22 July 2022 with a view to them being determined in the week commencing 25 July 2022.

Applications to rely on additional evidence

27. In the case of *AAA and others* (CO/2032/2022) and *Asylum Aid* (CO/2056/2022), applications are made to adduce two witness statements of Mr Toufique Hossain, and a second statement of Ms Theresa Schleicher. There is no objection to that and we grant permission.
28. There is an application in case CO/2032/2022 to admit evidence in reply from (a) two journalists, Ms Hayden and Mr Sundaram, and (b) Ms Sceats, the chief executive of Freedom from Torture, which was also said to be relevant to the case of *Asylum Aid* CO/2056/2022.

29. When making the application, Ms Kaufmann Q.C. accepted that the evidence of Ms Sceats was not evidence in reply; she could not assist on when it was first realised that they wished to adduce this evidence. Notwithstanding that this is not evidence in reply, and notwithstanding that this evidence could and should have been filed when the claims were commenced, we have decided to admit the statement. Admitting this statement at this stage will not prejudice the defendant's response to the claims. We do not give permission to rely on the two statements from the journalists. We do not consider that that material goes to any issue in the case.
30. Asylum Aid seeks permission to adduce a witness statement of Ms Pickup, and second witness statements of Mr Neal, Ms Moseley and Mr Pennington. No objection is taken to those and we grant permission to rely on those statements.
31. In the case of *AS (Iran)*, there is an application for an extension of time to 12 July 2022 for filing evidence in reply. No such evidence was adduced by that date, in any event. That application therefore appears academic and is refused. In so far as *AS* was given a new decision, or supplemental reasons, on 5 or 7 July 2022, *AS* would, in common with other claimants in a similar position, be able to amend to challenge that decision and adduce evidence limited to that issue.
32. There are three other requests for permission to adduce evidence. However, on consideration, the purpose of those applications is to make further representations to the Secretary of State about their case. As such they are not in truth applications to file reply evidence in proceedings before the court. We note that the defendant indicates that she would not object provided that all

representations are made in time to enable her to reach yet further decisions by 29 July 2022.

33. In addressing these requests, the starting point is that the court cannot dictate or tell claimants whether or by when they must make representations to the defendant. Nor can we manage the decision-making process that the defendant has to undertake if such representations are made to her. All we can do is indicate that, as the court dealing with claims for judicial review, we will deal with the claims on the basis of the grounds of claim included in the claim form directed to such decisions identified in the claim form as subject to challenge. Any new or supplementary decision that has been the subject of amendment permitted in accordance with the timetable below will be dealt with at the hearing. If further representations are made by any claimant to the defendant, or further new or supplementary decisions taken by the defendant outside that timetable, then the decisions will not fall within the scope of the hearing starting on 5 September 2022 unless it is possible to amend the grounds to include such a challenge without unfairness to any party, in accordance with the guidance given in *Caroopen*.
34. One of the three cases in this group is *NA (Iran)* (CO/2095/2022) The claimant seeks to adduce a supplemental statement and medical reports of Dr Clark and a further report by Dr Olowookere. The defendant submitted she would not object if no further representations were made and if she was given until 29 July 2022 to take a further decision in light of those representations. For that reason we refuse permission to rely on it for the purpose of any new or revised ground of challenge. The same applies to the case of *RM* (CO/2077/2022) where the

claimant seeks to rely upon a further witness statement from a solicitor, a report from a clinical psychologist dated 10 July 2022, a witness statement of RM dated 9 July 2022, a further report dated 10 July 2022 by a Dr Curry who is a clinical psychologist, and health records.

35. The third such case is *ASM* (CO/2080/2022) where permission is sought to rely on reports from a consultant psychiatrist, Dr Beeks, a letter from Medical Justice about their processes, a witness statement by ASM and a second witness statement of the solicitor. None of that is reply evidence. It appears instead to be information comprising new representations to the defendant. None of the evidence relied upon goes to decisions taken in the case and we do not grant permission to amend the grounds to include a new challenge based on that material.
36. We do, however, permit the new evidence in these three cases to be adduced in support of the claim already made by each claimant that the defendant failed to discharge the *Tameside* obligation of reasonable inquiry and that the evidence now filed is by way of example of the type of material that the claimants say the defendant would have obtained had reasonable inquiries been made.
37. There is one case, *RM* (CO/2077/2022) where the proposed amended grounds relate to a decision already taken on the 5 July 2022 (and confirmed on 13 July 2022). It is appropriate to grant permission to RM to amend his claim form, and to adduce evidence, limited to the challenge to the decision taken on 5 July, and confirmed on 13 July 2022.

38. The claimants in AAA (CO/2032/2022) applied for a stay of parts of the case of SAA (CO/2094/2022) dealing with aspects of his claims relating to data protection (principally, it seems, those dealing with the ability of the defendant to rely on statutory exceptions in relation to data protection obligations). It is, to say the least, unusual for a party in one case to seek a stay of parts of a claim by another party in a different, albeit linked, case. We do not, in any event, consider it appropriate to grant the stay.

REVISED DIRECTIONS

39. The Order of Swift J. of 22 June 2022 is varied so that the timetable in all cases bar Asylum Aid (CO/2056/2022) will be as follows (but the Order remains otherwise applicable):

(1) Add as paragraph 28A: Any individual claimant has permission to file amended grounds addressing any new or supplemental decision on his case issued on 5 or 7 July 2022; the amended grounds, and evidence limited to those grounds to be filed and served by no later 4 p.m. on 22 July 2022;

(2) Add as paragraph 28B: The UNHCR has permission to file evidence, limited to 25 pages, replying to those parts of the Secretary of State's evidence dealing with the UNHCR evidence, that evidence to be filed by 4 p.m. on 27 July 2022.

(3) Add as paragraph 28C: Any application for specific disclosure, or for permission to cross-examine the maker of any statement filed in these proceedings, or any application to rely on expert evidence shall be made by 4pm on 22 July 2022. If any such application is made, the party to whom it

is directed shall serve and file its response to the application by 4pm on 26 July 2022.

- (4) Add as paragraph 29B: The defendant is to serve any amended detailed grounds of defence, and evidence responding to the evidence referred to in paragraph 28A, if so advised, by 4 p.m. on 29 July 2022;
 - (5) Paragraph 30 is varied so that the Intervener is to file and serve written submissions by 4 p.m. on 19 August 2022;
 - (6) Paragraph 32 is varied so that the claimants are to file and serve their written skeleton arguments by 4 p.m. on 22 August 2022;
 - (7) Paragraph 33 is varied to that the defendant is to serve her written skeleton on the parties by 4 p.m. on 29 August 2022 and filed with the court by 4 p.m. on 30m August 2022;
 - (8) Paragraph 34 is varied to that the electronic bundles and hard-copy bundles are lodged no later than 4 p.m. on 22 August 2022;
 - (9) Paragraph 35 is varied to that the electronic bundles and hard-copy bundles are lodged no later than 4 p.m. on 25 August 2022.
39. The Order of Swift J. of 22 June 2022 in Asylum Aid (CO/2056/2022) is varied so that the timetable will be as follows (but the Order remains otherwise applicable, including for the avoidance of doubt, the new paragraph 28C):
- (1) Add as paragraph 28B: The UNHCR has permission to file evidence, limited to 25 pages, replying to those parts of the Secretary of State's

evidence dealing with the UNHCR evidence, that evidence to be filed
by 4 p.m. on 27 July 2022.

- (2) Para. 30 is varied so that the Intervener is to file and serve written submissions, if so advised by 4 p.m. on 26 September 2022;
- (3) Paragraph 32 is varied so that the claimant is to file and serve its written skeleton argument by 4 p.m. on 26 September 2022;
- (4) Paragraph 33 is varied to that the defendant is to file and serve her written skeleton on the parties by 4 p.m. on 3 October 2022;
- (5) Paragraph 34 is varied to that the electronic bundles and hard-copy bundles are lodged no later than 4 p.m. on 26 September 2022;
- (6) Paragraph 35 is varied to that the electronic bundles and hard-copy bundles are lodged no later than 4 p.m. on 4 October 2022.

CONCLUSION

40. In summary, the hearing of the claims listed for 19 July 2022 is adjourned. The hearing will be listed for 5 September 2022 for 5 days, and in the case of Asylum Aid on 10 October 2022 for 2 days. The order in this case will reflect that decision and the decisions set out in this judgment.
