



Neutral Citation Number: [2025] EWHC 294 (Admin)

Case No: AC-2023-LON-002120

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

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 12 February 2025

**Before:**

**JUDGE O'CONNOR CP**  
**(sitting as a Judge of the High Court)**

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**Between:**

**The King**  
**on the application of**

**ETX**

**Claimant**

**- and -**

**Secretary of State for the Home Department**

**Defendant**

**Grace Capel** (instructed by **Deighton Pierce Glynn Solicitors**) for the **Claimant**  
**Colin Thomann KC** (instructed by **Government Legal Department**) for the **Defendant**

Hearing date: 5 December 2024  
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**Approved Judgment**

This judgment was handed down remotely at 10 am on 12 February 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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JUDGE O'CONNOR CP

**Judge O'Connor:**

**Introduction**

1. The Claimant is a victim of modern slavery.
2. Modern Slavery is a brutal form of organised crime in which people are treated as commodities and exploited for criminal gain. The true extent of modern slavery in the United Kingdom, and indeed globally, is unknown. Modern slavery, in particular human trafficking, is an international problem and victims may have entered the United Kingdom legally, on forged documentation or clandestinely, or they may be British citizens living in the United Kingdom. Modern slavery takes a number of forms, including sexual exploitation, forced labour and domestic servitude, and victims come from all walks of life. Victims are often unwilling to come forward to law enforcement or public protection agencies, not seeing themselves as victims, or fearing further reprisals from their abusers. In particular, there may be particular social and cultural barriers to men identifying themselves as victims. Victims may also not always be recognised as victims of modern slavery by those who come into contact with them<sup>1</sup>.
3. By this claim, the Claimant seeks to challenge the Defendant's decisions of 14 May 2023, 2 May 2024 and 6 August 2024, made by the Single Competent Authority ("SCA") on the Defendant's behalf, to refuse him re-entry to the National Referral Mechanism ("NRM") to receive support under the Modern Slavery Victim Care Contract ("MSVCC").
4. The original claim was brought as long ago as the 11 July 2023. At a hearing of 17 April 2024, Andrew Kinnier KC granted the Claimant permission to bring a challenge to the decision of 14 May 2023. The grant of permission prompted further consideration and decision-making by the Defendant. This case has subsequently turned into what is colloquially known as a 'rolling judicial review', and, since the grant of permission, the Defendant has made two further decisions refusing the Claimant re-entry into MSVCC support (on 2 May 2024 and 6 August 2024). As a consequence, the Claimant filed Amended Claim Forms and Grounds on 9 May 2024 and 19 September 2024, extending his challenge to include the aforementioned decisions.
5. The Defendant has not sought to object to the admission of the amended Claim Forms and accompanying Amended Grounds and, in all the circumstances, and despite the intrinsic undesirability in judicial review proceedings being transacted by way of rolling review, permission is granted to rely upon the most recent Amended Claim Form and Amended Grounds.
6. The parties have both produced additional evidence post-dating the decision of the 6 August 2024. It is important to observe at this early juncture that the Court's primary task is not to determine for itself whether the Claimant is now entitled to MSVCC support, its task is to determine whether the decisions under challenged are vitiated by public law error.
7. Before leaving this introductory section. I feel bound to observe that I have found it incredibly difficult to navigate the bundles before me. I have been provided with a Core

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<sup>1</sup> Explanatory Note to the Modern Slavery Act 2015

Bundle running to 419 pages, a Supplementary Bundle running to 367 pages, a Further Supplementary Bundle running to 197 pages and an Authorities Bundle consisting of 1269 pages. In addition, numerous additional documents and authorities were handed up at the outset of the hearing. It is not the volume of the bundles that have caused me any difficulty, I am used to handling bundles many times larger in my home jurisdiction, it is the fact that the documents do not appear in any sensible and focused order. To follow documentation through a timeline on any particular issue, I have been required to traverse across all three bundles on multiple occasions. There is simply no logic to how the bundles have been presented. This has proved to be a very time-consuming process. It would no doubt greatly assist the Court if, in the future, greater thought was to be given to the presentation of the Court bundles.

### **The issues**

8. The parties filed an Agreed List of Issues, in the following terms:

“(1) “Did the Defendant irrationally conclude that the Claimant did not require re-entry into the NRM for support under the MSVCC because her obligations under Article 12 ECAT, Article 4 ECHR and/or statutory and policy guidance could be discharged via the Reach In service?”

(2) If so, what remedy should the Court grant the Claimant?”

9. Although the Agreed List of Issues restricted the Claimant’s challenge to one of irrationality, neither party sought to so confine itself at the hearing, nor did the pleaded Grounds of Challenge and Defence do so - the Claimant variously maintaining that, in reaching her decisions, the Defendant failed to take account of relevant matters, took account of irrelevant matters, and misdirected herself as to the terms of her policies.

10. By way of his original claim, the Claimant sought to challenge the lawfulness of aspects of guidance issued by the Defendant, but this claim was not pursued.

11. A further issue arose on the day of the hearing as to what standard of review the Court should. The Claimant contended that the Court must apply an enhanced standard of review, an anxious scrutiny, to the Defendant’s decisions and decision-making process, whereas the Defendant entirely rejects this contention. I have not needed to resolve this dispute because, in my conclusion, the answer to this judicial review application is the same whatever standard of review is applied by the Court.

### **Factual Background**

12. Given the difficulty I have had navigating the bundles, I have largely drawn the passages below from the respective pleadings and skeleton arguments in this case.

13. On 17 May 2022, the Claimant attempted to enter the UK clandestinely and was detained. He claimed asylum the following day. On 2 June 2022, he was referred to the NRM as a potential Victim of Trafficking and, on 10 June 2022, he received a positive Reasonable Grounds decision.

14. A Rule 35 health assessment was conducted on 20 June 2022. It is recorded therein that the Claimant had been captured in June 2019, whilst on his way to Europe. He claimed to have been detained for two months, and those capturing him had “*tortured many people other than him.*” Since then, the Claimant had been depressed and experienced flashbacks and nightmares. The author of the rule 35 report concludes that the Claimant had, “*significant mental distress*”.
15. On 22 June 2022, the Claimant obtained a medical report from Dr Galappathie, a Consultant Forensic Psychiatrist. This was subsequently served on the Defendant. The underlying assessment was conducted on 16 June. Dr Galappathie diagnosed moderate depression, anxiety, and symptoms of Post Traumatic Stress Disorder (“PTSD”). It was observed that the Claimant had a high number of risk factors of self-harm and suicide, but did not have any current thoughts, and the doctor opined that the Claimant should be released from detention, and that he would benefit from antidepressants, and psychological therapy. Dr Galappathie recommended two years therapy, provided at one hour per week. The doctor also considered that the Claimant would need stable accommodation “*and not fear being removed from the UK*” in order to meaningfully engage in therapy. A recommendation was made that the Claimant be afforded an opportunity to take part in education.
16. On 28 June 2022, the Claimant was granted bail by the First-tier Tribunal, and he was released from detention on 12 July, and moved into hotel accommodation provided by the Home Office.
17. The Salvation Army (“TSA”), operate services under the MSVCC on behalf of the Defendant. An Initial Risk Assessment was completed by TSA on 4 July 2022, whilst the Claimant was still in detention. The assessment recorded the Claimant’s care requirements as encompassing outreach support, advice and guidance on entitlements, and access to emotional and psychological support.
18. On 21 July 2022, an MSVCC Preliminary Risk Assessment was completed by TSA. Therein a support worker identified the Claimant’s mental health issues and envisaged the provision of services encompassing assistance registering with a GP and a reference to the Helen Bamber Foundation or Freedom from Torture, with a view to the Claimant receiving counselling. The Claimant confirmed at this time that he was happy to engage with such support.
19. On the same date, and what appears to be just 1 hour and 9 minutes after the MSVCC Preliminary Risk Assessment was created, the TSA conducted a further MSVCC Needs Based Assessment. It is not clear whether the same person conducted both assessments on 21 July, because the name of the support worker undertaking the assessment is redacted on both documents. This assessment records the Claimant as stating that he feels he does not require support with his mental health issues, or access to counselling. An interpreter was required, and provided, to enable these assessments to be undertaken.
20. On 15 August 2022, a Conclusive Grounds decision was made by the Defendant confirming the Claimant to be a victim of modern slavery – “*forced labour in Libya*”. It appears that the Claimant was not provided with this decision until 20 September 2022.

21. Thereafter, on the 6 October 2022, a Recovery Needs Assessment form was completed by the Defendant. There is no reference in this document to the Claimant's mental health or other related matters identified in Dr Galappathie's first report. The assessment considered, *inter alia*, the need for support by the Claimant in contacting his immigration solicitor, as well the funding of the Claimant's costs of travel to ESOL classes. On 4 November 2022, a further Risk Assessment was conducted by the TSA in conjunction with the Claimant's exit from MSVCC Support. No reference is made therein to the Claimant's mental health position.
22. Moving forward in time, on 16 March 2023, Dr Galappathie provided a second psychiatric report in relation to the Claimant, maintaining the treatment recommendations previously made. The Claimant's PTSD was noted to have slightly improved since the first report in June 2022 because, it is said, the Claimant had been released from detention. The Claimant's depression is recorded as having slightly deteriorated.
23. The Claimant's lawyers subsequently sent an email to the Defendant on 29 March 2023, challenging the lawfulness of the Defendant's decision in November 2022 to terminate the Claimant's NRM support, and requesting the Defendant withdraw this decision, reinstate NRM financial support, increase the rate being paid to the Claimant, and confirm support would continue until a lawful decision is made on whether the Claimant would be given 'temporary permission to stay'. On the same date, the Claimant's lawyers made a request for the TSA to reassess the Claimant. This letter draws attention to the fact that, at the time of exiting NRM support, the Claimant "*needed support to access mental health services.*"
24. The TSA subsequently undertook an assessment of the Claimant and, on 5 April 2023, made a request to the Home Office that the Claimant be re-entered into MSVCC support. The Defendant made a decision to refuse the Claimant re-entry to MSVCC support on 14 May 2023 – the first decision under challenge.
25. TSA's database records that the Claimant was offered Reach-In support on 15 May 2023, and declined this offer, stating that he only required financial support.
26. Following further pre-action correspondence between 30 May 2023 and 19 June 2023, the Claimant issued the instant proceedings, on 4 July. The Defendant subsequently filed its Acknowledgement of Service on 15 August. During this period, the Claimant was being considered for removal to Rwanda.
27. Pursuant to an application for interim relief made in the instant proceedings, the TSA conducted a re-assessment of the Claimant on 25 April 2024 and submitted a fresh request for the Claimant's re-entry into MSVCC support. The Claimant's lawyers were not notified in advance of this re-assessment.
28. The Defendant subsequently made a decision to refuse the Claimant re-entry to MSVCC support on 2 May 2024 – the second decision under challenge. A Reach-In placement was created, and the requisite Reach-In form was booked to be completed on 8 May 2024.
29. On 8 May 2024, the Defendant also issued a further Notice of Intent advising the Claimant that he may be removed to Rwanda.

30. On 6 August 2024, the Defendant made a further decision refusing the Claimant re-entry to MSVCC support – the third decision under challenge.
31. The Claimant was granted refugee status on 6 August, but was not informed of this until 15 August, when he was notified that he had been granted 5 years leave to remain as a refugee. He was also informed on the same occasion that he must vacate his accommodation at the Holiday Inn on 11 September 2024, when his placement in asylum accommodation would end.
32. The Claimant subsequently made a homelessness application to the Local Authority, and, on 29 August 2024, the Local Authority concluded that the Claimant was homeless and required accommodation.
33. Records of Reach-In contact indicate that, after being contacted by the Claimant who explained that he was being evicted, the Claimant’s support worker noted on 10 September 2024, that:

“Client stated he will be homeless tomorrow and Home Office has given the client leave to remain which is a 5-year visa. Client is on his way to the council to apply for housing. I explained if he needs anything he can let me know. Client understood.”
34. The Claimant was evicted from his accommodation on 11 September and became street homeless. This continued until 25 September, when the Claimant was provided with accommodation in a homeless hostel. On 15 October, the Claimant was moved to short term accommodation. The Claimant has been in receipt of Universal Credit since 19 October 2024.
35. The Claimant has recently commissioned a further medical report, dated 20 November 2024, jointly authored by Dr Hannah Walters (clinical psychologist) and Dr Sarah Heke (consultant clinical psychologist). The report is based on a 1.5-hour online assessment conducted on 25 October 2024. Therein the Claimant is diagnosed with complex-PTSD, moderate Major Depressive Disorder and anxiety. The authors recommend that the Claimant receives trauma-focused therapy, as well as support to access education and community organisations. They opined that he would require ongoing and practical support from a support worker.

### **Legal Framework – a summary**

36. The European Convention on Action against Trafficking in Human Beings 2005 (“**ECAT**”) is the principal international measure designed to combat trafficking in human beings. The United Kingdom signed the Convention in March 2007 and ratified it on 17 December 2008, but it has not been incorporated into UK law. Whilst individuals cannot enforce its provisions directly against the Government, insofar as the SSHD has adopted parts of the Convention as her own policy in guidance, she must follow that guidance unless there is good reason not to do so: R (EM) v SSHD [2018] EWCA Civ 1070, at [19]. Article 12 of ECAT requires parties to provide necessary assistance to victims in their physical, psychological, and social recovery, including subsistence, accommodation, counselling, and information.

37. Analogous provision was made under Article 11 of the EU Anti-Trafficking Directive (Directive 2011/36/EU), prior to the UK's withdrawal from the European Union at the end of the transition period. The scope of this duty was examined by the Court of Appeal in R (EM) v SSHD. Jackson LJ held at [65]:

“The general duty on the State under Arts. 11(2) and (5) of the Directive is to provide assistance and support to a VOT [Victims of Trafficking] by mechanisms that at least offer a subsistence standard of living through the provision of appropriate and safe accommodation, material assistance, necessary medical treatment, including psychological assistance, counselling and information, and translation and interpretation services.”

### ***Modern Slavery Victim Care Contract***

38. The NRM provides the machinery for determining whether someone is a potential or confirmed victim of trafficking and for ensuring that they receive the appropriate support. Support is delivered to Potential Victims in England by the Salvation Army as prime contractor (and by its subcontracted support providers) pursuant to the Victim Care Contract (“VCC”) made between the Home Office and the Salvation Army in 2015. In January 2021, a new contract started which is now referred to as the MSVCC.
39. The operation of these contracts is by the process set out in Schedule 2 of the VCC, which materially provides:
- a. Section 1, upon entry into the NRM, for a needs-based assessment to be undertaken, to ascertain the immediate welfare needs of the VOT and their dependents.
  - b. Section 2, for provision to be made for accommodation to be provided on a self-catered accommodation basis and, in exceptional circumstances, where individuals are found not capable of preparing their own food due to disability, debilitating illness or ongoing treatment, on a catered basis.
  - c. Section 3, *inter alia*, for obligations as regards the provision of outreach services, to be provided to all service users, including the Initial and Detailed Needs Based Assessment, Emergency Medical Treatment, Material Assistance, Subsistence Assistance, Translation and Interpretation Services, Information and Signposting, Advocacy for Specialist Services, assistance with Access to Education for Minors, and assistance with Additional Requirements.
  - d. Section 13, for “*transport service*” to be offered to individuals across England and Wales for scheduled and ad hoc journeys to a non-exhaustive list of locations for appointments linked to their needs.
40. TSA is required to administer “*Subsistence Payments*” which may be payable to potential VOTs. The rate and eligibility to receive Subsistence Payments is determined by reference to criteria specified in guidance issued by the Defendant.

### *The Statutory Guidance*

41. The SSHD has issued statutory guidance (“the Guidance”) to regulate the provision of support for Victims of Trafficking under section 49 of the 2015 Act, entitled “*Modern Slavery: Statutory Guidance for England and Wales (under s49 of the Modern Slavery Act 2015) and Non-Statutory Guidance for Scotland and Northern Ireland*”.
42. The Guidance is regularly refreshed, and I have been provided with copies of the Guidance issued in May 2024 [v3.9] and October 2024 [v3.11]. The Guidance provides for a wide range of measures under the general label of the NRM. Decisions under the NRM are made by the Single Competent Authority. References in this judgment are to the May version of the Guidance, unless otherwise stated.
43. The Guidance is supplemented by the Recovery Needs Assessment guidance (“RNA Guidance”). I have been provided with copies of the RNA Guidance issued in March 2023 [v7] and October 2024 [v8].
44. Financial support: “... *is intended to meet the potential victim’s weekly essential living needs during this period and assist with their social, psychological and physical recovery*” [15.49 of the Guidance]. The financial support policy in place since March 2023 takes the form of a case by-case assessment both of individual living needs (via the Essential Living Rate), and of the recovery payment (the Recovery Rate) to be made for potential and confirmed victims of modern slavery.
45. With respect to Additional Recovery Costs Support, the Guidance provides:

“15.216. Potential and confirmed victims should request support with additional recovery costs via their support worker, who will seek approval from the Single Competent Authority where necessary. Potential and confirmed victims may be eligible to receive additional support with recovery costs where:

  - The cost is to facilitate access to a provision or service that is related to, and will assist with, recovery from their modern slavery experience that led to their positive Reasonable or Conclusive Grounds decision but is not already met by the victim’s recovery needs financial support payment.
  - What is being requested is not already available to them through other support structures, including MSVCC support, or wider government support they are entitled to. A non-exhaustive list of alternative support provision includes:
    - o Access to work support and budgeting advances through DWP to facilitate access to work.
    - o Counselling provided via the NHS, or NHS funding to travel to medical appointments.
    - o Legal aid.



- What is being requested is not already provided by the accommodation provider, if the victim is living in MSVCC, Asylum, or other accommodation provided by a Local Authority.”
46. A non-exhaustive list of additional recovery costs the Home Office may fund via the MSVCC is set out in [15.215] of the Guidance. These include.
- “• Private counselling when recommended by a GP or medical professional, not financially benefitting from the recommendation, and where it is unavailable through the NHS or cannot be accessed via the NHS within a reasonable timeframe. A decision on whether counselling can be accessed, via the NHS, within a reasonable timeframe, will be made on a case-by-case basis, taking into account the individual’s specific circumstances. ...
- Travel to recovery related appointments with law enforcement agencies, solicitors, courts, asylum interviews and other recovery related appointments where outside of the three-mile radius safe walking distance (i.e., a six-mile roundtrip).
  - Where necessary to facilitate access to recovery related services:
    - o ESOL course registration fees.
    - o Specialist GP medical reports and letters.
    - o Document translation and interpretation.”
47. Paragraph 15.164 onwards of the Guidance summarises the position regarding assistance with travel to appointments and includes, non-exhaustively, travel to law enforcement agencies, solicitors, the courts, asylum interviews, medical institutions, and schools.
48. Guidance on support to be provided following a conclusive determination by the relevant competent authority (the Move-On Period) is set out at [8.27]. As in this Claimant’s case, this incorporates a guaranteed period, of at least 45 days, from receipt of a conclusive grounds decision, during which support is provided.

### **Decision and Reasons**

49. Before embarking on an analysis of the Defendant’s decisions, and the decision-making process, it is prudent to recall that the Defendant found the Claimant to be a refugee on the 6 August 2024 and, shortly thereafter, granted the Claimant five years leave to remain. This grant of leave permits the Claimant to access public funds.
50. The Claimant accepts that, as a consequence, this resolves his need for funding via the MSVCC for transport to access education and assistance to liaise with his immigration solicitors. The Claimant maintains, however, that he still requires access to mental health treatment, and support worker assistance - both in order to access such treatment

and to provide assistance with his housing and education needs. As a consequence, the Claimant further maintains that this judicial review has not become academic as a consequence of the grant of leave to remain.

51. When originally drawing up this decision, I attempted to consider each of the Defendant's challenged decisions in order. This is how the Claimant approached his submissions. However, this resulted in a somewhat disjointed consideration of the issues and, upon further reflection, I have decided to structure my consideration as to the lawfulness of the decisions, thematically, along the lines of the areas of support the Claimant contends require, or required, his re-entry into the MSVCC service.

***The need for access to and/or assistance in accessing, mental health services***

52. The first theme I address is the Claimant's contention that he requires an MSVCC support worker to assist him in gaining access to mental health treatment- a recovery need.
53. As far as the Claimant's discrete challenges trammel on this theme, it is broadly contended that:
- (i) The Defendant materially failed to take account of, or engage with, the evidence provided by Dr Galappathie, and other material evidence.
  - (ii) The Defendant's decision to exit the Claimant from the NRM and terminate MSVCC support was undertaken pursuant to a flawed RNA process, and without considering his ongoing need for support with his psychological recovery.
  - (iii) The Defendant irrationally refused the Claimant's request for re-entry into the NRM on the basis that access to Reach-In support was adequate to meet his trafficking related recovery needs.
  - (iv) The Defendant failed to monitor the assistance provided by her contractors under the Reach-In Service and was, therefore, not in a position to ascertain whether access to that service was sufficient to discharge her obligations to the Claimant. The Claimant was previously referred to the service on the 8 May 2024, and the service failed to provide for the Claimant's needs.
54. The Claimant's need to access mental health treatment, which has at various times in the papers also been referred to as "*therapy services*," has been an issue throughout the Claimant's time in the United Kingdom.
55. MSVCC support was terminated on 4 November 2022, without the Claimant having received any mental health treatment. By this time, the Defendant had received evidence as to the Claimant's mental health needs in the form of Dr Galappathie's first report of 22 June 2022, and there was an acknowledgement in the Initial Risk Assessment of 4 July 2022, that the Claimant required access to emotional and psychological support and that he was a "*potential suicide risk*". In addition, the MSVCC Preliminary Risk Assessment of 21 July 2022 indicated that the Claimant should be referred to counselling with the Helen Bamber Foundation or Freedom from Torture.

56. Although the Claimant contends that the Defendant's decision to terminate MSVCC support was undertaken pursuant to a flawed RNA process, and without considering his ongoing need for support with his psychological recovery, I observe that the decision to terminate the Claimant's MSVCC support was not challenged at the time it was made, and it has not been made the subject of formal challenge in the instant proceedings, which focus on the Defendant's re-entry decisions of 14 May 2023, 2 May 2024 and 6 August 2024.
57. Moving on, tracing through the history, post termination of MSVCC support, of the Claimant's need for mental health treatment and for assistance in accessing this treatment, I turn initially to Dr Galappathie's second report, dated 16 March 2023. At [55] thereof, Dr Galappathie observes that the Claimant, "*does not appear to have received the support he requires to engage with the treatment he requires.*" At [56] and [57], the doctor opines that "[the Claimant] *will benefit from the provision of an experienced therapist whom he can form a good therapeutic relationship with. ...given the severity of his symptoms and the trauma that he requires he will require at least 2 years of weekly hour long therapy sessions to meaningfully recover.*"
58. In an email to the TSA support worker of 29 March 2023, requesting a Recovery Needs Assessment, the Claimant's lawyers, *inter alia*, assert that the Claimant requires "*support to access mental health services... [and the Claimant] has also been assessed as requiring, given the severity of his [PTSD] symptoms and the trauma, at least 2 years of weekly hour-long therapy sessions to meaningfully recover.*"
59. On 5 April 2023, TSA requested the Claimant's re-entry into MSVCC support. Despite the Court having before it a Core Bundle, a Supplementary Bundle and a Further Supplementary Bundle, this document was not provided to the Court (by the Defendant) until the morning of the substantive judicial review hearing. The re-entry assessment is stated to have taken place on the 3 April 2023. It identifies the "*Referrer*" as being the Claimant's solicitors. The assessment is drawn, it would appear, after a conversation with the Claimant. It focuses on financial matters. It specifically records that the Claimant has "*No health issues*" and current concerns regarding the Claimant's mental health are recorded as, "*Struggles to sleep at night.*"
60. The conclusion to refuse the Claimant re-entry into MSVCC support was communicated to the Claimant's lawyers by TSA on 14 May 2023, by email. The Claimant has never been provided with a copy of the underlying decision taken by the Defendant, and it is not before the Court.
61. The email from the TSA identifies the rationale for such refusal in the following terms:

"They are unable to identify ongoing needs which require support on behalf of the MSVCC.

As [the Claimant] can access other support, i.e., alternative Home Office support or Reach-In, they state there is no need for re-entry to aid in recovery from their exploitative experience."
62. The Claimant's lawyers wrote to the Defendant, by way of a letter before claim, on 30 May 2023, seeking to better understand the rationale for the decision of 14 May. In particular, they sought to understand by which mechanism it was being suggested the

Claimant's needs would be met. In a further letter of 19 June 2023, the Claimant's lawyers said, *inter alia*, "despite us requesting that the Claimant's needs be met by these other means, you have failed to state how his needs will be met and to put relevant support in place." It is to be recalled at this stage that the Claimant was unaware of the terms of the TSA's request for his re-entry into MSVCC support.

63. There is nothing in the TSA re-entry request, or the short summary of the decision of 14 May 2023, which provides support for the contention that the decision-maker considered the plethora of medical evidence and needs assessments that were available to the Defendant by 14 May, many pertinent parts of which were highlighted in the Claimant's lawyer's 16 page letter of 29 March 2023. The terms of the TSA's re-entry request lead me to conclude that this evidence was not taken into account by the TSA. If it was taken into account then, for the TSA to record as it did in relation to the Claimant's health was, in my view, perverse.
64. I now move on to the second decision under challenge i.e. that of the 2 May 2024, which post-dates the filing of the instant proceedings.
65. The Claimant filled in an NRM questionnaire (dated March 2024), which attached the first two reports from Dr Galappathie of 22 June 2022 and 16 March 2023, and a witness statement from the Claimant of 22 March 2024. Therein, the Claimant, *inter alia*, disclosed that he had registered with a GP. He also identified his medical conditions, confirmed that he had never been offered relevant medical treatment for these conditions, and further stated that, because he had no access to a support worker, he has not been able to access health services.
66. On 28 March 2024, the Defendant refused the Claimant temporary permission to stay in the UK. Having considered, amongst other things, Dr Galappathie's second medical report, the Defendant, *inter alia*, reasoned as follows:

"...having considered all the available evidence, it has been decided to refuse the application because there is no supporting information to indicate that your client is currently receiving treatment by a medical professional or has recently been offered any counselling or other therapeutic treatment to assist your client's recovery from physical or psychological harm as a victim of modern slavery and human trafficking. Consequently, it is not necessary for your client to be provided with VTS for a medical reason."
67. On 4 April 2024, the Claimant's lawyers wrote to the Defendant in the following terms:

"[23]. The SSHD has refused to re-enter the Claimant into MSVCC support to receive this therapy (and other support), which is the subject of ongoing judicial review proceedings. Moreover, and without prejudice to the argument that he requires full MSVCC support, repeated requests have been made by the Claimant via this firm to provide the Claimant with 'Reach-in' Support, which the Defendant has failed to action. This has meant that he is unable to access the treatment he requires, or any treatment.

[24]. It is unlawful and irrational for the Defendant to rely on his own unlawful failure to provide the Claimant with access to the treatment he requires to assist his recovery and to refuse him VTS leave on the basis that he is not receiving such support.”

68. On 25 April, the Claimant was contacted by TSA and invited to provide details of his updated recovery needs. TSA subsequently made a request for the Claimant to be re-entered into MSVCC support. In the re-entry request, TSA answered “yes” to the Claimant requiring, “*Advocacy for Specialist Services, including Counselling.*”
69. In her decision of 2 May 2024, refusing the Claimant re-entry to MSVCC support, the Defendant, *inter alia*, said as follows:

“Re-entry can be considered where the [Claimant] has Modern Slavery/exploitation related health needs including mental health however it will not be considered where reach-in support can cover and or LA /NHS or asylum support is more appropriate.

Response: It would be expected that the [Claimant] would use reach-in services for referral/access NHS support independently in the first instance. If we are provided with evidence that this is not suitable, we could consider re-entry. Further, in the RNA that was submitted to us, Health and Mental health needs were not identified. There is no evidence that the need for counselling is related to their Modern Slavery experience. If they do this then we can consider re-entry. We would need to know what services have been explored/signposted to. Reach-In support includes a provision of information and signposting to medical treatment, mental health services and specialist counselling. We would need to know if they were accessed, what the outcome was and why they were not suitable.”

70. There is no reference to Dr Galappathie’s reports within this decision, as Mr Thomann KC candidly accepted. More significantly, the rationale deployed by the Defendant in her 2 May 2024 decision fails to engage with, and is in contradiction to, the evidence provided in Dr Galappathie’s reports that (i) the Claimant’s mental health needs do have a nexus to his modern slavery experience, and (ii) the Claimant required mental health therapy and support to access those services. The latter was also being something identified in the NRM questionnaire of March 2024. For this reason, I find the decision of 2 May 2024 to be legally flawed.
71. It is worthy of observation at this juncture that under the heading “*Access to Health and Mental Health Services*” at page 19 of the Defendant’s Recovery Needs Assessment Guidance, it is stated that “*The support worker will defer to the advice of trained medical professionals for both diagnosis and recommended treatment.*”
72. A Reach-In placement was subsequently offered to the Claimant on 8 May 2024, this being the same date that the Claimant was sent further Notice of Intent by the Defendant advising him that he may be removed to Rwanda.

73. On 16 May 2024, a TSA support worker completed a Modern Slavery Victim Care Contract (“MSVCC”) Full Risk Assessment. Under the heading “Risk Identified,” one of the rows reads “[the Claimant] is self-harming.” Under the heading, “Risk-Reducing Strategy/Actions” the response is recorded as, “SSW can contact the GP regarding the client’s mental health.” SSW appears to be a reference to a support worker.
74. Immediately following the above passages, under the heading “Risk Safety Management Plan” the following is recorded:
- “What actions will staff take to mitigate the risk? None
- What actions will the service user take to mitigate the risk? To remain hopeful, and liaise with immigration solicitor around Asylum application”.
75. On 31 May 2024, as part of a support plan, the Claimant was contacted. The record of the conversation is as follows:
- “Called client and I asked if everything is fine and the client stated yes. I explained if there is anything else he can contact me. Client understood. Client wants an update on his asylum claim. I explained I will contact his solicitor and explain if there are any update. Client understood.”
76. On 4 July 2024, the Claimant was again contacted by a support worker. The note of the conversation records, “Called client and asked if everything is fine at the moment and the client stated yes.”
77. On 24 July 2024, the Claimant’s lawyers served a further report from Dr Galappathie on the Defendant. The report is dated 14 June 2024 and based on a video assessment undertaken on 30 April 2024.
78. Dr Galappathie records the Claimant as feeling, “very anxious and worried that he is going to be arrested and detained.” He concluded that the Claimant’s condition had deteriorated (at [43]), that the worsening of his depression was likely due to the heightened level of fear about being sent to Rwanda [44], and that his anxiety [51] and PTSD had also worsened [58].
79. By way of treatment needs, Dr Galappathie observed that the Claimant stated that, “he does not know how to access therapy” [24] and that, at [33]:
- “He said he would like to take part in psychological therapy and recover from his mental health problems but has not felt able to look into this yet as he needs a support worker to refer him for therapy.”
80. The conclusion of Dr Galappathie at [63] is in line with his previous assessment:
- “He has not yet had the stability and support that he needs in order to access and benefit from the specialist treatment that he requires in order to recover from his current mental health

problems. In my opinion, the trauma of his trafficking experience and his current symptoms have not yet been treated or resolved. In my opinion, the current threat of being re-detained and removed to Rwanda is significantly worsening his mental health and preventing him from being able to recover.”

At [79], the following is said:

“In my opinion, [the Claimant] probably had a previous lack of understanding about how to access therapy. He has now had time in the UK but has not had a support worker who has helped him to help him navigate the healthcare system in order to access NHS therapy and has not had financial support to access private therapy. He is aware that psychological therapy services are available within the UK through the NHS and privately, however in my opinion there are still significant barriers to him being able to access therapy in that he does not feel safe and secure as he fears being removed to Rwanda. In my opinion, he is unlikely to be able to access, engage and benefit from therapy whilst he continues to fear being removed to Rwanda in order to engage and benefit from treatment. In my opinion, his lack of engagement to date does not indicate that he is feigning or malingering his mental health symptoms but is in keeping with him being despondent and unable to focus on therapy given his fear of being removed to Rwanda. It is notable that he is now motivated to engage and take part in treatment. In my opinion he will benefit from having a support worker allocated to refer him for suitable psychological therapy and ensure that he is provided relevant support whilst he takes part in therapy that he requires...he is now motivated to take part in therapy and would benefit from allocation of a support worker to assist him with this.”

And [85] reads:

“...he has not had a support worker to help him access the treatment and therapy that he requires. His mental health has instead gradually worsened given the uncertainty that he has face.”

81. Dr Galappathie opined, at [87], that:

“...[I]t is likely that he will probably require a longer period of treatment to recover given the uncertainty that he has faced, the chronic nature of his mental symptoms and the long period of time he has not had the stability required in order to engage and benefit from treatment. It is therefore likely that his symptoms have now become deeply entrenched, hard to treat and he will require treatment for a longer period of time in order to recover.”

82. Turning then finally to the most recent of the decisions under challenge i.e. that of the 6 August 2024. The rationale therein for refusing re-entry into MSVCC support is recorded in a document headed "*Recovery Needs Support Casework decision minute*" ("the Minute"). The Minute records the "*Date of Submission*" as being the 25 April 2024, and it states that five documents were considered:

- The Salvation Army Re-entry to MSVCC Support form dated 25 April 2024
- The Re-entry to MSVCC Support outcome email dated 26 April 2024
- The Re-entry to MSVCC Support review outcome email dated 2 May 2024
- The letter from Deighton Pierce Glynn (the Claimant's public law lawyers) dated 24 July 2024, and
- Home Office Records accessed on 6 August 2024.

83. The rationale for the Defendant's decision in relation to the Claimant's access to mental health services is recorded in the Minute in the following terms:

"A decision to refuse re-entry into MSVCC support has been made as it is considered that the needs raised can be met outside the MSVCC main service, such as via Reach in support and no significant changes to your circumstances have been evidenced to warrant re-entry.

...

The SCA also considered the previous review outcome, wherein it was noted that re-entry is required to help you access mental health services and a Support Worker who can assist with contacting your legal representatives. In addition, the SCA considered a letter from Deighton Pierce Glynn with extracts of a medical report by Dr Galappathie, which states: "*He is not taking part in any counselling or therapy. He told me that he does not know how to access therapy. He does not have anyone to support him.*" And the following: "*he outlines that he would need a support worker to refer him for therapy.*"

The SCA previously advised that "*it was expected that you would use Reach-in services for referrals to NHS mental health support in the first instance*" ...

The extracts of a medical report by Dr Galappathie, do indicate your need for assistance to access mental health services however it does not necessitate re-entry into MSVCC support as Reach-in services can provide access to a Support Worker and signposting to mental health services to address your needs. Additionally, it has not been evidenced that Reach-In is unsuitable or unavailable to you currently. The process by which you can access Reach-in support is outlined below.



Confirmed victims who exited the main service on or after the 04/01/2021 with a positive Conclusive Grounds decision will be eligible for Reach-in support from the MSVCC Prime Contractor (see the Reach-in guidance in chapter 8 of MS guidance for full details on what Reach In provides) ...

Confirmed victims can self-present to access post-exit Reach-in support as required or can be referred to the service by any professional by contacting The Salvation Army's Modern Slavery Victim Care Contract team directly."

84. The Claimant contends that the decision of 6 August 2024 is legally flawed as a consequence of the decision-makers failure to take account of the entirety of the evidence provided by Dr Galappathie in his report of 14 June. Mr Thomann KC accepts that the Defendant did not consider Dr Galappathie's full report but contends that: (i) she was not invited to do so, (ii) she, nevertheless, considered the decision on the appropriate evidential basis and, in any event, (iii) relief should not be granted.
85. The two aspects of the report alighted upon by the Claimant as being of significance, are (i) Dr Galappathie's opinion that there had been a recent worsening of the Claimant's symptoms of PTSD and depression, including Dr Galappathie's identification that the Claimant had started experiencing thoughts that "*life was not worth living*", and (ii) the "*evidence that the Claimant required Support Worker assistance, over and above information and signposting, to help him access specialist therapy and to provide him support to maintain his engagement.*"
86. Dr Galappathie's report of 14 June 2024 was sent to the Defendant under cover of a letter of 24 July 2024. The letter of 24 July cites from six passages in Dr Galappathie's report, including passages detailing Dr Galappathie's opinion that the Claimant's condition had deteriorated. Reference is also made within those passages to the fact that "*the current threat of [the Claimant] being re-detained and removed to Rwanda is significantly worsening his mental health and preventing him from being able to recover*" Paragraph 79 of Dr Galappathie's report (quoted above) is set out extensively in the covering letter.
87. The Claimant's solicitors (and Counsel) are very experienced in this area and, as one would expect of such an experienced firm, the letter of 24 July properly draws attention the most significant features of Dr Galappathie's report. Whilst, undoubtedly, the Defendant ought to have had cognisance of the entirety of the report, having considered the report for myself I do not accept that there was a failure by the Defendant to have regard to those aspects of the report which had a material bearing on the issue of whether the Claimant should be re-entered in to MSVCC support to assist him in gaining access to mental health treatment.
88. I observe at this juncture that whilst, before this Court, the Defendant has been keen to emphasise that she does not accept the medical evidence provided by the Claimant, on my reading of the decision of 6 August, the Defendant proceeded to make the decision on the basis that the Claimant did need, "*assistance to access mental health services*". I also remind myself, again, of the Defendant's RNA Guidance, which states that, "*The support worker will defer to the advice of trained medical professionals for both diagnosis and recommended treatment.*"

89. In her decision, the Defendant answered the Claimant's contended need for support to access mental health treatment by, (i) identifying that the Claimant had previously been informed that he should use Reach-In services *for referrals* to NHS mental health services in the first instance, and (ii) further observing that Reach-In services could "*provide access to a Support Worker and signposting to mental health services to address [the Claimant's] needs*".
90. Such an approach is entirely consistent with the approach identified in the MSVCC Guidance which provides that: "*If the support requested does not need to be met by the MSVCC, for example, if it is being met by other services, or the support cannot be provided by the MSVCC, or if Reach-in Support is appropriate, the victim will not re-enter MSVCC support*" [8.35].
91. The Claimant contends before this Court that Reach-In support was not capable of providing the assistance required by him on 6 August and, therefore, that the Defendant's conclusion that it was appropriate for him to rely on this service, as opposed to being re-entered into MSVCC support, was irrational.
92. The Detailed Grounds of Defence mount a multi-pronged response to the Claimant's challenge, asserting that; (i) the Claimant has at all times been registered with a GP, (ii) it is not an irrational response to conclude that any request for signposting or advocacy by the Claimant could be met in principle by way of Reach-In support, (iii) the Claimant has at all times been able to contact his support worker and confirm whether he requires assistance in making medical appointments by way of Reach-In support; and, (iv) following an exchange on 14 May 2023, the Claimant *declined* Reach-In support offered to him in the event that he should experience any difficulties and/or require assistance in accessing medical support.
93. As I have identified above, the decision letter itself indicates, by way of reference to the earlier decision to refuse re-entry into the MSVCC, that the Claimant should use Reach-In services *for referrals* to NHS mental health services in the first instance.
94. I observe at this juncture that the exchange referred to at [92 (iv)] above, took place 15 months prior to the 6 August decision, and must be read in the context of the indication in later medical evidence that the Claimant's mental health had deteriorated in the meantime. In any event, the exchange referred to therein is recorded in a TSA Client Details Report (for the date, 15 May 2023), and the Claimant is not recorded as having declined support to access medical services. As I read this note, the Claimant enquired as to what sort of support Reach-in could provide. It is said that the Claimant was informed of the types of support available and that he declined that support. There is nothing in the note which suggests that the Claimant was informed that Reach-In support could provide assistance with accessing mental health services.
95. In reality, the disjunct between the parties on the issue of the availability of support, revolves around the rationality of the Defendant's conclusion that Reach-In support, including support from a support worker, could provide the necessary assistance to the Claimant to enable him to access the mental health treatment he requires.
96. The core submission from the Claimant is that Reach-In support only offers the possibility of signposting and information in relation to mental health services, whereas

he requires support or assistance to access the services, not just signposting or information.

97. The Defendant's Detailed Grounds of Defence assert, at [115], that "*any request for signposting and/or advocacy could be met in principle by way of Reach-In support*", and, at [109] of her skeleton argument drawn for the hearing, the Defendant asserts that, "*any such assistance by way of signposting or facilitating the making of contact [for trauma focused therapy] is reasonably provided by way of Reach in support available through the claimant's support worker*". (my emphasis).
98. It is at this point that I must keep the Court's role in this matter firmly in mind. Judicial Review proceedings are not normally the appropriate forum to resolve factual disputes. Nevertheless, it is helpful to consider the material evidence that has been put before the Court.
99. I turn first to the MSVCC Guidance. Post-NRM services are referred to at [8.30-8.33] of the Guidance, which read as follows:

“8.30. Reach-in support is a post-NRM service that offers transitional support to confirmed victims once they have exited the main Modern Slavery Victim Care Contract support service.

8.31. Victims who exit the main service on or after the 4th January 2021 with positive Conclusive Grounds decision will be eligible for reach-in support from MSVCC Prime Contractor. The aim of reach-in, which is separate to the core Modern Slavery Victim Care Contract support service, is to help support a smooth and sustainable transition for the confirmed victim after exit.

8.32. Following exit from the main service, the assistance that can be provided through reach-in will include provision of information and signposting in respect of the following services:

**Medical treatment;**

Translation and interpretation;

Assistance at appropriate stages of criminal proceedings against offenders;

Education (whether for Dependent School Age Children or otherwise);

Employment (including preparation for work);

Housing;

Mental health services;

Substance dependency (detoxification) services;

Sexual health services;

Specialist counselling; ...

Resettlement support;

ESOL classes;

Support with submitting claims e.g. asylum, benefits, or legal.

8.33. Confirmed victims can self-present to access post-exit reach-in support as required, or can be referred to the service by any professional by contacting The Salvation Army's Modern Slavery Victim Care Contract team directly [by telephone] or by sending the completed referral form found on the Salvation Army website... by email... The Modern Slavery Victim Care Contract will liaise with individual providers responsible for the Reach-In Support Service in the areas outlined above." (my underlining)

100. Further guidance regarding access to mental health services is detailed within the RNA Guidance. As I have alluded to on a number of occasions already, page 18 of the RNA Guidance states, in relation to those within MSVCC support, that, "*The support worker should help the victim to access support services which can assist in meeting their individual recovery needs*".
101. At page 19 of the RNA Guidance, it is said that:

"Health needs arising from a victim's modern slavery experiences will generally be considered to have been met outside of the MSVCC where the support worker has:

  - ensured that the victim has been referred to the appropriate medical services for any treatment required
  - ensured that the victim has been made aware of their ongoing entitlements to NHS treatments and how to access services."
102. These two guidance documents disclose a delineation between the assistance that is available within the MSVCC support structure – i.e. assistance with accessing support services and/or referrals to appropriate medical services, and that which is generally available outside of the MSVCC support structure through Reach-In support – i.e. the provision of information and signposting regarding mental health services.
103. Whilst it is clear that [8.32] of the Guidance does not provide an exhaustive list of assistance that is available via the Reach-In service, it is plain that, at least in so far as accessing Mental Health services is concerned, it is "*signposting and information*" that would be made available. It may be, of course, that the practical realities on the ground do not elide with the delineation in the levels of assistance identified through an analysis of the guidance documents, however, given how the Defendant puts her case before this Court and in the decision notices, I would have anticipated that if this were case it would have been clearly identified through witness evidence adduced by the Defendant or, at the very least, via some other form of documentation put before the Court.
104. The Defendant has produced a lengthy witness statement, dated 29 November 2024 from Nicholas Collins, the Recovery Needs Operational Lead at the NRM Single Competent Authority. This statement does not make comment on the extent of Reach-In support and, in particular, it makes no observation as to whether, despite the apparent limitations on such support identified in the guidance documents, its scope is such that the Claimant could obtain support/assistance in accessing the mental health treatment via the Reach -In service.

105. In my conclusion, having proceeded in the decision of 6 August to consider the exercise of discretion to re-enter the Claimant into MSVCC support on the basis that the Claimant requires assistance to access Mental Health services, and taken full account of the fact that it is clear that [8.32] of the Guidance is not intended to be an exhaustive list of the services offered by Reach-In support, on the evidence available to this Court it was not a rational response for the Defendant to refuse to exercise her discretion in the Claimant's favour in reliance on the availability of alternative (Reach-In) support that is not capable of meeting that the Claimant's identified need.
106. Mr Thomann KC points to the breadth of the Defendant's discretion to re-enter an individual into MSVCC support and I accept the discretion is broad, but it must be exercised on a principled, lawful, and evidenced basis.
107. Mr Thomann KC also points to the fact that a support worker contacted the Claimant by telephone on numerous occasions, and the Claimant either did not answer the telephone or did not identify a need for assistance accessing mental health treatment during such telephone calls. Again, this is not an answer to the Claimant's case. Nothing in the decision letter refers to these telephone calls as being matters the Defendant treated as being relevant to the exercise of her discretion, and neither do they provide evidence that, had the Claimant referred to the need for assistance in accessing mental health treatment during the calls, this would have been actioned by a Reach-In service, other than for the service to provide "*signposting and information*".
108. I further conclude that it is no answer for the Defendant to say that the Claimant was granted refugee status on 6 August and he, therefore, now has access to the full range of NHS services. I note that the 6 August decision makes no reference to the Claimant's grant of status, but accepts, given the terms of the Defendant's letter of 15 August, that it was something that the decision maker had in mind (although it is said that it was not known to the decision maker on 6 August "*whether the Claimant would be granted recourse to public funds*"). The issue for the Claimant has not been whether he was entitled to mental health treatment, the issue has been his inability to access that treatment without support. The Defendant has not put anything before the Court in support of a contention that this issue has been ameliorated by the Claimant having been granted leave to enter. I note the evidence from Dr Heke and Dr Waters that the Claimant had a need for mental health treatment as recently as November 2024, some 4 ½ months after he was granted leave, and that, in their opinion, the Claimant's failure to access psychological therapy to date was as a consequence of "*barriers to access*" and that he would require "*assistance to overcome this*" [5.6.1].
109. In all the circumstances, I conclude that the Defendant's decision of 6 August is irrational.

### ***Recovery Rate financial support***

110. Turning to the second of the themes that require consideration.
111. The Claimant submits that the Defendant erred in law in her decisions when refusing his request for re-entry into the NRM to enable provision of Recovery Rate financial support, to support the cost of his transport to ESOL classes.

112. Whilst the Claimant no longer requires entry into the NRM for the payment of travel costs because he is in receipt of Universal Credit, he nevertheless seeks relief by way of “*back payments of MSVCC recovery support from the original request for re-entry until 19 September 2024*”. To this extent it is submitted that the issue is not academic.
113. The MSVCC Guidance identifies that financial support, “... *is intended to meet the potential victim’s weekly essential living needs during this period and assist with their social, psychological and physical recovery*” [15.49]. The financial support policy in place since March 2023 takes the form of a case by-case assessment both of individual living needs (via the Essential Living Rate), and of the recovery payment (the Recovery Rate).
114. With respect to Additional Recovery Costs Support, the Guidance provides:
- “15.216. Potential and confirmed victims should request support with additional recovery costs via their support worker, who will seek approval from the Single Competent Authority where necessary. Potential and confirmed victims may be eligible to receive additional support with recovery costs where:
- The cost is to facilitate access to a provision or service that is related to, and will assist with, recovery from their modern slavery experience that led to their positive Reasonable or Conclusive Grounds decision but is not already met by the victim’s recovery needs financial support payment.
  - What is being requested is not already available to them through other support structures, including MSVCC support, or wider government support they are entitled to. A non-exhaustive list of alternative support provision includes:
    - o Access to work support and budgeting advances through DWP to facilitate access to work.
    - o Counselling provided via the NHS, or NHS funding to travel to medical appointments.
    - o Legal aid.
  - What is being requested is not already provided by the accommodation provider, if the victim is living in MSVCC, Asylum, or other accommodation provided by a Local Authority.”
115. A non-exhaustive list of additional recovery costs the Defendant can fund via the MSVCC is set out in [15.215]. These include:
- “• Private counselling when recommended by a GP or medical professional, not financially benefitting from the recommendation, and where it is unavailable through the NHS or cannot be accessed via the NHS within a reasonable

timeframe. A decision on whether counselling can be accessed, via the NHS, within a reasonable timeframe, will be made on a case-by-case basis, taking into account the individual's specific circumstances. ...

- Travel to recovery related appointments with law enforcement agencies, solicitors, courts, asylum interviews and other recovery related appointments where outside of the three-mile radius safe walking distance (i.e., a six-mile roundtrip).
- Where necessary to facilitate access to recovery related services:
  - o ESOL course registration fees.
  - o Specialist GP medical reports and letters.
  - o Document translation and interpretation.”

116. Paragraph 15.164 onwards of the Guidance summarises the provision of assistance with “*Travel to Appointments,*” and includes, non-exhaustively, travel to law enforcement agencies, solicitors, the courts, asylum interviews, medical institutions, and schools. Paragraph 15.167 identifies that: “*The Home Office may fund, or part fund, travel for other journeys through the Modern Slavery Victim Care Contract as necessary to support the victim’s recovery.*”
117. I turn next to the nature of the requests made, and the Defendant’s responses. The first request for re-entry letter from the Claimant’s lawyers to the Defendant, of 29 March 2023, identified that the Claimant was “*enrolled in college*”, that he attended three days per week, that the college was a 1 hour journey from the Claimant’s accommodation, that the cost of travel was £3.50 per day, but that the Claimant had no funds for transport and, therefore, walked to college - a four hour round trip. The letter identified these transport costs as a recovery need.
118. In the re-entry assessment form dated 3 April 2023, TSA requested the Claimant’s re-entry into MSVCC support. The re-entry request materially reads:
- “[The Claimant] said that he is only receiving £8 weekly as financial support from the home office. The client explained that he normally gets travel card from the college for transportation, but they sometimes don’t give the cards out and as a result he then has to use his own money that he received from home office. [The Claimant] said that this has its own problems. At times as a result he cannot even buy/afford water for himself. ...”
119. Whilst the fact that the Defendant refused re-entry is known, the rationale for this conclusion is limited to that set in the email of 14 May 2023, which, relevantly, reads, “*As [the Claimant] can access other support, i.e., alternative Home Office support ... they state there is no need for re-entry to aid in recovery from their exploitative experience.*”
120. The subsequent TSA request for re-entry, created on 24 April 2024, materially states:

“The [Claimant] is currently receiving £8 per week in asylum payments. The [Claimant] states that he has fallen into financial hardship and had to stop attending his college English classes, as he was unable to afford public transport. The [Claimant] would like more money in order to buy food and drink, and to also pay for transport to attend English classes and to visit his friends.”

121. The response of 2 May 2024, reads as follows on this issue:

“The request was refused as the [the Claimant] is currently supported by asylum support with accommodation and financial support and is not at risk of destitution. A supported asylum seeker can request additional support under Section 96(2) of the Immigration and Asylum Act 1999 (ASF2), and it is recommended this is explored. ...

[the Claimant’s]’s access to education

Re-entry form stated that access to ESOL was stopped due to [the Claimant] being unable to afford public transport. Re-entry form states [the Claimant] is in asylum accommodation and in receipt of asylum support of £8 per week. Home Office records show payments of £8.86 per week.

Response: The RNA Recovery Rate does not cover transport to ESOL so re-entry to RNA would not be appropriate if only for this reason. Travel to ESOL may be provided (subject to approval, travel distance etc) if we are actually funding the class itself. We have no evidence of this. The [Claimant] states they were attending ESOL classes 3x a week, paying a minimum of £10.50 per week. We would need to know how they managed this previously, whether online classes have been explored and whether there are there any ESOL classes nearer to him. All this can be explored via the Reach-In service. Alternatively, ASF2 could be used. ...”

122. The decision letter of 6 August replicates the decision of 2 May 2024 on this issue, reading as follows:

“In making the decision, the SCA considered the Re-entry into MSVCC support form, wherein it states that support is required as: “The [Claimant] would like more money in order to buy food and drink, and to also pay for transport to attend English classes and to visit his friends”.

You are being supported through asylum support for your accommodation and financial needs. Therefore, it is considered that you are not at risk of destitution. The SCA previously advised that Recovery Rate payments provided via the Recovery Needs Assessment process “*does not cover transport to ESOL so re-entry to RNA would not be appropriate if only for this*



*reason. Travel to ESOL may be provided (subject to approval, travel distance etc) if we are funding the class itself... We have no evidence of this” and recommended “as a supported asylum seeker you be eligible to request additional support under Section 96(2) of the Immigration and Asylum Act 1999 (ASF2)” and this recommendation still applies.”*

123. The Defendant now accepts that the cost of travel to ESOL classes is in principle capable of being a need for the purposes of MSVCC support. In any event, in my conclusion it is clear from the MSVCC Guidance (see above), that there is a discretion to fund, through MSVCC support, the cost of such travel. In addition, there is no requirement for the ESOL classes to be funded through the MSVCC support, or by the Home Office generally, before funding for travel thereto can be made available through MSVCC support. The conclusions to the contrary in the decisions of 2 May and 6 August are unlawful.
124. However, the Defendant has also provided an alternative rationale in both decisions for refusing to fund the aforementioned transport costs, advising the Claimant in both decisions of his ability to apply for additional support under s.96(2) of the Immigration and Asylum Act 1999 (“1999 Act”).
125. The Claimant contends that any application for additional support made pursuant to s.96(2) of the 1999 Act would have been refused based on the availability of MSVCC Recovery Rate financial support and that, in any event, the Claimant was not capable of applying for this additional support without assistance from an MSVCC Support Worker.
126. In my conclusion, it is entirely rational for the Defendant to have regard to the availability of the avenue of alternative financial support that may have been available to the Claimant had he made an application under s.96(2) of the 1999 Act. Financial assistance of the sort required by the Claimant is not precluded by section 96(2) and, although such support is only provided by the Defendant where the “*circumstances of a particular case are exceptional*”, I do not accept the Claimant’s contention that the existence of the possibility of support being provided under the MSVCC would be bound to lead to a refusal of any application under section 96(2). Indeed, given that the Defendant is the ultimate provider of such financial assistance in either scenario, significant weight needs to be given to the Defendant’s view as to the appropriate route to obtain such funding, i.e., as between section 96(2) and re-entry into MSVCC support.
127. The Claimant further contends that he was not capable of applying for financial support under s.96(2), without assistance from an MSVCC Support Worker, who would be able to provide assistance beyond “*information and signposting*”.
128. I observe, in this regard, that unlike for the provision of mental health services and medical treatment, where the Reach-In service is said by the Guidance to provide “*information and signposting*,” the Guidance identifies that the Reach-In service provides “*support*” with submitting claims. There is a non-exhaustive list of the types of claims that support is provided for, but these include: “*asylum, benefits, or legal.*”
129. In addition, I note from the link in the “*Applications for Additional Support Guidance*” document, that Migrant Help provide free assistance in making such applications, and

this assistance can be obtained using a freephone telephone number and is provided in the Claimant's first language.

130. In all the circumstances, I do not accept that the decisions under challenge are irrational in their consideration and conclusions in response to the Claimant's request for re-entry into the NRM to enable provision of Recovery Rate financial support to fund his transport costs to the ESOL classes.

### ***Human Rights breach***

131. By way of relief, the Claimant seeks damages for just satisfaction of breaches of the Claimant's human rights pursuant to section 8 of the Human Rights Act 1998.

132. The submission that the Defendant breached the Claimant's Article 4 ECHR rights is pleaded in only the most basic of terms in the Amended Statement of Facts and Grounds:

“[94] ...By failing to lawfully assess and arrange provision of support for the Claimant's trafficking-related recovery needs, the Defendant breached Article 12 ECAT, her statutory and policy guidance and Article 4 ECHR”.

133. The Claimant's skeleton argument is drawn in similar terms:

“[4] The Claimant submits that the Defendant's failure to re-enter him into the NRM breaches her obligations under Article 12 of the Council of Europe Convention on Action against Human Trafficking (“ECAT”) and Article 4 of the European Convention on Human Rights (“ECHR”), implemented in domestic law through statutory guidance issued under section 49 of the Modern Slavery Act 2015 (“MSA 2015”) and policy guidance.”

134. The Defendant responds by making the point that the claim for damages and just satisfaction is not developed in the grounds and is disputed.

135. Article 4 ECHR provides in so far as material:

“1. No one shall be held in slavery or servitude.

2. No one shall be required to perform forced or compulsory labour. ...”

136. It is not in dispute that human trafficking, as defined by Article 4(a) of ECAT, falls within the scope of Article 4 ECHR. As observed in R (TDT (Vietnam)) v Secretary of State for the Home Department [2018] EWCA Civ 1395, [2018] 1 WLR 4922, at [17], it imposes positive obligations on the State which may be classified under three headings:

“(a) a general duty to implement measures to combat trafficking  
– ' **the systems duty** ' ;

- (b) a duty to take steps to protect individual victims of trafficking – ' **the protection duty** ' (sometimes called 'the operational duty');
- (c) a duty to investigate situations of potential trafficking – ' **the investigation duty** ' (sometimes called 'the procedural duty')”

137. Article 12 ECAT reads:

“Assistance to Victims -

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

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

2. Each Party shall take due account of the victim's safety and protection needs.

3. In addition, each Party shall provide necessary medical or other assistance to victims lawfully resident within its territory who do not have adequate resources and need such help ...”  
(emphasis added)

138. The assistance provided for under paragraphs 1 and 2 of Article 12 ECAT is less extensive than that under paragraph 3, (EOG v SSHD v The Aire Centre [2022] EWCA Civ 307).

139. ECAT is not incorporated into UK law. The Article 12 ECAT obligations have, though, been incorporated into the Guidance. The Guidance does not give private law rights to individuals (EOG at [25]), but it has consistently been accepted by the Defendant that the NRM should comply with ECAT.

140. As regards the level of support to be provided, I accept the Defendant’s submission that the obligation under Article 12 ECAT is one of “*assisting*” recovery. The level of ‘trafficking support’ was examined by this Court in R (ZV) v SSHD [2018] EWHC 2725, at [119 to 124], who described the support envisaged under Article 12 ECAT as:

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“Modest levels of assistance [comprising of] measures, for example, capable of ensuring the subsistence and to emergency medical support, rather than to the more sophisticated support treatment for which Ms Knight contends.”

141. Although not expressly pleaded, I assume that the Claimant contends that any failure by the Defendant to observe the requirements of Article 12 ECAT, must violate Article 4 ECHR. I proceed on the further assumption that, on the facts of this case, the Claimant contends that the Defendant has breached Article 12 ECAT, and, therefore, the Article 4 operational duty, by failing to provide him with the mental health treatment he required to assist in his recovery as a victim of trafficking.
142. I do not accept the proposition that all breaches of Article 12 ECAT must violate an individual’s rights under Article 4 ECHR. Whether the Article 12 ECAT obligations should be read into Article 4 ECHR is far from settled, as is also the position regarding the extent of the Defendant’s obligations under the Article 4 ECHR operational duty. Before the Supreme Court in MS (Pakistan) v SSHD [2020] UKSC 9, it was submitted that: *“the positive obligations in article 4... follow the same pattern as the positive obligations in articles 2 and 3. It is wrong to enlarge them by reference to the obligations in ECAT, as the appellant and the interveners seek to do”* [16]. At [27] the Court found that: *“it is not necessary for us to decide whether all the obligations in ECAT are incorporated into the state’s positive obligations under article 4 in order to decide this appeal.”*. Thus, the issue remains at large.
143. Given the absence of substantive submissions addressing this issue and, in particular, whether the Article 12 ECAT obligations should be read into Article 4 ECHR, I conclude that it is not an issue that it is appropriate for me to conclude upon.
144. In any event, even if this is a route that the Claimant can legitimately plough, the next stage of my consideration would necessarily involve scrutiny of the factual position, which is the subject of considerable dispute between the parties.
145. For example, the medical evidence provided by the Claimant is not agreed by the Defendant (see [19] of the Defendant’s skeleton argument). In addition, the Defendant relies upon numerous conversations between the Support Worker and the Claimant, in which the Claimant either indicated he did not require support, or declined such support, and the Defendant also points to Risk Assessments where it is said the Claimant responded in a like manner. The Claimant contends that he lacked an understanding of the conversations with the Support Worker, because he required an interpreter and was not provided with one.
146. Judicial reviews are not procedurally suited to an intensive investigation of factual disputes. The Defendant’s evidence is generally accepted when there is a dispute of fact. In the present proceedings, I am not able to investigate and resolve the important disputed issues of fact, which would ultimately require resolution in the intensively fact sensitive analysis of whether there been a breach of Article 4 ECHR on the facts of this particular case.
147. For these reasons, I find that the Claimant has not made his case in this Court, that the Defendant has breached his rights under Article 4 ECHR.

## **Decision**

148. In summary, I have concluded above that the decisions of 14 May 2023 [63 above], 2 May 2024 [70] and 6 August 2024 [109] are flawed by legal error in their consideration of the Claimant's need for re-entry into MSVCC support to meet his recovery need to access mental health services.
149. This application Judicial Review is, therefore, allowed on this limited basis.

## **Relief**

150. Upon circulating a copy of the draft judgment to the parties, I invited submissions on the terms of the relief, absent agreement as to such terms.
151. The parties were unable to reach an agreement on three issues: (i) whether the Court should make a declaration that the decision of 6 August is unlawful, (ii) whether the Court should make a mandatory order requiring the Defendant to re-enter the Claimant into the MSVCC, and (iii) whether the Court should order the Defendant to make a payment on account of £65000, as a proportion of the Claimant's costs.
152. Taking these issues in turn, I agree with the Defendant that a declaration is unnecessary, given that the decision of 6 August has been quashed, for the reasons provided above.
153. The most contentious of the issues going to relief, is whether I should make a mandatory order requiring the Defendant to forthwith re-enter the Claimant into MSVCC support to facilitate his access to medical treatment for his mental health. Once again, I agree with the Defendant on this issue.
154. In my draft decision, I said as follows:

“It seems to me, however, that caution should be exercised when making of such an order. First, as I have indicated above, there are unresolved factual disputes relevant to this issue. Second, an assessment of the Claimant's needs is required to be made holistically in light of his up-to-date circumstances. There is a fine balance to be struck between the role of the Court and the role of an SCA, who are the expert body in the making such assessments.

It may be a more prudent approach for the Claimant to be provided with a short period within which to provide up-to-date evidence to the SCA/TSA, and for that period to also be used to make a formal request to the Reach-In service for assistance accessing mental health services, in terms drawn up by the Claimant's public law solicitors. Albeit there is an absence of information to this effect before me, it may also be prudent for the Defendant to give due thought to providing the Claimant with any necessary assistance on an exceptional basis outside of the MSVCC support structure.”

155. The Claimant reminds the Court that all three of Defendant's decisions have been found to be unlawful and, in particular, observes that, by this judgment, the Defendant irrationally refused to exercise her discretion to re-enter the Claimant into MSVCC support based on the availability of Reach-In support.
156. In reaching my conclusion as to the lawfulness of the 6 August decision, and given the terms of the Guidance, I pointed to the lack of evidential foundation for the Defendant's contention as to the operational scope of the Reach-In service. In the Defendant's proposed Draft Order, it is suggested that I make an Order that the Defendant "*shall provide the Claimant with such assistance as is assessed to be necessary, exercising her powers to provide Reach-in support outside the principal NRM support structure, in accessing mental health services.*" Operationally, this order will bring to a head the ability of the Reach-In service to provide the assistance that the Claimant requires to enable him to access appropriate mental health services. If, despite the terms of the Guidance, as a matter of practical reality the service now provides for the Claimant's needs in this regard, this will clearly be relevant to the determination of whether the Claimant should be re-entered into MSVCC support in order to obtain such assistance.
157. Furthermore, the last decision by the SCA was taken approximately 6 months ago. The SCA have not had an opportunity to consider the most up to date medical evidence (including, the evidence from Dr Heke and Dr Walters and any additional evidence the Claimant may now seek to rely upon). In my view, it would be wrong for this Court to be the primary decision maker in relation to such evidence. I add, however, that thus far there has not been any principled reason provided by the Defendant as to why the medical evidence produced by the Claimant should not be agreed.
158. The Claimant finally points to the lengthy delay in the Claimant receiving the treatment he requires, and the impact this delay has had on his mental health. The attached Order provides for expedited consideration of this matter by the Defendant (the SCA).
159. I, finally, turn to the issue of whether I should order the Defendant to make a payment on account in respect of the Claimant's costs. The Claimant suggests a sum of £65,000, which is said to 'conservatively' represent just over 50% of his costs.
160. The Claimant should have lodged a schedule of costs with the Court (CPR 44 PD paragraphs 9.5(2) and 9.5(4)(b)) but has not done so. In my conclusion, it would not be appropriate to order the Defendant to make a payment on account at this stage, absent the provision of such a schedule. In such circumstances, I consider it appropriate to adopt the terms of the order made by the Court of Appeal in R (SO) v Thanet DC [2023] EWCA Civ 526.

*Judge O'Connor*

Sitting as a judge of the High Court