Neutral Citation Number: [2022] EWHC 3299 (Admin)

Case No: CO/605/2022

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 21/12/2022

Before :

CLARE PADLEY (SITTING AS A DEPUTY HIGH COURT JUDGE)

- -

Between :

THE KING (ON THE APPLICATION OF LUIZ PAULO PEREIRA CAMPOS)	**Claimant**
- and -	
THE SECRETARY OF STATE FOR THE HOME DEPARTMENT	**Defendant**

- -
- -

Mr Jay Gajjar (instructed by **Ashton Ross Law**) for the **Claimant**
Ms Catherine Brown (instructed by **Government Legal Department**) for the **Defendant**

Hearing dates: 15 November 2022

- -

Approved Judgment

This judgment was handed down remotely at 10.30am on 21st December 2022 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Clare Padley (sitting as a Deputy High Court Judge) :

1. This is a claim for judicial review. The claimant is a Brazilian national who came to the UK in November 2021 as a visitor and was given leave to remain until May 2022. In February 2022 his leave was cancelled by the Defendant on the grounds that he was working illegally, and he was detained pending removal.

2. The Claimant was given permission at an oral renewal hearing in August 2022 to challenge the decisions made by the Defendant on 1 February 2022:

    i) to cancel his leave to stay in the UK and

    ii) to detain him pending removal (which detention lasted from 1 February 2022 to 7 March 2022)

3. The Claimant is seeking the following orders:

    i) An order quashing the cancellation of his leave

    ii) A declaration that his detention was unlawful

    iii) An order that the Defendant pay him damages and costs

4. The Claimant's original grounds of challenge in the claim form and Grounds of Claim were that the cancellation of his leave was arguably unlawful given the failure by the Defendant to disclose the material held against him and that his detention was unlawful. At that stage, the claim was based entirely on arguments about procedural unfairness relating to disclosure of evidence.

5. The importance of procedural rigour in judicial review claims has been repeatedly emphasised by the appellate Courts. 'Procedural Rigour' and the need to observe the rules has its own section in the Administrative Court Guide (2022) which is available online to all parties to such proceedings. Unfortunately, such rigour and observance were notably absent from the conduct of these proceedings on the part of both parties, with the result that by the time of the substantive hearing, the nature of the claim, the evidence from both parties, and the arguments being made had all evolved significantly from the originally pleaded claim.

Additional ground of irrationality

6. The Claimant, at the court's invitation at the start of this hearing, sought retrospective permission to rely on an additional ground of irrationality, for which the court's permission did not appear to have previously been sought or given, but which was first raised as a potential further or alternative ground in the Claimant's submissions in reply to the Acknowledgement of Service on 5 April 2022 and was addressed by both Counsel in their skeleton arguments.

7. Part 54 of the Civil Procedure Rules and Practice Direction 54A set out clear rules and procedures in judicial review cases of this nature. Part 54.15 makes clear that the court's permission is required if a claimant seeks to rely on grounds other than those for which he has been given permission to proceed. PD 54A sets out the requirements for such an application for permission which must be made in accordance with Part 23

and be accompanied by draft amended grounds and evidence explaining the need for the proposed amendment and any delay in making the application for permission.

8. Although it was agreed by both parties that no formal application to amend the claim had been made and that this issue had not been expressly addressed at the oral permission hearing, the Defendant accepted that she had not taken the point and that both parties had proceeded on the basis that since the permission stage, the irrationality ground now formed part of the claim. I noted that the Order of the Deputy High Court Judge granting permission following the oral renewal hearing stated that it was granted on "all grounds" rather than on "both grounds" although no mention was made in the Order itself of the nature of those grounds or of any amendment.

9. Having regard to the overriding objective and taking into account the overlapping nature of the grounds of irrationality and procedural unfairness in this case, and the lack of prejudice to the Defendant, I agreed to grant permission for the Claimant to rely on the additional ground of irrationality in relation to the unlawfulness of the cancellation decision.

Other preliminary applications

10. Two other preliminary applications by the Defendant were also before me at the start of the hearing:

    i) To extend time for service of the Defendant's skeleton argument.

    ii) To rely on additional witness evidence from the two immigration officers Watson and Chapman who attended the premises and a full copy of the interview notes.

11. The first application was not opposed by the Claimant, and the skeleton argument was served by the revised date, so I granted an order for that extension of time retrospectively.

12. The second application had been opposed by the Claimant in writing prior to the hearing but was no longer opposed by Counsel for the Claimant, Mr Gajjar, at the start of the hearing. He accepted that the Defendant should be allowed to rely on the additional witness evidence and indeed sought to rely on some of it himself. The additional evidence was filed in response to points of challenge made for the first time in the Claimant's submissions in response to the Detailed Grounds for which permission had been given at the oral renewal hearing and raised in the Claimant's skeleton argument. It was also, arguably, evidence that should have been included in the initial statements from these witnesses. Again, despite my concern about the lateness of this evidence, in the light of the agreed position of the parties and the need to ensure a fair hearing, I allowed this evidence to be admitted.

Post-hearing application

13. Following the hearing, I indicated to the parties that I would reserve judgment. The following day, the Defendant emailed the court seeking to rely on an extract from the PRONTO record referred to in the further witness statements of officers Watson and Chapman relating to the issue of whether a caution was given to the Claimant. I advised

that a proper application would have to be made and that the Claimant should be given an opportunity to respond.

14. The Defendant then made a written N244 application on 17 November 2022 and attached a screenshot of the PRONTO record for which permission was sought to rely but provided no witness evidence in support of the application and no explanation at all as to why this evidence had not been disclosed at an earlier stage. The Claimant filed a response objecting to this late application and challenging the reliability of the evidence in the absence of any accompanying witness statement or statement of truth. In all the circumstances, I do not consider it appropriate to admit this evidence at that late stage after the hearing had concluded, in the absence of any proper explanation for the delay. The Defendant's application is refused and I will therefore proceed to consider this claim without regard to that evidence.

Background

15. The Claimant was born on 16 September 2002 and is now aged 20. He came to the United Kingdom (UK) on 10 November 2021 when he was 19 as a visitor on his Brazilian passport. He told the entry officials that he planned to stay for 10 days. He was granted leave to enter as a standard visitor and given leave to remain in the UK for 6 months, until 10 May 2022. He did not have a return ticket. It is accepted by the Claimant that as a visitor, he was not entitled to carry out any type of work in UK.

16. By February 2022, the Claimant was living in an address in Swindon with several other people. Immigration officials obtained a warrant to enter and search that premises. The search took place at 6.00 am on 1 February 2022. The Claimant was encountered by immigration officials in a bedroom at the Swindon premises during that enforcement visit.

17. He was interviewed by immigration officials. He was arrested by an immigration official for working in breach of his leave to remain and his leave was cancelled. He was therefore liable to administrative removal from the UK as defined in Section 10 of the Immigration and Asylum Act 1999. There is a factual dispute in this case as to what occurred during that interview, and I will return to the details of that interview and search in due course.

18. The Claimant was served with a RED.0001 liability notice and an IS.91.R (reasons for detention and bail rights notice) in accordance with section 120 Nationality, Immigration and Asylum Act 2002 and he was detained pending his removal. The cancellation notice gave the following reasons:

> " *You are specifically considered a person who has been working in breach of your employment restrictions whilst in the United Kingdom. You was [sic] granted leave to enter on 10th November 2021 for six months. You stated that you intended to and [sic] leave on 30th November 2021. Immigration officers have seen also evidence you showed today on your phone of your work account with Deliveroo where you working as a delivery driver. You are restricted from employment in the United Kingdom therefore you are working in breach of your Employment Restrictions.*

> *I have considered all the information available to me and I am satisfied that you are an [sic] Worker in Breach - an offence under 24(1)b(2)[sic] of the Immigration Act 1971 as amended. Therefore, you are liable to administrative removal from the United Kingdom as defined in section 10 of the Immigration and Asylum Act 1999. A decision has been made to cancel your permission to stay in the UK so that it expires with immediate effect."*

19. That notice included a section informing the Claimant of his right to respond if he thought there were any reasons why he should be allowed to stay in the UK. The detention form included confirmation that it had been translated into Portuguese.

20. On 6 February 2022 the Claimant informed the Defendant that he wanted to make a voluntary departure to Brazil. On 11 Feb 2022 the Claimant signed an IS.101 (voluntary departure disclaimer form) confirming his wish to return voluntarily to Brazil. On 15 February 2022 he was then served with removal directions scheduled for removal to Brazil on 20 February 2022.

21. On 17 February 2022, the Claimant's representatives then submitted a section 120 response and a letter before action including human rights representations to the Defendant. Following receipt of this claim, the Claimant's planned removal on 20 February was cancelled by the Defendant.

22. On 18 February 2022, the Claimant applied for and was refused immigration bail by Defendant. On 25 February 2022, the Claimant applied to the First Tier Tribunal (FTT) for immigration bail. Following a bail hearing on 2 March 2022, the FTT refused to grant immigration bail. On 4 March 2022 the Claimant made a further application for bail to Defendant. This was initially refused, but on 7 March 2022, in the light of his pending judicial review claim, the Defendant granted immigration bail to the Claimant with conditions. The Claimant's visitor visa then expired in May 2022, but I understand that he remains in the UK on immigration bail.

Procedural history of this claim

23. As I have stated, on 17 February 2022 the Claimant sent a pre-action protocol (PAP) letter to the Defendant including his representations under section 120 Nationality, Immigration and Asylum Act 2002. Following receipt of that letter, and confirmation from the Claimant that he no longer wished to voluntarily depart from the UK, the removal directions were cancelled. The Defendant should have had 14 days to respond to the PAP letter. However, a judicial review claim was then commenced by the Claimant on 18 February 2022 which was sealed on 21 February 2022 and issued on 27 February 2022 before the Defendant's time to reply under the PAP had expired. The claim included two grounds of review and stated that the claim included human rights claims under Article 5 and 8. The claim form was accompanied by Grounds for Review but was not supported by any written evidence from the Claimant as required by Practice Direction 54A and did not include the required details for a Human Rights Act claim. The claim form also included mention of a challenge to the removal direction, but the grounds of claim did not include such a claim as the removal direction was cancelled before the issue of this claim.

24. On 3 March 2022 the Defendant served her response to the pre-action letter to Claimant stating that the PAP had been overtaken by the issue of the claim. On 21 March 2002, the Defendant then filed her Acknowledgement of Service and Summary Grounds of Defence and an extract from the G-CID notes (where GCID stands for General Computer Information Database), indicating that she intended to fully contest the claim. On 5 April 2022 the Claimant then filed an application for permission to file submissions in response to the Acknowledgement of Service and to rely on evidence, including witness statements from the Claimant and his friend Mr Viktor Soares and some exhibits. On 26 April 2022 the Defendant responded to the Claimant's application by letter objecting to the application.

25. On 23 May 2022, by an order of Michael Ford KC sitting as a Deputy High Court Judge, the Claimant was given permission to rely on his submissions in response to the Acknowledgement of Service and the accompanying evidence, but permission to apply for judicial review was refused. That Order was sealed on 7 June 2022.

26. The Claimant's witness statement dated 1 April 2022 has been translated from Portuguese. In that statement, he said that he came to the United Kingdom to visit his family friend, Douglas Viveiros Soares Aguiar (the uncle of the second witness Viktor Soares). The Claimant accepts that he stated that when he entered the UK that he intended to stay for 10 days but that as he was granted leave to enter as a visitor valid for 6 months, he then decided to stay for longer. He says that he sought advice from an immigration lawyer and was told he could stay for the 6-month duration. He states that he has not worked in the UK.

27. The Claimant also accepts that at the time of the immigration interview on 1 February 2022 he owned a motorbike but he claims that it was being used by his childhood friend, Viktor Soares, who lives in a room with the Claimant. The Claimant states that he does not have a driving licence for this country or insurance. I note that the V5 for the motorcycle is in the bundle and is dated 18 November 2021.

28. The Claimant states that the mobile phone checked by the officers belonged to Mr Viktor Soares and it was a Deliveroo application that the officers saw, not Uber Eats. This latter point is in fact not disputed by the Defendant who has confirmed that the reference to Uber Eats in the initial G-CID summary disclosed with the summary grounds of defence was an error. Indeed, I note that the screen shots from the phone which was found in the Claimant's possession were for Deliveroo and all the contemporaneous evidence relates to Deliveroo. It is now agreed by the parties, and I accept, that this reference in the G-CID summary to Uber Eats was a clerical error by the Defendant.

29. The Claimant states the two t-shirts found by the officers were Uber t-shirts but that one was small and one was large and that he is a medium and that neither t-shirt belonged to him, but that they were both given by Douglas to Viktor. He also states that there were 8 officers who arrived at the property at 3am and they were *'aggressive, rude intimidating and threatening'*.

30. The Claimant also relied on a witness statement from Mr Viktor Soares who was living at the same address. Mr Soares says that he is an Uber delivery driver and that he has the right to work in the UK. He has exhibited his passport and evidence of his right to work. He says that the phone found in the Claimant's possession at the time of the

immigration visit was his second phone and that the Deliveroo App was his. He has provided screen shots of a Deliveroo app on a phone and a video which has not been shown to the Court but from which some screen shots have been provided to the Court. The Claimant's counsel, Mr Gajjar, accepted that there is no evidence as to which/whose phone is shown in this evidence.

31. Mr Soares also provided a copy of his Barclays bank account for 12 Feb to 11 March 2022 which shows an opening balance of £2.00 and a closing balance of £00.00 but this does not show receipt of any of the monies displayed on the phone screen shots as having been paid by Deliveroo. Mr Gajjar has explained that the purpose of this statement was simply to show Mr Soares' address. Mr Soares did not provide any evidence in his statement about the motorcycle boots that the Claimant had stated belonged to his room-mate.

32. The Reply to the Acknowledgement of Service refers for the first time to "*the heavy-handed nature*" of the immigration officials and states that the visit took place at 3 am. It also notes that the G-CID fails to mention that the Claimant was sharing a room with Mr Soares and that the mobile phone and the Uber-Eats t-shirts seen by the immigration officials belonged to him.

33. On 14 June 2022 the Claimant filed a Notice of Renewal. On 4 August 2022, following an oral renewal hearing before David Lock KC sitting as a Deputy High Court Judge, permission to apply for judicial review was granted on "all grounds" and directions were given including provision for detailed grounds and a further reply. As I have already noted, that order does not include any reference to an application by the Claimant to amend his grounds.

34. The Defendant then served its Detailed Grounds together with witness evidence from the two immigration officers who were present at the interview with the Claimant - Ms Chantelle Chapman and Mr Jonathan Watson. Ms Chapman's evidence is that she entered the property at Gambia Street in Swindon under a warrant issued under Schedule 2 paragraph 17(2) of the 1971 Immigration Act which had been granted by the Magistrates Court on 31 January 2022, together with a number of other immigration officers. The basis for the warrant was that there was a named offender living there illegally and in addition there were two individuals from Brazil linked to the property, one of whom was an alleged illegal entrant and one an alleged overstayer and that there was intelligence indicating that one individual (Francis Douglas Oliveria Soares) was funding Brazilian nationals to come to the UK and providing false documents for work. The names on the warrant did not include the Claimant or Mr Viktor Soares.

35. The search commenced by 5.57 am. She found the Claimant in bed in an upstairs bedroom at 6.06 a.m. and, together with Mr Watson, she questioned him with a Portuguese interpreter. She says that he asked the Claimant questions as she had reason to suspect him of working illegally. She started interviewing him at 6.08 am and she says that during the interview her cover CIO Watson noticed the V5 on his shelf and that's when she questioned him about this. Her statement includes a list of the questions and answers used during the interview. This list of questions and answers is the same as the full transcript which was disclosed more recently by the Defendant as part of the additional evidence for which permission was given at the start of the hearing, and the note of the interview was signed on the day as being accurate by the Claimant. That said, it is apparent from the remainder of the Defendant's evidence that there may have

been some additional exchanges with the Claimant which are not recorded verbatim. The full note of the interview conducted by Ms Chapman is recorded in her statement and in the interview record as follows:

> *"Q What is your intention on coming to the UK?."*
>
> *A. I had money from my parents*
>
> *Q. But what is your intention on being here ?*
>
> *A. I came because I was invited by Douglas and I wanted to see London and the winter and the snow and then I'm going back home*
>
> *Q. You told an immigration officer that you are coming for a month why are you still here*
>
> *A. Because we didn't have snow and it didn't happen and i asked to stay by Douglas so I'm going to wait. he wants me to go and see a show in London*
>
> *Q. How are you supporting yourself ?*
>
> *A. Douglas gives me money not dad gives money to Douglas to give to me for groceries etc*
>
> *Q. Are you working in the UK ?*
>
> *A. No*
>
> *Q. Where is your return ticket ?*
>
> *A. I haven't got one yet as I want to see the winter*
>
> *Q. When I came in there was a bank card. Is this yours ?*
>
> *A. This is my car*
>
> *Q. Who's motorbike shoes are they ?*
>
> *A. There Douglas and Matthews. Matthew lives in this room with me*
>
> *Q. Who's motorbike gloves are there in your bag*
>
> *A. There just clothes there not bike gloves*
>
> *Q. You just need to be honest with your answers now*
>
> *A. I am being honest*
>
> *Q. Where is your wallet ?*

A. I don't have

Q. Have you applied for a driving licence there is a DVLA letter

A. No

Q. Why is there a V5 document with your name ?

A. Name? The owner douglas wanted me in his name

Q. Why does Douglas want your name on a car?

A. You can ask him he's downstairs he was having problems with insurance

Q. Why have you got a moped ?

A. I don't have a motorbike I did it in my name for Douglas

Q. Do you have a driving licence ?

A. Showed me a Portuguese licence

Q. Do you have a UK licence ?

A. No i don't need

Q. Why is there an app on your phone you have been taking orders and working?

A. My friend broke his phone

Q. now we know the motorbike is yours just tell me who you are working for ?

A. I told you I don't work here I have a gf in Brazil and work in Brazil

The interview was finished at 6:40 AM and he signed it and happy with the answers.

36. Ms Chapman records that the interview was finished at 6:40 a.m. and the Claimant signed it and was happy with the answers. She states that as they were finishing the interview the Claimant's phone had disappeared and he moved his bed quilt to cover some clothing. When the quilt was moved, some Deliveroo clothing and his phone were found. The Claimant was then arrested for an alleged breach of a condition of his leave and his mobile phone was then examined under s.47 of the Immigration Act 2016 and some screen shots of a Deliveroo working app showing some deliveries completed and some upcoming ones were exhibited. They do not show the name of the Deliveroo account holder. A photograph of the Claimant wearing the motorbike helmet and standing next to a motorcycle was also found on the phone and was also exhibited.

37. In his witness statement Mr Watson confirmed Ms Chapman's account above about the warrant and the entry to the premises and stated that he noticed a pair of motorbike boots and a helmet next to the bed identified by the Claimant as his and asked the Claimant whether they were his and he denied they were, stating that the boots were the wrong size for him. Mr. Watson also confirmed that during the interview he noticed a document in the corner of a shelving cabinet identified by the Claimant as his which was a V5 logbook for a motorscooter. The V5 recorded the Claimant as the registered keeper of this vehicle. Mr Watson exhibited a copy of this document to his statement. He then records that he noticed a blue uniform on the bed used by the Claimant and that the Claimant appeared to wrap some clothing around a mobile phone which he subsequently identified as his own. Mr. Watson then confirms the examination of the Claimant's phone and the discovery of the Deliveroo App and the photograph of the Claimant dressed for motorbike riding and the exhibiting of the screen shots described by Ms Chapman.

38. Thereafter the Claimant filed a Response to the Detailed Grounds of Defence dated 20 October 2022, in accordance with the Order of David Lock KC dated 4 August 2022. In that Response, the Claimant continued to rely on the failure of the Defendant to disclose a full interview transcript and to suggest that other potential witnesses in the property should have been interviewed and that the Claimant's alternative explanation should have been probed and investigated. In addition, the Claimant raised a number of fresh points of challenge, including submissions that the statements of the officers were not prepared at the time and were therefore unreliable, that the officers had not confirmed that the Claimant was cautioned before he was questioned in breach of the Defendant's guidance on enforcement interviews, that the Defendant had no legal right to access his mobile phone and that the officers were rude and threatening. I note that in this latest Reply, the Claimant did not appear to maintain the previous position set out in his signed witness statement that the mobile phone found with him in his bedroom was not in fact his.

39. On 1 November 2022 the Defendant lodged an application seeking a one-day extension of time to file her skeleton argument, which was not opposed by the Claimant and on 2 November 2022 the Defendant filed her skeleton argument. On 2 November 2022, the Defendant lodged another application to rely on further evidence, including additional witness statements from the two immigration officers who attended the premises and a full copy of the interview notes. These applications were dealt with at the start of the final hearing as I have explained above.

40. The further statements from Ms Chapman and Mr Watson which were prepared to address issues raised in the Claimant's further Reply can be summarised as follows. Mr Watson confirmed that the information in his previous statement had been recorded on the Home Office systems at the time (and that the PRONTO system is a type of electronic notebook used by officers instead of paper notebooks. He stated that an administrative caution should have been given prior to questioning and recorded on the PRONTO system but his statement does not confirm whether such a caution was given. He also stated that no other officers at the premises were involved in the interviewing of the Claimant. He set out the full text of sections 46 and 47 of the Immigration Act 1971 which provided the legal basis for the search of the Claimant's phone which had been challenged by the Claimant. Mr Watson also confirmed that the interview was not audio or video-recorded as they do not routinely wear body-worn cameras. He

accepted that he did not corroborate the claims by the Claimant that the motorcycle helmet and boots found in the bedroom were not his. He stated that he does not recall putting the Claimant under any pressure or making any threats and that they asked reasonable questions about his immigration status because of their suspicions about him working illegally and the true intentions behind his visit to the UK. He noted that the Claimant was the registered owner of a motorscooter found in the back garden of the house. He also stated that they established a good relationship with the Claimant and that he was often smiling and joking with them during the interview.

41. In her further statement, Ms Chapman confirms that the references to Uber Eats instead of Deliveroo in the G-CID notes are errors and that all the information in her first statement had come from the notes on the PRONTO system which had been completed on the 1st of February 2022. She said that the Claimant was happy to sign the note of the interview, that he was given the option of refusing to sign, but that he was more than happy to do so. Exhibited to her statement was a full copy of the interview notes from the PRONTO electronic notebook dated 1 February 2022. The questions and answers listed on that form are the same as the ones set out in the body of her first statement but at the top of the form the details of the interpreter are set out and at the bottom of the form the Claimant's signature can be seen in an electronic box.

42. I am grateful to both Counsel for their detailed skeleton arguments and their further submissions during the hearing.

Key Legal Principles

Immigration provisions

43. The power to grant leave to enter or remain arises under section 3(1) of the Immigration Act 197 ("the 1971 Act"), which provides:

> "Except as otherwise provided by or under this Act, where a person is not a British citizen;
>
> (a) he shall not enter the United Kingdom unless given leave to do so in accordance with the provisions of, or made under, this Act;
>
> (b) he may be given leave to enter the United Kingdom (or, when already there, leave to remain in the United Kingdom) either for a limited or for an indefinite period."

44. The Immigration Rules set out the way in which the Secretary of State would exercise his power under that section. The Immigration Rules are made by the Secretary of State and approved by Parliament under section 3(2) of the 1971 Act. Immigration rules for visitors are found in Appendix V of the Immigration Rules. The Claimant was given a standard visitor visa, allowing him to stay for the time allowed (here 6 months) but not to work.

45. By V 4.4 of the Immigration Rules, the Visitor must not intend to:

> "(a) work in the UK, which includes:

(i) taking employment in the UK; and

(ii) doing work for an organisation or business in the UK; and

(iii) establishing or running a business as a self-employed person; and

(iv) doing a work placement or internship; and

(v) direct selling to the public; and

(vi) providing goods and services,"

46. Paragraph 322(1) of the Immigration Rules provides that a person's leave to remain may be curtailed on the ground set out at paragraph 322(3), namely failure to comply with a condition attached to the current leave to remain.

47. Section 24(1)(b) of the Immigration Act 1971 provides that:

> "(1) A person who is not a British citizen shall be guilty of an offence punishable on summary conviction with a fine of not more than level 5 on the standard scale or with imprisonment for not more than six months, or with both, in any of the following cases: …
>
> (b) if, having only a limited leave to enter or remain in the United Kingdom, he knowingly fails to observe a condition of the leave; "

48. Section 10(1) of the Immigration and Asylum Act 1999 provides that:

> "(1) A person may be removed from the United Kingdom under the authority of the Secretary of State or an immigration officer if the person requires leave to enter or remain in the United Kingdom but does not have it."

49. The relevant parts of Section 120 of the Nationality, Immigration and Asylum Act 2002 provide as follows:

> "**Requirement to state additional grounds for application etc**"
>
> (1) Subsection (2) applies to a person ("P") if—
>
> (a) P has made a protection claim or a human rights claim,
>
> (b) P has made an application to enter or remain in the United Kingdom, or
>
> (c) a decision to deport or remove P has been or may be taken.

> (2) The Secretary of State or an immigration officer may serve a notice on P requiring P to provide a statement setting out—
>
> (a) P's reasons for wishing to enter or remain in the United Kingdom,
>
> (b) any grounds on which P should be permitted to enter or remain in the United Kingdom, and
>
> (c) any grounds on which P should not be removed from or required to leave the United Kingdom.
>
> (3) A statement under subsection (2) need not repeat reasons or grounds set out in—
>
> (a) P's protection or human rights claim,
>
> (b) the application mentioned in subsection (1)(b), or
>
> (c) an application to which the decision mentioned in subsection (1)(c) relates.
>
> (6) In this section—
>
> *"human rights claim"* and *"protection claim"* have the same meanings as in Part 5
>
> references to *"grounds"* are to grounds on which an appeal under Part 5 may be brought (see section 84)

Test to be applied on judicial review

50. The appropriate test to be applied in a lawfulness challenge to a cancellation of leave decision by an immigration officer of a similar nature was recently considered in the case of *R (Kanwal) v Secretary of State for the Home Department* [2021] EWHC 2071 (Admin). In that case, the issue of whether the decision raised a precedent fact for the court to determine was considered as a preliminary issue. The judge concluded that a judicial review challenge of the Secretary of State's decision to curtail leave to remain (made under the Immigration Act 1971) on the grounds of working illegally in breach of visa conditions did not raise issues of precedent fact for the court to determine. The appropriate approach to be applied was that set out in the case of *R (Giri) v Secretary of State for the Home Department* [2015] EWCA Civ 784, namely to apply conventional public law or *Wednesbury* principles. Both parties accepted that this is the correct approach in this case.

Irrationality

51. A decision will be unlawful if it is irrational. Put shortly, this means that it was "*so unreasonable that no reasonable authority could have come to it*" (*Wednesbury*, 230 *per* Lord Greene MR) or as Sedley J said in *R v Parliamentary Commissioner for Administration ex p. Balchin* [1996] EWHC 152 (Admin), : '*What the not very apposite*

term "irrationality" generally means in this branch of the law is a decision which does not add up – in which, in other words, there is an error of reasoning which robs the decision of logic.'

Procedural unfairness

52. It was also common ground that the broad requirements of procedural fairness would apply to such immigration decisions. I was referred by both parties to the cases of *Wahid, R (on the application of) v Entry Clearance Officer* [2021] EWCA Civ 346 and *R (on the application of Karagul and others) v Secretary of State for the Home Department* [2019] EWHC 3208 (Admin). At para 31 of the *Wahid* case, Lady Justice Carr stated:

> "The requirement of procedural fairness depends upon the facts and the context in which a decision is taken, including the nature of the legal and administrative system within which the decision is taken."

53. In the same case, Lady Justice Carr referred to the case of *R v SSHD ex parte Doody* [1994] AC 531 (at 560D-G) in which six key points were made by Lord Mustill that have been approved in subsequent cases:

> *"(1) where an Act of Parliament confers an administrative power there is a presumption that it will be exercised in a manner which is fair in all the circumstances.*
>
> *(2) The standards of fairness are not immutable. They may change with the passage of time, both in the general and in their application to decisions of a particular type.*
>
> *(3) The principles of fairness are not to be applied by rote identically in every situation. What fairness demands is dependent on the context of the decision, and this is to be taken into account in all its aspects.*
>
> *(4) An essential feature of the context is the statute which creates the discretion, as regards both its language and the shape of the legal and administrative system within which the decision is taken.*
>
> *(5) Fairness will very often require that a person who may be adversely affected by the decision will have an opportunity to make representations on his own behalf either before the decision is taken with a view to producing a favourable result; or after it is taken, with a view to procuring its modification; or both.*
>
> *(6) Since the person affected usually cannot make worthwhile representations without knowing what factors may weigh against his interests, fairness will very often require that he is informed of the gist of the case which he has to answer*."

54. This approach was also approved in the case of *Karagul*. In *Karagul,* following the decision *Balajigari v SSHD* [2019] EWCA Civ 673, Saini J also reached the following conclusions as to the general principles to be applied in cases involving dishonesty or bad faith:

> "(*1) Where a public authority exercising an administrative power to grant or refuse an application proposes to make a decision that the applicant for some right, benefit or status may have been dishonest in their application or has otherwise acted in bad faith (or disreputably) in relation to the application, common law fairness will generally require at least the following safeguards to be observed. Either the applicant is given a chance in a form of interview to address the claimed wrongdoing, or a form of written "minded to" process, should be followed which allows representations on the specific matter to be made prior to a final decision.*
>
> *(2) Further, a process of internal administrative review of an original negative decision which bars the applicant from submitting new evidence to rebut the finding of wrongdoing is highly likely to be unfair.*
>
> *(3) The need for these common law protections is particularly acute where there has been a decision by the legislature to remove an appeal on the merits to an independent and impartial tribunal"*

55. I note that in the *Karagul* case a process of decision-making which did not include giving applicants for leave to remain in the UK as businesspersons an an opportunity to address a serious allegation of bad faith or dishonesty in their applications and did not allow reliance on additional evidence at the administrative review stage was held to be procedurally unfair.

56. In *Wahid*, these principles were held to apply to an entry clearance decision, in a situation in which a decision to refuse the grant of an entry visa on the grounds of dishonesty for failing to declare a police caution was made without any interview with the applicant or giving him any opportunity to explain or respond to the concerns raised.

Unlawful detention

57. The following principles of the limitations on statutory powers of detention pending removals were set out in the case of *R v Governor of Durham Prison ex p Hardial Singh (*1984) 1WLR 704, and summarized by Dyson LJ in *R (I) v Home Secretary* [2002] EWCA Civ 888 and approved in *R* (*Lumba) v Secretary of State for the Home Department* [2011] UKSC 12:

(1) The Secretary of State must intend to deport the person and can only use the power of detention for that purpose

(2) The detainee may only be detained for a period that is reasonable in all the circumstances

(3) If before expiry of the reasonable period it becomes apparent that Secretary of State will not be able to effect deportation within a reasonable period, he should not seek to exercise power of detention.

4) The Secretary of State should act with reasonable diligence and expedition to effect removal.

58. In this case, it was common ground that the lawfulness of the period of detention pending removal depended on the lawfulness of the cancellation of leave decision and no other breaches of the *Hardial Singh* principles were relied on.

Section 31 of the Senior Courts Act 1981

59. Section 31 of the Senior Courts Act 1981 states:

> *"(2A) the High Court -*
>
> *(a) must refuse to grant relief on an application for judicial review and*
>
> *(b) may not make an award under Section 4 on such an application*
>
> *if it appears to the court to be highly likely that the outcome for the applicant would not have been substantially different if the conduct complained of had not occurred.*
>
> *(2B) The court may disregard the requirements in subsection (2A) (a) and (b) if it considers it appropriate to do so for reasons of exceptional public interest.*
>
> *(2C) If the court grants relief or makes an award in reliance on subsection (2B) the court must certify that the condition in subsection (2B) is satisfied*"

60. This section was applied in the recent judicial review case of *R (De Aquino) v SSHD [2022]* EWHC 2730 on which the Claimant relied in relation to the requirements of procedural unfairness. In that case, the judge concluded that there had been procedural unfairness during an immigration interview by the applicant not being granted the opportunity he requested to provide evidence of his income by being given access to the internet or some other means during his interview. The judge then went on to conclude that on the evidence which the Claimant had subsequently been able to produce, it was highly likely that being given that opportunity at the time would not have made any substantial difference to the Defendant's decision.

Grounds of challenge and submissions

61. As I have outlined above, the Claimant is now challenging the Defendant's decisions on three grounds and I will summarise the parties' submissions on these three grounds of challenge in turn although I recognise that there is a degree of overlap in the submissions relating to the lawfulness of the cancellation decision.

62. Before doing so, I will note for completeness that it has not been submitted that the claim is academic by reason of the cancellation of the removal notice and the subsequent expiry of the Claimant's visitor visa as it is agreed by both parties that there would be ongoing consequences of the decision to cancel his leave in any event. I have been invited by both parties to disregard the fact that the Claimant has remained in the UK, which I have done.

Ground 1(a) – Irrationality in relation to the cancellation decision

63. The Claimant submits that the decision reached by the immigration officers on 1 February 2022 that he was working illegally as a Deliveroo delivery driver was irrational in that there was insufficient cogent evidence upon which they could have reached such a decision.

64. In support of this submission, Mr Gajjar, on behalf of the Claimant, made the following points in relation to the items of evidence relied upon by the officers:

    i) The moped/motorbike – whilst the Claimant accepted that he had a V5 in his name dated 18 November 2021, he claimed that it was not for his own use but that he had been asked to purchase it in his name by Douglas because he was having problems with insurance. The Claimant asserts that no enquiries were made of Douglas and no enquiries were made to establish that the Claimant does not have a UK driving licence or insurance that would allow him to legally use it. Mr Gajjar produced a print-out from the Deliveroo website indicating the list of requirements for a short-term supplier agreement which includes the need for a scooter, bike or car with licence and insurance, a helmet, a smart-phone and a right to work self-employed in the UK.

    ii) That the Claimant has not been prosecuted for any driving offences.

    iii) The motorcycle helmet and boots – the Claimant now accepts that the helmet was his but still says that the boots were not his. In the first statement from Mr Watson, it is recorded that the Claimant said that the boots were not his size. In his second statement, Mr Watson accepted that he did not corroborate that statement. Mr Gajjar also highlighted that no mention is made in the Defendant's statements of the fact that the Claimant stated that the room was shared.

    iv) The Deliveroo app – it is accepted that a Deliveroo working app was found on a phone which was with the Claimant in the bedroom at the time but the screen shots taken by the Defendant did not show that the App was in the Claimant's name or prove that he was using it, which he denied. It was suggested that the officers should have contacted Deliveroo to establish if the Claimant had a worker account with them.

v) The Deliveroo clothing – the Claimant relies on the fact that the clothing was not his size.

vi) The photo of the Claimant in a motorcycle helmet standing next to a motorcycle – this does not include any evidence of Deliveroo clothing or food and the Claimant was not riding the motorcycle. It cannot be relied on as evidence that the Claimant was working illegally as he might have been simply posing by it or using it as a passenger.

65. Mr Gajjar submitted that there should have been a high evidential threshold for reaching a conclusion about working illegally as it amounted to a potential summary offence and constituted grounds for administrative removal. Taken together, Mr Gajjar submitted that there were so many ‘holes’ in the evidence available to the officers that it was irrational or Wednesbury unreasonable for them to reach the conclusion that they did.

66. He also submitted that the officers should have sought to fill some of these evidential gaps or inconsistencies in the Claimant’s account at the time and should have taken steps to corroborate his account. In relation to this final point, Mr Gajjar relied on the cases of *R (on the application of Anjum) v Entry Clearance Officer, Islamabad (entrepreneur – business expansion – fairness generally)* [2017] UKUT 00406 (IAC) and *De Aquino v Secretary of State for the Home Department* [2022] EWHC 2730 in which entry clearance interviews were held to be procedurally unfair in circumstances where inconsistent answers about his business plans were not fully explored (*Anjum*) or the applicant was denied a request to produce further evidence of his income (*De Aquino*).

67. This issue of failing to corroborate the Claimant’s account and/or give him a fair opportunity to respond to the concerns raised overlaps with the submissions raised under procedural fairness.

68. The Defendant’s submissions in response to this Ground can be summarised as follows. Reliance is placed on all the evidence of Officers Chapman and Watson set out above and the numerous inconsistencies between the account given by the Claimant at the time of the interview and the contents of his witness statement and that of Mr Soares filed in support of this claim. In particular, the Defendant highlights that the Claimant accepted at the time of the interview that the mobile phone was his but then asserted in his witness statement that it belonged to Mr Soares. He asserted in his witness statement that the officers did not ask questions and that he did not understand what was being said, whereas the notes show a clear record of questions and answers, with an intrepreter being used.

69. The Defendant does not accept that the officers should have followed up other lines of enquiry or interviewed other residents at the property. The Defendant contends that the evidence found by the officers and the responses given by the Claimant at the time (as recorded in the note of the interview which was signed by the Claimant at the time) was sufficient to justify the decision that was made and should not be regarded as either irrational or Wednesbury unreasonable.

70. Overall, the Defendant contends that the officers were entitled to take the various pieces of evidence together as a whole to rationally and reasonably conclude that the Claimant had been working in breach of the terms of his visitor visa.

Ground 1(b) – Procedural unfairness in relation to the cancellation decision

71. It is right to note that the nature of the Claimant's case under this ground has materially changed since the inception of this claim. In his initial claim, prior to sight of the Defendant's notes, the Claimant claimed that he was under pressure from the immigration officers on 1 February 2022, that he did not fully understand what was being asked of him as he only spoke Portuguese, and he denied showing any Deliveroo account on his phone to the officers. He sought disclosure of the evidence relied on in reaching the cancellation decision.

72. The Claimant now submits that the interview process was procedurally unfair for three main reasons. First, that the Claimant was subject to undue pressure and that the officers were rude and threatening during the interview and he was not given an opportunity to respond to the concerns raised. Secondly, that there is no evidence that he was cautioned as he should have been. Thirdly that the officers did not comprehensively record all the evidence obtained during the interview.

73. In addition, during his oral submissions Mr Gajjar relied on the same points relating to a failure to sufficiently probe and investigate the Claimant's account relied on in relation to the irrationality argument, as evidence of procedural unfairness.

74. I should note that Mr Gajjar confirmed that it is no longer submitted by the Claimant that there was no interpreter (as originally claimed) or that no questions were asked (as originally claimed) or that there was no legal right to search the phone found with the Claimant (as claimed in the Claimant's further Reply) or that the interview took place at 3 a.m. and involved 8 officers (as originally claimed).

75. In support of his submissions, Mr Gajjar, on behalf of the Claimant, made the following points;

    i) The evidence provided by the Defendant in relation to the interview process is still unsatisfactory in that it is plain that not all the exchanges between the officers and the Claimant have been recorded in the note of the question and answers, such as the comment about the motorcycle boots not being his size.

    ii) The new evidence from Mr Watson in his recent statement that the officers established a good relationship with the Claimant and that he was often smiling and joking with them during the interview is not consistent with any of the contemporaneous notes made by the officers which refer to him being evasive and should not be relied on.

    iii) The evidence from the Claimant in his witness statement refers to the officers being rude and threatening and the phrase in the note "you just need to be honest" could indicate that the officers were putting undue pressure on the Claimant.

    iv) The Defendant has still failed to provide any contemporaneous evidence confirming whether the Claimant was cautioned.

76. In relation to the final point, Mr Gajjar referred to the Home Office Guidance on Enforcement interviews 2.0 which includes the following passage:

> "*The following principles must be observed or considered during initial administrative interviews:*
>
> *• a caution should not be given for an initial administrative interview where questioning is intended to establish basic facts such as identity, relationships or ownership of property - but you must identify yourself and your purpose*
>
> *• where initial examination leads to reasonable suspicion that an administrative breach or criminal offence may have been committed by the person, they must be arrested and immediately given the administrative explanation or criminal caution as appropriate and as per instructions given within 'Arrest and Restraint' guidance*"

77. The Defendant's submissions in response to this Ground can be summarised as follows. First, on the basis of the contemporaneous statements of the officers and the note of the interview which was signed by the Claimant at the time and was conducted with the assistance of an interpreter, no credible criticism can be made of the way in which the evidence was obtained. The list of questions and answers does not show any indication that the Claimant did not understand what was being asked or that the officers were being rude or threatening.

78. Second, that the Claimant was given a fair opportunity to respond at the time of the interview before any decision was made in line with the appropriate requirements of procedural fairness in this context and was given a further opportunity to make representations in the RED.0001 decision letter. Ms Brown noted that at that stage the Claimant's initial response was not to dispute the decision, nor to deny that he had been working illegally, but instead to request voluntary removal to Brazil.

79. Ms Brown's skeleton argument was prepared on the basis that the Claimant was cautioned at the start of the interview. Ms Brown drew this to the court's attention during the hearing and explained that her submission had been prepared based on an earlier version of Officer Watson's statement that had not been served. She accepted that there was not in fact any direct evidence on this issue before the court. The issue of whether an administrative caution had been given was not addressed by Ms Chapman in her most recent witness statement of 2 November 2022 and the version of the witness statement from Mr Watson before the court only stated that an administrative caution should have been given by the interviewing officer and should have been recorded on the PRONTO system but did not confirm whether this had been done.

80. Ms Brown submitted that the Claimant had at no stage during the claim suggested that he was not cautioned and that his witness statement also did not provide any evidence on this issue. She highlighted that the Guidance on Enforcement Interviews makes clear that an administrative caution does not need to be given at the start of the questioning and that in any event it is more relevant to any criminal prosecution that might have followed. Overall, she submitted that the lack of direct evidence of a caution being given does not make the evidence of the interview inadmissible and that in fact the Claimant does not dispute what was recorded as being said or that he signed the note at

the time. Overall, Ms Brown submitted that the lack of direct evidence of a caution would not be a sufficient basis to render the decision unfair.

Ground 2 – Unlawfulness of decision to detain

81. The Claimant submitted that if either ground in relation to the cancellation decision is made out, such that the cancellation decision is found to be unlawful, then it must follow that his detention was also unlawful as his removal from the UK on that basis could not have been imminent.

82. Mr Gajjar confirmed that the Claimant was not relying on any other breaches of the *Hardial Singh* principles so that this ground of challenge was entirely dependent on the court's conclusions in relation to the cancellation decision.

83. The Defendant agrees that the lawfulness of the detention depends upon the lawfulness of the cancellation decision as the Defendant did not have any other basis for detaining the Claimant.

Discussion

84. This claim was originally brought on the basis of a failure by the Defendant to disclose a copy of the record of interview or any audio or video recordings of it. The Defendant has now disclosed a full note of the interview with the Claimant and this initial ground of challenge has now been developed into a wider procedural fairness challenge to the decision.

85. In the Claimant's Submissions in reply and his witness statement served in response to the Acknowledgement of Service, additional claims about the nature of the encounter between the Claimant and the immigration officers were made which I have outlined above, most of which are no longer being pursued.

86. As I have already set out, the claim is now put on the basis that the cancellation decision was unlawful because it was either irrational or Wednesbury unreasonable or was vitiated by procedural unfairness and that the Claimant's detention depended on the lawfulness of that cancellation decision.

Ground 1(a) – Irrationality in relation to the cancellation decision

87. In line with the approach taken in the case of *Kanwal*, both Counsel submitted that the Court should apply public law principles in considering the lawfulness of the Defendant's decisions. It was accepted that there was conflicting and inconsistent evidence on many issues that it would not be possible or indeed appropriate for this court to resolve.

88. Instead, it is necessary to look at the totality of the evidence upon which the immigration officers relied at the time and the context in which it came to light. Whilst it is correct that they must not 'jump to conclusions', in my judgment they were allowed to consider all the available evidence, including the plausibility of the responses of the Claimant to the questions he was asked at that time.

89. This was a case which relied on several items of circumstantial evidence. In summary, at the time that they interviewed the Claimant, the officers were aware that they were

entering and searching a house under a warrant which had been secured on the basis of intelligence about illegal working by Brazilian nationals arranged by an individual called Douglas Soares. They found the Claimant in a bedroom in the house. They found the following items of evidence related to working as a delivery driver in close proximity to the Claimant in his bedroom:

i) A V5 registration document for a motorscooter which officer Watson states in his 2nd statement had been found in the back garden of the property.

ii) A motorcycle helmet which the Claimant initially denied was his when asked by the officers but he was then seen wearing in a photograph found on his phone (and he now accepts was his).

iii) A pair of motorcycle boots in the room by his bed which he also said were not his and were not his size.

iv) A pair of motorcycle gloves in the Claimant's bag which he accepted were his but denied were motorcycle gloves.

v) Some Deliveroo clothing which he attempted to hide under his bed clothing (but has since stated was not his but belonged to Viktor Soares or Douglas Aguiar).

vi) A mobile phone which he also attempted to hide on which the officers found a Deliveroo worker's app which had been recently used. At the time of the interview, the Claimant did not deny that the phone was his, but claimed that the app was only on his phone because his friend had broken his phone. He has since given conflicting accounts in his witness statement and further submissions in this claim.

90. The officers interviewed the Claimant at the premises with the benefit of a Portuguese interpreter. They did not consider his responses in relation to his reasons for staying longer in the UK than he had originally stated to be his intention and for being in possession of the V5 showing ownership of a motorscooter and the other 'delivery driver' related items above were plausible. In particular, they noted that he did not have a return ticket or any independent financial means and had no explanation for his extended stay other than that he wished to stay longer to see the snow and that Douglas wanted to take him to a show in London.

91. I do not accept that the immigration officers were not entitled to take into account all the items of evidence found in the Claimant's possession or close vicinity. As I have stated above, it was apparent from the Deliveroo information sheet relied on by Mr Gajjar that one of the requirements for a Deliveroo supplier agreement in your own name, as well as having a scooter or car with a licence and insurance and safety equipment, was proof of your right to work in the UK. It was clear from the phone found with the Claimant that someone had set up such a Deliveroo supplier account to which the Claimant had been given access and the immigration officers were entitled to conclude that the Claimant was carrying out delivery work using that account even if it was not in his own name. Similarly, it was not necessary to establish that the Claimant owned all the items of clothing or equipment he was using to work, particularly in circumstances where, on his own evidence at the time, some equipment, such as the motorcycle and clothing, was being shared with others living in the property.

92. None of the alleged 'gaps' in the evidence alleged by the Claimant were in fact necessary to be filled and it is noteworthy that the additional evidence since provided by the Claimant and his witness, Mr Viktor Soares does not in fact satisfactorily fill any of the alleged gaps highlighted by the Claimant. For example, the fact that Mr Soares has Uber Eats and Deliveroo working accounts and uses Deliveroo or Uber Eats uniform provided by Douglas or that the motorbike boots by the bed being used by the Claimant belonged to "Douglas and Matthew" as stated by the Claimant in his interview at the time, does not mean that he was not using them when he undertook Deliveroo work.

93. The final argument raised by the Claimant in relation to both the irrationality and procedural unfairness grounds was that the officers failed to undertake further investigations at the time which may have corroborated his answers. I do not accept that the officers were under a duty to undertake further investigative inquiries to corroborate the Claimant's account, such as interviewing Douglas Aguiar/Soares ('Douglas'), particularly taking into account that he appears to have been an individual who was named on the warrant as being involved in facilitating illegal working.

94. The Claimant's explanation about Douglas having insurance problems which had led to the Claimant agreeing to become the owner of a motorscooter within 10 days of his arrival in the UK as a visitor did not necessitate further enquiries. The implausible account provided by the Claimant was sufficient to support the officers' conclusions that he was involved in working illegally as a delivery driver rather than simply being in the UK to visit his friends and 'see the snow'.

95. I also have regard to the fact that the Claimant was sent a section 120 notice and given an opportunity to put forward any further evidence in response to the allegation of a breach of his leave. He did not put forward any evidence from Douglas in his section 120 response and Douglas has not provided a witness statement in support of this claim. There is no credible basis upon which the Claimant can assert that the failure to interview Douglas at the time rendered the decision-making process unfair or the Defendant's decision irrational or Wednesbury unreasonable.

96. The only other person named by the Claimant at the time of the interview was Matthew, who the Claimant said was living in the room with him and to whom, along with Douglas, he stated that the motorbike boots found on the floor by his bed belonged. The Claimant has not stated whether Matthew was present at the time or what further evidence was likely to have been forthcoming from Matthew that rendered a failure to interview him unreasonable or procedurally unfair.

97. The only witness statement relied upon by the Claimant in addition to his own, is from Viktor Soares, whose evidence I have already summarised. The difficulty facing the Claimant is that the evidence of Viktor Soares in relation to his ownership of the phone found with the Claimant contradicts the Claimant's own account at the time and does not in any way undermine the evidence relied on by the Defendant. In simple terms, the fact that Viktor Soares has legitimate identification documents and a Deliveroo working app is not in any way inconsistent with the conclusion reached by the officers at the time that the Claimant was using the Deliveroo working app they found on his own phone and was using his own or shared clothing or boots to carry out deliveries. I also note that Viktor makes no mention of Matthew (and whether he is another person

entirely or a name used by Viktor) and does not confirm whether any of the motorcycle clothing found in the room was his rather than the Claimant's.

98. I have carefully considered the two first-instance authorities of *Anjum* and *De Aquino* relied on by Mr Gajjar in relation to this issue, but I do not believe that they assist the Claimant as they relate to very different factual situations. In each case, the court or tribunal reached a conclusion of procedural unfairness in circumstances where the applicant seeking entry or leave to remain in the UK had not been given a fair opportunity to address the concerns held by entry officers about their applications. In *Anjum* this was because of a clear factual misunderstanding during the interview about the nature of the applicant's business plans and in *De Aquino* because of a refusal to allow him to access the internet to produce additional evidence of his earnings.

99. In this case, the Claimant did not ask for an opportunity to provide further evidence which was refused and has not in fact subsequently provided any evidence which undermines the evidence relied on at the time by the immigration officers. In fact, I note that in his witness evidence in support of this claim, the Claimant did not explain the presence of the phone he now claims was not his or why he did not state that the phone found by the officers in the bedroom was not his phone at the time. He also does not explain why he tried to hide the phone and the clothing if they were not being used by him.

100. I consider that on the basis of the totality of the evidence available to them at the time, including the Claimant's implausible responses to their questions and his actions in trying to hide certain items from view, that it was rationale for the officers to reach the conclusion that they did, namely that the Claimant was working illegally in breach of his conditions to enter the UK as a visitor. I also consider that having reached that conclusion it was also rational for the decision to be made to cancel his leave to remain.

101. For these reasons, the ground of irrationality/Wednesbury unreasonableness fails.

Ground 1(b) – Procedural unfairness in relation to the cancellation decision

102. It is plain from all the authorities to which I have been referred that the question of whether there has been procedural fairness or not is an objective question for the court to decide for itself. As I have noted, the Claimant now relies on three reasons in relation to his claim that the decision-making interview process was procedurally unfair. First that the Claimant was subject to undue pressure and a degree of hostility during the interview. Secondly, that there is no evidence that he was cautioned as he should have been. Thirdly, that the officers did not comprehensively record all the evidence obtained during the interview.

103. Before setting out my conclusions in relation to these specific points, it is necessary to address the parties' submissions on the appropriate approach to take to the requirements of procedural fairness in relation to a decision of this nature. It was not contended by the Defendant that the principles of procedural fairness are limited to allegations of deception. The extent of the legal dispute between the parties was whether this case fell squarely within the category of dishonesty or bad faith addressed in the cases of *Balajigari*, *Karagul* and *Wahid* referred to above and if so, whether the necessary procedural safeguards had been met.

104. I accept that in general terms, the '*Doody*' principles would apply in a case of this type. The cases of *Wahid* and *Karagul* relied on by the Claimant related to allegations of dishonesty or bad faith and outlined the approach the court should take to the requirements of procedural fairness in such cases. Mr Gajjar accepted that this case did not involve a specific allegation of dishonesty and I accept the Defendant's submission that this case cannot be regarded as precisely akin to one of using dishonesty or bad faith in a visa application. That said, I am satisfied that the nature of the allegation facing the Claimant was a serious one which was going to have immediate consequences for him in terms of potential detention and removal and was an allegation which could also amount to a summary offence. For these reasons, having regard to the need for procedural fairness to reflect that context, I consider that this was a situation in which the Claimant was entitled to be made aware of the gist of the case which he had to answer and to be given an opportunity by way of an interview to provide an explanation and address the concerns raised by the immigration officers before a decision was made. To this extent, I accept that similar procedural safeguards to those outlined in the *Wahid* and *Karagul* cases would be applicable in this situation.

105. I have reached the conclusion that the requirements for procedural fairness necessary in this context were met in this case. The Claimant was made aware of the nature of the concern raised by the immigration officials, namely that he had been working illegally as a Deliveroo delivery driver. I also consider that the full note of the interview which has now been disclosed shows that the Claimant was asked a series of questions, with the benefit of a Portuguese interpreter and was given a fair opportunity to explain his extended stay in the UK and the presence in his room of all the items of evidence found by the officers. The allegation was not a complicated one and I consider that the form of interview that was undertaken was reasonable in the circumstances. Whilst, as I have already noted, it is apparent that the note is not completely verbatim and the interview was not audio or video-recorded, it was signed by the Claimant as an accurate note (via the interpreter) on the day. I note that the Claimant has not sought to withdraw his agreement to the accuracy of that note in this claim or to put forward any evidence that he says was provided by him to the officers but was not properly recorded in the notes and statements at the time.

106. I do not accept that there is any credible evidence upon which it can be concluded that the Claimant was subject to undue pressure during the interview or that a hostile environment was created. I note that in his section 120 response document sent to the Defendant on 17 February 2022, following receipt of legal advice, no mention was made of any undue pressure being used on 1 February 2022 and the Claimant did not deny working illegally. In the Grounds of Review also dated 17 February 2022, but filed on 18 February 2022, the first mention is made of the Claimant being 'under pressure' but it was expressed in these terms "*him feeling under pressure, confused and him only speaking Portuguese*". No witness statement from the Claimant was filed at that time.

107. By the time the Claimant wrote his witness statement dated 1 April 2022 (prior to sight of the notes of interview) he said '*These officers did not want answers, they did not ask questions, they made decisions, there and then. I pleaded but in vain. They were aggressive, rude, intimidating and threatening. Imagine, 8 officers (or even more than that) waking you up at 3 a.m., searching through everything and threatening prison*'.

108. Given the evolving and sometimes inconsistent nature of the Claimant's evidence, I am not satisfied that his recollection of events at the time he made that witness statement in April 2022 is more reliable than the notes which were signed by him and uploaded onto the PRONTO system at the time which do not reveal any evidence of oppressive questioning. I should also add that I treat with similar caution the most recent statement from officer Watson to the effect that the Claimant was smiling and joking with the officers as this does not appear to have been noted in the records at the time.

109. The most reliable evidence before me in relation to the nature of the interview is the contemporaneous witness evidence made by the immigration officers at the time and the full note of interview which was signed by the Claimant as accurate at the time. I also take into account the contents of the Claimant's section 120 response set out above which was his first opportunity to set out his account after the interview. On the basis of all that evidence, I reject the claim that the officers were rude or threatening or behaved in way so as to render the environment hostile or make the interview process unfair. I have no doubt that the Claimant was upset by the experience of being woken up early in the morning and questioned and felt 'under pressure' to explain himself given the items of evidence found in his vicinity including the V5 and motorbike clothing, but I find no credible evidence on which a claim of undue hostility so as to render the decision-making unfair, can be made out.

110. Secondly, it is said by the Claimant that there is no evidence that he was cautioned as he should have been. I note that the Claimant did not raise any issue in relation to the caution at any stage until his most recent Submissions in reply to the Detailed Grounds dated 20 October 2022 and has not provided any direct evidence to the effect that he was not cautioned. Similarly, the Defendant did not provide any conclusive evidence in relation to the caution at the time of the hearing. The Defendant's evidence at the time of the hearing was only that the Claimant should have been given an administrative caution. For the reasons I have outlined, I have not given the Defendant permission to rely on additional evidence submitted to the court after the end of the hearing. I have therefore proceeded on the basis that there is no conclusive evidence as to whether the Claimant was cautioned and if he was, at what stage in the interview process such a caution was given.

111. The need for an administrative caution arises in the context of the initial questioning leading to suspicion of both an immigration breach and a possible summary offence and it is clear from the Defendant's witness evidence that at the end of the interview he was arrested for that breach under paragraph 17(1) of Schedule 2 to the 1971 Act. It follows from the Home Office Guidance on Enforcement Interviews 2.0 to which I was referred that there was no requirement for the Claimant to be cautioned at the start of the interview, but that he should have been given an administrative caution immediately following his arrest and before any further questioning. It was not submitted by Mr Gajjar that the absence of direct evidence of an administrative caution in this case would, in itself, be sufficient to render the decision-making process in relation to the cancellation of leave decision unfair. Instead, the significance of this issue would appear to be that the lack of evidence as to whether a caution was given should heighten the need to ensure that the overall interview process was fair.

112. I have not been directed by either Counsel to any authorities providing assistance on this issue. I noted however that in the case of *Kanwal* to which I was referred by both Counsel during the hearing, at para 77, Freedman J considered a similar argument based

on alleged breaches of PACE in relation to an investigation into illegal working and was referred to the case of *Elsakhawy (immigration officers: PACE)* [2018] UKUT 86 (IAC). In that case the Upper Tribunal (a Presidential Tribunal) reviewed all the relevant legislative provisions and guidance and confirmed that immigration officers are not required to follow PACE in circumstances where they are making administrative (as opposed to criminal) enquiries and that the PACE provisions relating to exclusion of evidence do not therefore apply in such non-criminal cases.

113. There is no direct contemporaneous evidence available upon which I can reach a proper conclusion as to whether an administrative caution was in fact given in this case. That said, looking at the entire interview process in the round, I am not satisfied that the absence of an administrative caution would be sufficient to render the decision-making process in this case procedurally unfair. The purpose of such an administrative caution is to ensure that the person under investigation is made aware of the nature of the allegation that they are facing and the reason for the questions they are being asked. It is plain on the basis of all the contemporaneous evidence that the Claimant was made aware of the nature of the allegation he was facing at the time and was given an opportunity to respond to this allegation, which he did. There is also no question in this case of the Defendant seeking to rely on an admission of illegal working made by the Claimant in the absence of a caution.

114. I also take into account in reaching this conclusion that the Claimant was given a further opportunity in his response to the section 120 notice to present any relevant evidence having received legal advice and that he failed to raise this issue at that time or to provide any evidence which undermined the evidence available to the officers at the time or to provide a more credible explanation for his actions.

115. For all these reasons, I do not accept any of the submissions made by the Claimant that the requirements for procedural fairness necessary in this context were not met in this case.

116. In case any of the above conclusions in relation to procedural unfairness are wrong, I have also considered whether this is a case to which section 31(2A) of the Senior Courts Act 1981 applies on the grounds that it is highly likely that the outcome for the Claimant would not have been substantially different even if there were any failures in the Defendant's decision-making process on 1 February 2022.

117. The Claimant submits that it is not possible to reach such a conclusion as it is not possible for the court to determine what decision the officers would have reached if they had undertaken further enquiries or if the nature of the questioning had been different. The Defendant did not seek to persuade the court to rely on section 31(2A) as an alternative basis for refusing relief in this claim if her primary submissions on procedural unfairness did not succeed. Taking into account the parties' submissions and having regard to the high threshold for reaching such a conclusion and the need to avoid speculation, I do not consider that this is a case to which section 31(2A) would apply as an alternative basis for refusing relief.

Ground 2 – Unlawfulness of decision to detain

118. As I have concluded that the Defendant's cancellation decision was not irrational or Wednesbury unreasonable and that it was not tainted by procedural unfairness, then it follows that the Claimant's detention was lawful and justified.

119. For these reasons, the challenge under Ground 2 also fails.

Conclusion

120. For the reasons outlined above, this judicial review claim is dismissed.

Costs

121. Following receipt of the draft judgment, both parties made written submissions in relation to costs for which I am grateful. In reaching an appropriate decision I have had regard to CPR 44.2 and the case of *R (on the application of M) v Croydon London Borough Council* [2012] EWCA Civ 595 in which the Court of Appeal analysed the relevant general principles to be taken into account.

122. The Defendant has been successful in defending this case and costs would ordinarily follow the event. However, having regard to all the circumstances of this case, I consider that some adjustment is required to reflect the Defendant's conduct in failing to disclose her full evidence until after the oral permission hearing and her unsuccessful application to adduce further evidence after the hearing.

123. I consider that the appropriate costs orders are that:

i) there should be no order for costs up to service of the Defendant's detailed grounds of defence and evidence on 29 September 2022

ii) the Claimant must pay the Defendant's costs reasonably incurred after 29 September 2022, excluding the costs of the Defendant's application dated 17 November 2022

iii) the Defendant should pay the Claimant's reasonably incurred costs of her application dated 17 November 2022.

iv) all such costs to be assessed by detailed assessment if not agreed.

124. A final order reflecting all the orders set out in this judgment and the above orders in relation to costs has been approved.