



Neutral Citation Number: [2025] EWHC 447 (Admin)

Case No: AC-2023-LON-001189

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 03/03/2025

Before:

MR JUSTICE MACDONALD

Between:

THE KING on the Application of AAM
- and -
SECRETARY OF STATE FOR THE HOME
DEPARTMENT

Claimant

Defendant

Ms Miranda Butler (instructed by **Duncan Lewis**) for the **Claimant**
Mr Jack Anderson (instructed by **Government Legal Department**) for the **Defendant**

Hearing dates: 30 January 2025

Approved Judgment

This judgment was handed down remotely at 10.30am on 5 March 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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MR JUSTICE MACDONALD

Mr Justice MacDonald:

INTRODUCTION

1. This is an application for judicial review of the decision of the Defendant, the Secretary of State for the Home Department, made on 12 January 2023, that there are no reasonable grounds to conclude that the Claimant, a Syrian national who arrived in the United Kingdom by way of a small boat on 16 May 2022, is the victim of slavery or human trafficking. On 10 October 2023, Bright J gave permission on the papers to apply for judicial review. An anonymity order remains in force.
2. By his amended Statement of Facts and Grounds, the Claimant relies on a single ground of review. Namely, that in making her decision the Defendant misdirected herself as to the meaning of the term “exploitation” in Art 4 of the European Convention on Action against Trafficking (hereafter “ECAT”) and the term “exploited” in r.3(6)(d) of the Slavery and Human Trafficking (Definition of Victim) Regulations 2022, SI 877 (hereafter the “2022 Regulations”). Within this context, the Claimant asserts that his claim raises an important point of principle, namely whether abduction, detention and torture for the purpose of extracting a ransom for release (hereafter “kidnap for ransom”) constitutes exploitation for the purposes of ECAT and the 2022 Regulations.
3. By her Skeleton Argument, Ms Miranda Butler of counsel contends on behalf of the Claimant that the Defendant took an unduly restrictive approach to the question of whether there were reasonable grounds for believing that the Claimant was a victim of trafficking in two ways. First, in failing to conclude that the Claimant, having been subjected to kidnap within the meaning of r.3(1)(a) and r.3(5)(a)(ii) and thereafter subjected to force, threats or deception designed to induce him to enable the kidnappers to acquire a benefit, namely ransom from his family, was exploited for the purposes of Art 4 of ECAT and r.3(6)(d)(iii) of the 2022 Regulations. Second, in failing to recognise that, having been subjected to kidnap within the meaning of r.3(1)(a) and r.3(5)(a)(ii) and thereafter subjected to force, threats or deception designed to induce him to provide services, namely asking his family to pay money to the kidnappers, the Claimant was exploited for the purposes of Art 4 of ECAT and r.3(6)(d)(i) of the 2022 Regulations.
4. By her amended Detailed Grounds of Defence, the Defendant concedes that the Claimant was subjected to serious ill-treatment in Libya, including kidnap for the purposes of ransom or extortion, but contends that she directed herself correctly that the Defendant’s treatment did not amount to exploitation within the meaning of Art 4 of ECAT and r.3(6)(d) of the 2022 Regulations and, accordingly, the Defendant was correct in deciding that there were no reasonable grounds to conclude the Claimant had been the victim of slavery or human trafficking. In his Skeleton Argument, on behalf of the Defendant, Mr Jack Anderson of counsel takes a pleading point on the absence of reference to r.3(6)(d)(iii) and r.3(6)(d)(i) of the 2022 Regulations in the Claimant’s Amended Statement of Facts and Grounds. However, I am satisfied that each of these provisions inevitably falls for consideration by the court in circumstances where the Claimant’s pleaded ground is that, in making her decision, the Defendant misdirected herself as to the meaning of the term “exploitation” and r.3 of the 2022 Regulations is the secondary legislation that defines “exploitation” for the purposes of identifying victims of human trafficking.

5. In determining this claim, I have been assisted by the provision of a trial bundle containing the pleadings, a statement from the Claimant and expert reports from Dr Aidan McQuade, former Director of Anti-Slavery International and a consultant on human rights, and Dr Nuwan Galappathie, Consultant Forensic Psychiatrist. I have also been provided with a bundle of authorities. Finally, I have had the benefit of written and oral submissions from Ms Butler and Mr Anderson.
6. Given the nature of the issues raised in this case, I reserved judgment and now set out my decision and the reasons for it.

BACKGROUND

7. The Claimant was born on 27 January 2001 and is now aged 24. On 31 July 2021, the Claimant left Syria, he says under threat of forcible conscription into the Syrian Army and in circumstances where he did not wish to fight his fellow citizens or participate in war crimes being committed by the Syrian Army, and travelled to Libya. The Claimant contends that had he not fled Syria, he would have been imprisoned, and likely tortured and killed, for refusing conscription.
8. The Claimant asserts that whilst in Libya, and travelling between Benghazi and Tripoli, he was abducted along with other Syrian nationals by armed men and held in captivity for a month between August and September 2021. There is a detailed account of the Claimant's ordeal set out in his statement dated 17 November 2022. I consider the following elements of that account, which are broadly accepted by the Defendant for the purposes of this hearing, to be relevant to the determination of this claim:
 - i) The Claimant was taken captive with others by unidentified armed men whilst travelling between Benghazi to Tripoli in August 2021 and his money and phone were taken. Thereafter, the captives were driven through the desert for 24 hours. During the journey the Claimant heard gunshots, was not fed and was given only a small amount of water. On occasion the kidnappers would beat the captives with their weapons.
 - ii) The Claimant was detained with other captives in a jail in Sabha, about 600 kilometres south of Tripoli. The kidnappers began to beat them and took their passports. They were told that they would not be released until each paid \$7,000 in ransom. One of the captives was very badly beaten after he voiced objection.
 - iii) In his second week in captivity the Claimant spoke directly with his family and informed them of the \$7,000 ransom demand, which his father stated was an impossible amount of money for the family to raise. The Claimant was then instructed to inform his family that the ransom was \$5,000 and then instructed to tell his family that they would have to pay \$4,000 for his release.
 - iv) The Claimant was tied up and often beaten by his kidnappers on his hands and feet. During phone calls with his family, the kidnappers would beat other prisoners and his family would hear them cry out. The kidnappers wanted his family to hear that he and the other captives were being beaten and wanted him to tell his family to send money to save him. When other captives were speaking to their families, the Claimant would be beaten with sticks for the same purpose. On occasion during the Claimant's calls to his family the kidnappers would tell

his family that they would kill the Claimant unless they send the money the kidnappers were demanding. During these telephone calls, the Claimant could hear his mother and father crying.

- v) After two weeks the Claimant was moved to another, smaller location and held with eighteen other men in cramped and hot conditions. He was not fed properly and not given enough water. The Claimant was no longer permitted to speak to his family and the kidnappers no longer spoke to the captives about money, instead speaking directly with the families. By the fourth week, eight captives remained.
 - vi) The Claimant was released from captivity during the fourth week. He does not know how much his family paid to secure his release but his sister has informed him that, from conversations between her parents that she overheard, she believes his parents paid about \$1,500 through a third party.
 - vii) The Claimant was released with two other men and driven for 12 hours before being dropped off near a town and given a phone. The people of the town treated them kindly and fed and took care of them for two days before they could arrange transport to Tripoli.
 - viii) The Claimant considered himself to have been in a terrifying and dangerous situation. He and those with him expected that they would be trafficked onwards or have their organs harvested, even were their families to pay the ransom. The Claimant encountered captives of other nationalities at the first location who had been held for several months, many of whom stated that their families had paid ransom but that they had still not been released.
9. As I have noted, the court also has before it a report from Dr Aidan McQuade. Dr McQuade is a former Director of Anti-Slavery International (which is a successor organisation to the Anti-Slavery Society founded in 1839 by William Wilberforce and Thomas Clarkson). The report, dated 8 December 2022, was prepared on the instruction of the Claimant's solicitors and was provided to the Defendant ahead of her 'reasonable grounds' decision of 12 January 2023. Whilst Dr McQuade was instructed to opine on whether the experiences of the Claimant set out above were in keeping with known models of exploitation in Libya and on whether the Claimant's account is plausible, as I have noted the Defendant has broadly accepted the Claimant's account. Further, whilst Dr McQuade was instructed to advise whether the Claimant's experiences fall within the definition of trafficking in ECAT, and concludes that they do, the parties accept that this is a question for the court.
10. In the foregoing circumstances, Ms Butler relied on Dr McQuade's report primarily to support her contention, made in the context of her submission that the legal instruments addressing human trafficking must be interpreted in line with present day realities, that kidnap for ransom or extortion of the type experienced by the Claimant has, relatively recently, become a distinct form of exploitation in cases of trafficking. In this regard, Dr McQuade quotes in his report information from United Nations High Commissioner for Refugees (hereafter "the UNHCR") dealing with trafficking in persons (emphasis in the original):

“49. The United Nations High Commissioner for Refugees recognises that extortion, as discussed further below, has relatively recently become a distinct form of exploitation in many trafficking cases. They note that, “*A smuggling case can become a human trafficking case if the victims are exploited, for example by being held for ransom, or to pay off a smuggling debt through forced labour or sex work.*”

11. The Claimant travelled from Libya to Italy by boat in April 2022. In his statement, the Claimant asserts that he always intended to claim asylum in the United Kingdom because he had heard that it is a tolerant country where people do not experience racism. On 16 May 2022, the Claimant arrived in the United Kingdom by way of a small boat and claimed asylum based on his fear of persecution by the Syrian authorities. He was detained under the immigration legislation. On 6 June 2022, the Defendant served the Claimant with her decision treating his claim for asylum as inadmissible and her directions for his removal to Rwanda under the scheme then in force. On 6 July 2022, Dr Galappathie prepared his report, diagnosing the Claimant with severe depression, generalised anxiety disorder and post-traumatic stress disorder. The Defendant was released from detention on 20 July 2022. The inadmissibility and removal decisions of the Secretary of State were subsequently quashed by the Divisional Court on 17 January 2023.
12. On 13 October 2022, the Claimant’s legal representatives in this jurisdiction requested that he be referred to the National Referral Mechanism (hereafter “NRM”) for identifying potential victims of slavery or trafficking and ensuring that they receive appropriate support. On 24 November 2022, the Defendant decided that there were no reasonable grounds to conclude that the Claimant was the victim of slavery or trafficking. On 19 December 2022, the Claimant requested reconsideration of the decision and provided further evidence. As I have noted, that evidence comprised a statement from Dr McQuade and Dr Galappathie. On 21 December 2022 the Defendant agreed to reconsider her decision.
13. On 12 January 2023, the Defendant again decided that there were no reasonable grounds to conclude that the Claimant was the victim of slavery or trafficking. This is the decision that is the subject of challenge in these judicial review proceedings.
14. Within the decision made on 12 January 2023, the Defendant accepted a number of matters that form the factual context within which this court is considering the Claimant’s claim for judicial review:
 - i) That modern slavery occurs in Libya and Libya is a country in which exploitation occurs, with evidence that human trafficking crimes persist and are highly profitable for traffickers in Libya.
 - ii) The Claimant’s account of his experiences in Libya was credible and was accepted.
 - iii) On the basis that the Claimant had been held captive in Libya for one month in 2021, the Claimant had been subjected to an act of transportation and harbouring whilst in Libya (fulfilling the ‘action’ element of the definition of trafficking).

- iv) On the basis that the Claimant was kidnapped and that his captors would beat him and threaten to kill him if his parents could not pay the ransom, the Claimant experienced a threat or use of force or other form of abduction and was in a position of vulnerability (fulfilling the ‘means’ element of the definition of trafficking).
15. The Defendant did not, however, accept that the Claimant had been a victim of human trafficking in circumstances where the Defendant assessed that the actions taken in respect of the Claimant by the means described were not for the purposes of exploiting him (failing to fulfil the ‘purpose’ element of trafficking). The decision explained the rationale for this conclusion as follows:
- “The description of forced labour is contained in the decision annex attached to this letter.
- You said that you were held captive for 1 month while you and then your captors were in communication with your family in order to extort a ransom. There is no indication, from the evidence that has been provided that you were required to perform any form of work or service for your captors or anyone else.
- After your family paid middle-men for your release and you were left you in a town and refused to take you to Tripoli.
- It is, therefore, considered that you were not subjected to forced labour, nor was there an intention to subject you to this.”
16. The Defendant further decided that, as the Claimant did not meet the three constituent elements of trafficking under the 2022 Regulations, the Claimant did not meet the two constituent parts of the definition of slavery under those Regulations.
17. Accordingly, on 12 January 2023 the Defendant reached the following decision with respect to ‘reasonable grounds’:
- “Taken cumulatively, there are not considered to be reasonable grounds to believe that you were trafficked within Libya and that you are a victim of modern slavery (human trafficking and or slavery, servitude or forced/compulsory labour).
- Consequently, a negative Reasonable Grounds decision has been made.”
18. A pre-action letter was sent on 23 March 2023. The Claimant’s claim was issued on 17 April 2023. The Defendant’s Acknowledgment of Service and Summary Grounds of Defence were filed on 11 May 2023. As I have noted, permission was granted on the papers on 10 October 2023. On 1 July 2024 the Claimant was given permission to amend his Statement of Facts and Grounds and to rely on further evidence. The Defendant’s Amended Grounds of Defence were filed on 5 August 2024.
19. In the circumstances summarised above, the Claimant relies on a single ground of review. Namely, that in making her decision the Defendant misdirected herself as to the meaning of the term “exploitation” in Art 4 of ECAT and the term “exploited” in

r.3(6)(d) of the 2022 Regulations. By her amended Detailed Grounds of Defence, the Defendant contends that she directed herself correctly, that the actions taken in respect of the Claimant by the means described were not for the purposes of exploiting the Claimant within the meaning of in Art 4 ECAT and r.3(6)(d) of the 2022 Regulations and, accordingly, the Defendant was correct in deciding that there were no reasonable grounds to conclude the Claimant had been the victim of slavery or trafficking.

RELEVANT LAW

20. Part 5 of the of the Modern Slavery Act 2015 (hereafter “the 2015 Act”) sets out the statutory regime for the protection of victims of slavery or trafficking. Section 49 of the 2015 Act, as amended by s.60 of the Nationality and Borders Act 2022 (hereafter “the 2022 Act”), provides as follows with respect to guidance on the identification protection and support of victims of trafficking:

“49 Guidance about identifying and supporting victims

(1) The Secretary of State must issue guidance to such public authorities and other persons as the Secretary of State considers appropriate about—

(a) the sorts of things which indicate that a person may be a victim of slavery or human trafficking;

(b) arrangements for providing assistance and support to persons who there are reasonable grounds to believe are victims of slavery or human trafficking or who are such victims;

(c) arrangements for determining whether there are reasonable grounds to believe that a person is a victim of slavery or human trafficking.

(d) arrangements for determining whether a person is a victim of slavery or human trafficking.

(1A) Guidance issued under subsection (1) must, in particular, provide that the determination mentioned in paragraph (d) is to be made on the balance of probabilities.

(2) The Secretary of State may, from time to time, revise the guidance issued under subsection (1).

(3) The Secretary of State must arrange for any guidance issued or revised under this section to be published in a way the Secretary of State considers appropriate.

(4) If the Secretary of State makes regulations under section 50, the references in subsection (1) to “arrangements” include arrangements under the regulations.”

21. Under s.49(1) of the 2015 Act, the Defendant has issued statutory guidance entitled *Modern Slavery Act Statutory Guidance* (hereafter “the Statutory Guidance”). The Statutory Guidance makes clear that the policy of the Defendant is to discharge her duties with respect to modern slavery under the applicable domestic and international

legal instruments. Within this context, the United Kingdom has obligations under Art 4 of the Convention for the Protection of Human Rights and Fundamental Freedoms agreed by the Council of Europe at Rome on 4th November 1950 (hereafter “the ECHR”), the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (hereafter “the Palermo Protocol”), supplementing the United Nations Convention against Transnational Organised Crime 2000, and under ECAT. As noted by the Court of Appeal in *R(TDT) v Secretary of State for the Home Department and Anr* [2018] EWCA Civ 1395; [2018] 1 WLR 4922 at [6], the domestic statutory language set out in the 2015 Act and the 2022 Regulations reflects, to a certain extent, the principles set out in and the language used by those international instruments. In the circumstances, before dealing in more detail with the domestic law, it is convenient to deal first with the effect of the international instruments.

22. Art 4 of the ECHR provides as follows:

“Article 4

Prohibition of slavery and forced labour

1. No one shall be held in slavery or servitude.
2. No one shall be required to perform forced or compulsory labour.
3. For the purpose of this Article the term “forced or compulsory labour” shall not include:
 - (a) any work required to be done in the ordinary course of detention imposed according to the provisions of Article 5 of this Convention or during conditional release from such detention;
 - (b) any service of a military character or, in case of conscientious objectors in countries where they are recognised, service exacted instead of compulsory military service;
 - (c) any service exacted in case of an emergency or calamity threatening the life or well-being of the community;
 - (d) any work or service which forms part of normal civic obligations.”

23. When applying Art 4, in *Rantsev v Cyprus and Russia* (2010) 51 EHRR 1 at [274] the European Court of Human Rights (hereafter “the ECtHR”) emphasised the need to ascertain the ordinary meaning to be given to the words in their context and in light of the object and purpose of the provision from which they are drawn. The ECtHR further reiterated at [275] the need, in the context of its object and purpose being the protection of individual human beings, to interpret and apply the provisions of the ECHR so as to make its safeguards practical and effective. In the context of these principles, in *Rantsev v Cyprus and Russia* at [282], the ECtHR held that the formulation adopted in Art 4 of the ECHR includes trafficking within the meaning of the Palermo Protocol and ECAT:

“[282] There can be no doubt that trafficking threatens the human dignity and fundamental freedoms of its victims and cannot be considered

compatible with a democratic society and the values expounded in the Convention. In view of its obligation to interpret the Convention in light of present-day conditions, the Court considers it unnecessary to identify whether the treatment about which the applicant complains constitutes ‘slavery’, ‘servitude’ or ‘forced and compulsory labour’. Instead, the Court concludes that trafficking itself, within the meaning of Article 3(a) of the Palermo Protocol and Article 4(a) of the Anti-Trafficking Convention, falls within the scope of Article 4 of the Convention.”

24. Art 4(a) of ECAT contains the following definition of “trafficking in human beings”, which is identical to the definition of “trafficking in persons” contained in Art 3(a) of the Palermo Protocol:

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

25. As regards the question of exploitation, in respect of which ECAT provides non-exhaustive examples expressed as “a minimum”, the Explanatory Report to ECAT provides as follows at [85]:

“85. The purpose must be exploitation of the individual. The Convention provides: “Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs”. National legislation may therefore target other forms of exploitation but must at least cover the types of exploitation mentioned as constituents of trafficking in human beings.”

26. In the foregoing context, in *Rantsev v Cyprus and Russia* at [284], the ECtHR observed as follows with respect to the required nature and extent of domestic legislation concerning trafficking when assessing whether there has been a breach of Art 4 of the ECHR in the context of trafficking:

“In assessing whether there has been a violation of Article 4, the relevant legal or regulatory framework in place must be taken into account (see *mutatis mutandis Nachova and Others v. Bulgaria* [GC], nos. 43577/98 and 43579/98, § 93, ECHR 2005-VII). The Court considers that the spectrum of safeguards set out in national legislation must be adequate to ensure the practical and effective protection of the rights of victims or potential victims of trafficking.”

27. Returning to the domestic legislation in the foregoing context, s.50 of the 2015 Act provides as follows with respect to the making of regulations concerning the identification and support for victims of slavery or human trafficking:

“50 Regulations about identifying and supporting victims

(1) The Secretary of State may make regulations providing for assistance and support to be provided to persons—

(a) who there are reasonable grounds to believe are victims of slavery or human trafficking;

(b) who are victims of slavery or human trafficking.

(2) The Secretary of State may make regulations providing for public authorities to determine (for the purposes of regulations under subsection (1) or other purposes specified in the regulations) whether—

(a) there are reasonable grounds to believe that a person is a victim of slavery or human trafficking;

(b) a person is a victim of slavery or human trafficking.

(3) Regulations under subsection (2) may in particular make provision about the public authorities who may make such determinations, and the criteria and procedure for doing so.

(4) If regulations under subsection (2) make provision for determining whether a person is a victim of slavery or human trafficking (as mentioned in paragraph (b) of that subsection), they must provide that the determination is to be made on the balance of probabilities.”

28. Accordingly, pursuant to ss.50(2) of the 2015 Act, as amended by s.60 of the 2022 Act, and s.69(1) of the 2022 Act the Defendant may make regulations providing for public authorities (meaning pursuant to s.56(3) of the 2015 Act any public authority within the meaning of s.6 of the Human Rights Act 1998, other than a court or tribunal) to determine, for the purposes of providing assistance and support or other purposes specified in the regulations, whether there are reasonable grounds to believe that a person is a victim of slavery or human trafficking (a “positive reasonable grounds decision”, as defined by s.61(1)(a) of the 2022 Act). The Regulations made under the powers contained in the 2015 Act are the 2022 Regulations.

29. The 2015 Act creates a series of criminal offences with respect to modern slavery and human trafficking. Sections 1 to 3 of the 2015 Act provide as follows:

“1 Slavery, servitude and forced or compulsory labour

(1) A person commits an offence if—

(a) the person holds another person in slavery or servitude and the circumstances are such that the person knows or ought to know that the other person is held in slavery or servitude, or

(b) the person requires another person to perform forced or compulsory labour and the circumstances are such that the person knows or ought to

know that the other person is being required to perform forced or compulsory labour.

(2) In subsection (1) the references to holding a person in slavery or servitude or requiring a person to perform forced or compulsory labour are to be construed in accordance with Article 4 of the Human Rights Convention.

(3) In determining whether a person is being held in slavery or servitude or required to perform forced or compulsory labour, regard may be had to all the circumstances.

(4) For example, regard may be had—

(a) to any of the person's personal circumstances (such as the person being a child, the person's family relationships, and any mental or physical illness) which may make the person more vulnerable than other persons;

(b) to any work or services provided by the person, including work or services provided in circumstances which constitute exploitation within section 3(3) to (6).

(5) The consent of a person (whether an adult or a child) to any of the acts alleged to constitute holding the person in slavery or servitude, or requiring the person to perform forced or compulsory labour, does not preclude a determination that the person is being held in slavery or servitude, or required to perform forced or compulsory labour.

2 Human trafficking

(1) A person commits an offence if the person arranges or facilitates the travel of another person (“V”) with a view to V being exploited.

(2) It is irrelevant whether V consents to the travel (whether V is an adult or a child).

(3) A person may in particular arrange or facilitate V's travel by recruiting V, transporting or transferring V, harbouring or receiving V, or transferring or exchanging control over V.

(4) A person arranges or facilitates V's travel with a view to V being exploited only if—

(a) the person intends to exploit V (in any part of the world) during or after the travel, or

(b) the person knows or ought to know that another person is likely to exploit V (in any part of the world) during or after the travel.

(5) “Travel” means—

(a) arriving in, or entering, any country,

- (b) departing from any country,
- (c) travelling within any country.

(6) A person who is a UK national commits an offence under this section regardless of—

- (a) where the arranging or facilitating takes place, or
- (b) where the travel takes place.

(7) A person who is not a UK national commits an offence under this section if—

- (a) any part of the arranging or facilitating takes place in the United Kingdom, or
- (b) the travel consists of arrival in or entry into, departure from, or travel within, the United Kingdom.

3 Meaning of exploitation

(1) For the purposes of section 2 a person is exploited only if one or more of the following subsections apply in relation to the person.

Slavery, servitude and forced or compulsory labour

(2) The person is the victim of behaviour—

- (a) which involves the commission of an offence under section 1, or
- (b) which would involve the commission of an offence under that section if it took place in England and Wales.

Sexual exploitation

(3) Something is done to or in respect of the person—

- (a) which involves the commission of an offence under—
 - (i) section 1(1)(a) of the Protection of Children Act 1978 (indecent photographs of children), or
 - (ii) Part 1 of the Sexual Offences Act 2003 (sexual offences), as it has effect in England and Wales, or
- (b) which would involve the commission of such an offence if it were done in England and Wales.

Removal of organs etc

(4) The person is encouraged, required or expected to do anything—

(a) which involves the commission, by him or her or another person, of an offence under section 32 or 33 of the Human Tissue Act 2004 (prohibition of commercial dealings in organs and restrictions on use of live donors) as it has effect in England and Wales, or

(b) which would involve the commission of such an offence, by him or her or another person, if it were done in England and Wales.

Securing services etc by force, threats or deception

(5) The person is subjected to force, threats or deception designed to induce him or her—

(a) to provide services of any kind,

(b) to provide another person with benefits of any kind, or

(c) to enable another person to acquire benefits of any kind.

Securing services etc from children and vulnerable persons

(6) Another person uses or attempts to use the person for a purpose within paragraph (a), (b) or (c) of subsection (5), having chosen him or her for that purpose on the grounds that—

(a) he or she is a child, is mentally or physically ill or disabled, or has a family relationship with a particular person, and

(b) an adult, or a person without the illness, disability, or family relationship, would be likely to refuse to be used for that purpose.”

30. The 2022 Regulations apply the definitions contained within ss.1 to 3 of the 2015 Act to the identification of “victims of slavery” and “victims of trafficking”. The 2022 Regulations also draw on the 2015 Act for the meaning of exploitation in this context. Pursuant to r.1(3) of the 2022 Regulations, “slavery”, “servitude” and “forced or compulsory labour” have the same meaning as they have for the purposes of Art 4 of the ECHR. Insofar as relevant, the 2022 Regulations provide as follows:

“Citation, commencement, extent and interpretation

1.—(1) These Regulations may be cited as the Slavery and Human Trafficking (Definition of Victim) Regulations 2022 and come into force on the day after the day on which they are made.

(2) These Regulations extend to the United Kingdom.

(3) In these Regulations—

“the 2022 Act” means the Nationality and Borders Act 2022; “adult” means a person aged 18 or over;

“child” means a person under the age of 18;

“slavery”, “servitude” and “forced or compulsory labour” have the same meaning as they have for the purposes of Article 4 of the Convention for the Protection of Human Rights and Fundamental Freedoms agreed by the Council of Europe at Rome on 4th November 1950 as it has effect for the time being in relation to the United Kingdom.

Victim of slavery

2.—(1) For the purposes of Part 5 of the 2022 Act, “victim of slavery” means a person who has been subjected to slavery, servitude or forced or compulsory labour.

(2) In determining whether a person has been subjected to slavery, servitude or forced or compulsory labour, regard may be had to all the circumstances including—

(a) any of the person’s personal circumstances (such as the person’s age, the person’s family relationships, and any physical or mental disability or illness) that significantly impair the person’s ability to protect themselves from being subjected to slavery, servitude or forced or compulsory labour;

(b) any work or services provided by the person.

(3) The consent of a person (whether an adult or a child) to any of the conduct alleged to show that the person has been subjected to slavery, servitude or forced or compulsory labour is not relevant to a determination as to whether the person is a victim of slavery.

Victim of human trafficking

3.—(1) For the purposes of Part 5 of the 2022 Act, “victim of human trafficking” means a person (“V”) whose travel is arranged or facilitated by another person (“P”)—

(a) using any of the methods mentioned in paragraph (5), and

(b) with a view to V being exploited.

(2) P may in particular arrange or facilitate V’s travel by recruiting V, transporting or transferring V, harbouring or receiving V, or transferring or exchanging control over V.

(3) The consent of V (whether V is an adult or a child) to the travel is not relevant to a determination as to whether V is a victim of human trafficking.

(4) It is irrelevant for the purpose of paragraph (1)(a) whether the person using the method is P or another person.

(5) The methods are—

(a) in a case where V is an adult at the time the method is used—

- (i) the threat or use of force or other coercive behaviour;
- (ii) abduction, kidnap or false imprisonment;
- (iii) fraud or other deception;
- (iv) abuse of power or a position of vulnerability;
- (v) the giving of payments or other benefits to achieve the consent of a person who has control over V;
- (b) in a case where V is a child at the time the method is used, any method.
- (6) For the purposes of paragraph (1)(b), a person is being exploited if the person is—
 - (a) prostituted by another person or otherwise subject to sexual exploitation;
 - (b) subjected to slavery or servitude or forced or compulsory labour;
 - (c) encouraged, required or expected to—
 - (i) do anything which involves the commission, by that person or another person, of an offence under section 32 or 33 of the Human Tissue Act 2004 (prohibition of commercial dealings in organs and restrictions on use of live donors)(2);
 - (ii) do anything which involves the commission, by that person or another person, of an offence under section 17 or 20 of the Human Tissue (Scotland) Act 2006 (prohibition of commercial dealings in organs and restrictions on use of live donors)(3), or
 - (iii) do anything outside the United Kingdom that, if it were done in any part of the United Kingdom, would involve the commission of an offence mentioned in paragraph (i) or (ii), or
 - (d) subjected to force, threats or deception designed to induce that person—
 - (i) to provide services of any kind;
 - (ii) to provide another person with benefits of any kind, or
 - (iii) to enable another person to acquire benefits of any kind.”

31. As has been seen, pursuant to s. 49(1) of the 2015 Act, the Secretary of State must issue statutory guidance about, *inter alia*, “the sorts of things which indicate that a person may be a victim of slavery or human trafficking”. The Statutory Guidance states at paragraph 2.3 that “The essence of human trafficking is that the victim is coerced or deceived into a situation where they are exploited” and at paragraph 2.4 that “Human trafficking consists of 3 basic components: action, means and purpose of exploitation.” At paragraph 2.5, quoting the UNHCR Guidelines, the statutory guidance states that “Whether or not an international border is crossed, the intention to exploit the individual

concerned underpins the entire process.” The guidance further makes clear at paragraph 2.24 that it is the fact that specified actions are carried out for the *purpose* of exploitation, rather than whether or not exploitation has *actually* occurred that is relevant. Finally, the statutory guidance emphasises the lack of a bright line delineating cases of trafficking under the heading “Unclear Cases”. Paragraph 2.66 states as follows in this regard:

“2.66. As noted in ‘Smuggled or Trafficked?’ by Jacqueline Bhabha and Monette Zard’ staff in the competent authorities must appreciate that in some cases the distinction of smuggling and trafficking can be blurred. There are certainly ‘pure’ cases of trafficking and smuggling. For example, there may be trafficking cases where children are kidnapped without their parents’ consent, or in which migrant workers are defrauded and forced from the outset.”

32. As set out above, within the foregoing context, the Claimant contends he was exploited for the purposes of Art 4 of ECAT and r.3(6)(d)(iii) of the 2022 Regulations, having been subjected to kidnap within the meaning of r.3(1)(a) and r.3(5)(a)(ii) and thereafter subjected to force, threats or deception designed to induce him to enable the kidnappers to acquire a benefit, namely ransom from his family. He further contends that he was exploited for the purposes of Art 4 of ECAT and r.3(6)(d)(i) of the 2022 Regulations, having been subjected to kidnap within the meaning of r.3(1)(a) and r.3(5)(a)(ii) and thereafter subjected to force, threats or deception designed to induce him to provide services, namely asking his family to pay money to the kidnappers.
33. Within the context of the second basis on which the Claimant puts his case with respect to exploitation, r.1(4)(b) of the 2022 Regulations provides that in determining whether a person has been required to perform forced or compulsory labour, regard may be had to any work or services provided by the person, including work or services provided in circumstances which constitute exploitation. In this context, and where the Statutory Guidance makes clear that the policy of the Defendant is to discharge her duties under the applicable domestic and international legal instruments, the ECAT Explanatory Report at [89] to [92] states as follows with respect to “forced services”:

“89. Nor does the Convention define “forced labour”. Nonetheless, there are several relevant international instruments, such as the Universal Declaration of Human Rights (Article 4), the International Covenant on Civil and Political Rights (Article 8), the 1930 ILO Convention concerning Forced or Compulsory Labour (Convention No. 29), and the 1957 ILO Convention concerning the Abolition of Forced Labour (Convention No. 105).

90. Article 4 of the ECHR prohibits forced labour without defining it. The authors of the ECHR took as their model the ILO Convention concerning Forced or Compulsory Labour (No.29) of 29 June 1930, which describes as forced or compulsory “all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily”.[...]

92. With regard to the concept of “forced services”, the Court likewise found, in *Van der Müsssele v. Belgium*, that the words “forced labour”, as used in Article 4 ECHR, were to be given a broad meaning and encompassed the

concept of forced services (judgment of 23 November 1983, Series A, No.70, paragraph 33). From the standpoint of the ECHR, therefore, there is no distinction to be made between the two concepts.”

34. In *Van der Mussele v Belgium* (1984) 6 EHRR 163 at [32] and [33], the ECtHR held as follows regarding the interrelationship between ILO Convention No. 29 concerning Forced or Compulsory Labour and Art 4 of the ECHR:

“32. ...There is in fact a striking similarity, which is not accidental, between paragraph 3 of Article 4 (art. 4-3) of the European Convention and paragraph 2 of Article 2 of Convention No. 29. Paragraph 1 of the last-mentioned Article provides that "for the purposes" of the latter Convention, the term "forced or compulsory labour" shall mean "all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily". This definition can provide a starting-point for interpretation of Article 4 (art. 4) of the European Convention. However, sight should not be lost of that Convention's special features or of the fact that it is a living instrument to be read "in the light of the notions currently prevailing in democratic States" (see, inter alia, the Guzzardi judgment of 6 November 1980, Series A no. 39, p. 34, § 95).

33. It was common ground between those appearing before the Court that the services rendered by Mr. Van der Mussele to Mr. Ebrima amounted to "labour" for the purposes of Article 4 § 2 (art. 4-2). It is true that the English word "labour" is often used in the narrow sense of manual work, but it also bears the broad meaning of the French word "travail" and it is the latter that should be adopted in the present context. The Court finds corroboration of this in the definition included in Article 2 § 1 of Convention No. 29 ("all work or service", "tout travail ou service"), in Article 4 § 3 (d) (art. 4-3-d) of the European Convention ("any work or service", "tout travail ou service") and in the very name of the International Labour Organisation (Organisation internationale du Travail), whose activities are in no way limited to the sphere of manual labour.”

35. Within the foregoing context, the Statutory Guidance at paragraph 2.40 adopts the International Labour Organisation (hereafter “ILO”) of forced work. Namely, “All work or service which is exacted from any person under the menace of any penalty and for which the person has not offered himself voluntarily”. The Statutory Guidance goes on to note at paragraph 2.41 that:

“2.41. This definition is a useful indication of the scope of forced labour for the purposes of human trafficking. In *Siliadan v France* 2005 (Application no. 73316/01), the European Court of Human Rights took this as the starting point for considering a forced labour threshold and held that for forced labour, there must be work: ‘exacted under the menace of any penalty which is performed against the will of the person concerned, that is, for which the person has not offered themselves voluntarily.’”

36. On behalf of the Claimant, Ms Butler further points to paragraph 2.81 of the Statutory Guidance, which provides as follows:

“2.81. Labour is the provision of any service, not just manual labour. ‘Penalty’ may go as far as physical violence or restraint, but it can also take subtler forms of a psychological nature, such as threats to denounce victims to the police or immigration authorities when their employment status is illegal. Consent is a factor in forced and compulsory labour, but a victim may have given consent in a situation where they felt they had no viable alternative, in which case they could still be subject to forced or compulsory labour. For a person to be a victim of forced or compulsory labour there must have been 2 basic components:

- Means – threat of penalty – for example, threat or use of force, coercion, abduction, fraud, deception, abuse of power or vulnerability
- Service – as a result of the means, an individual provides a service for benefit, for example, begging, sexual services, manual labour, or domestic service”

37. Where a “positive reasonable grounds decision” has been made that there are reasonable grounds to believe that a person is a victim of slavery or human trafficking within the context of the legal framework set out above, pursuant to s.61(1) of the 2022 Act that person will become “an identified potential victim”. That status gives rise to protections under s.61 of the 2022 Act and assistance and support under s.50A of the 2015 Act. Section 61 of the 2022 Act provides as follows:

“61 Identified potential victims of slavery or human trafficking: recovery period

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

And s.50 of the 2015 Act provides as follows:

“50A Identified potential victims etc: assistance and support

(1) The Secretary of State must secure that any necessary assistance and support is available to an identified potential victim (within the meaning given by section 61 of the Nationality and Borders Act 2022 (the “2022 Act”)) during the recovery period.

(2) For the purposes of this section, assistance and support is “necessary” if the Secretary of State considers that it is necessary for the purpose of assisting the person receiving it in their recovery from any physical, psychological or social harm arising from the conduct which resulted in the positive reasonable grounds decision in question.

(3) Subsection (4) applies where a further RG decision, within the meaning given by section 62 of the 2022 Act, is made in relation to a person.

(4) If the Secretary of State determines that it is appropriate to do so, the Secretary of State must secure that any necessary assistance and support is available to the person during the period—

(a) beginning with the day on which the further RG decision is made, and

(b) ending with whichever of the following is the later—

(i) the day on which the conclusive grounds decision is made in relation to the further RG decision;

(ii) the end of the period of 30 days beginning with the day mentioned in paragraph (a).

(5) Any duty under subsection (1) or (4) ceases to apply in relation to a person in respect of whom a determination is made under section 63(2) of the 2022 Act (disqualification from protection).

(6) In this section, a reference to assistance and support is to assistance and support provided in accordance with—

(a) arrangements referred to in section 49(1)(b), or

(b) regulations made under section 50.

(7) In this section—

“conclusive grounds decision” has the same meaning as in Part 5 of the 2022 Act (see section 69 of that Act);

“recovery period” has the same meaning as in section 61 of that Act.”

38. Accordingly, under the NRM for identifying and supporting victims of trafficking the Defendant will, after receiving a referral, determine whether there are reasonable

grounds to believe that the person referred is a victim of trafficking. If such a determination is made they will be given a 45-day recovery and reflection period with associated support. After the expiry of the 45 days, the Defendant will make a “conclusive grounds decision” as to whether there are, on the balance of probabilities, sufficient grounds to decide that a person is a victim of trafficking.

39. Finally with respect to the relevant law, I turn to the role of the decision maker in reaching a “reasonable grounds decision” and the role of the court in reviewing such a decision.
40. As noted by the Court of Appeal in *R(TDT) v Secretary of State for the Home Department and Anr* at [14], the consequence of trafficking itself falling within the scope of Art 4 of the ECHR is that any obligations in relation to trafficking arising under Art 4 are binding on public authorities as a matter of domestic law under s. 6 of the Human Rights Act 1998, in respect of which obligations the ECtHR in *Rantsev v Cyprus and Russia* held at [286] that:

“286. As with Articles 2 and 3 of the Convention, Article 4 may, in certain circumstances, require a State to take operational measures to protect victims, or potential victims, of trafficking (see, *mutatis mutandis*, *Osman*, [(2000) 29 EHRR 245] § 115; and *Mahmut Kaya v. Turkey*, no. 22535/93, § 115, ECHR 2000-III). In order for a positive obligation to take operational measures to arise in the circumstances of a particular case, it must be demonstrated that the State authorities were aware, or ought to have been aware, of circumstances giving rise to a credible suspicion that an identified individual had been, or was at real and immediate risk of being, trafficked or exploited within the meaning of Article 3(a) of the Palermo Protocol and Article 4(a) of the Anti-Trafficking Convention. In the case of an answer in the affirmative, there will be a violation of Article 4 of the Convention where the authorities fail to take appropriate measures within the scope of their powers to remove the individual from that situation or risk (see, *mutatis mutandis*, *Osman*, cited above, §§116 to 117; and *Mahmut Kaya*, cited above, §§ 115 to 116).”
41. In these circumstances, the standard to be applied when the Defendant is taking a reasonable grounds decision has been described as a “low threshold of suspicion but not proof” (see *R (HAM) v SSHD* [2015] EWHC 1725 (Admin)) and “substantially equivalent to the ‘credible suspicion’ threshold” under Art 4 of the ECHR (see *TDT v Secretary of State for the Home Department and Anr*), the ECtHR having equated the “credible suspicion” standard with a putative victim’s account of having been trafficked being “not inherently implausible” (see *CN v United Kingdom* (2013) 56 EHRR 24). In *R (HAM) v SSHD* at [69] to [72], the court held that the question is not whether the potential victim has persuaded the decision-maker, but rather whether there is evidence which provides grounds upon which a reasonable observer could believe that this person is a victim, the decision falling to be taken in light of all the evidence, including evidence from specialist organisations or evidence which suggests that the potential victim’s account appears consistent with known trafficking patterns.
42. In reviewing a reasonable grounds decision, the court must adopt the approach helpfully summarised in *R (SM) v Secretary of State for the Home Department* [2024] EWHC 1683 (Admin) at [29] to [31] drawn from the cases set out in those paragraphs:

“29. [B]oth sides agree that a decision that a person is not the victim of trafficking requires the Administrative Court to adopt a heightened or more rigorous level of scrutiny (also described as "anxious scrutiny") (see *R(HAM) v SSHD* [2015] EWHC 1725 (Admin) at [2] to [5]; *R(FM) v SSHD* [2015] EWHC 844 (Admin) at [24]; *R(TVN) v. SSHD* [2021] EWHC 3019 (Admin) at [4] to [5] and *R(MN) v Home Secretary* [2021] 1WLR 1956 at [240] to [246]; H at [2] to [5]). The general principles are:

i) The starting point is that a high quality of reasoning is required in an Reasonable Grounds Decision (such as the SCA's Decision), which engages fully with the case advanced by the person concerned due to the importance of the decision as a potential gateway to important rights including the right to a Conclusive Grounds Decision.

ii) A Reasonable Grounds Decision needs to demonstrate a careful and conscientious analysis of all relevant factors and that every factor that might tell in favour of the person concerned has been properly taken into account.

iii) The requirement for a high standard of reasoning is all the more important given that a Reasonable Grounds Decision is a largely paper exercise, albeit conducted by a trained and qualified SCA decision maker.

iv) The provision of proper reasons is an essential part of a lawful decision and thus a Reasonable Grounds Decision which contains insufficient or inadequate reasons will be unlawful and will generally be quashed, (subject to the "highly likely" test in section 31 of the Senior Courts Act 1981).

v) The Guidance must be carefully applied, weighing the strength of the indicators or evidence presented and a comprehensive written assessment must be prepared, based on the circumstances of each case. “The Guidance requires decision-makers to include in their decision letters a full and detailed consideration explaining the reason for the decision in every case.” (MN at [243]).

30. However, the Court must not lose sight of the fact that its task is one of review for error of law, not correctness. Furthermore, anxious scrutiny is concerned with substance not semantics, “what matters is the substance of the analysis, reasoning and conclusions, rather than matters of wording or form” (MN at [245]), anxious scrutiny “does not mean that the court should strive by tortuous mental gymnastics to find error in the decision when in truth there has been none. The concern of the court ought to be substance not semantics” (HAM at [5], applying FM at [32], quoting *R(Sarkisian) v IAT* [2001] EWHC Admin 486 at [18]).

31. Lastly, “...particular care is necessary to ensure that the criticism is as to the fundamental approach of the [decision-maker], and does not merely reflect a feeling on the part of the appellate tribunal that it might itself have taken a different view of the matter from that that appealed to the [decision-maker]” (MN at [245] applying *Mibanga v Secretary of State for the Home Department* [2005] INLR 377, Buxton LJ at [29]).”

SUBMISSIONS

43. The parties agree that there is a single issue to be determined in this claim. They formulate that issue as being whether the Defendant erred in law in concluding that there were no reasonable grounds on which to find that the Claimant was a victim of slavery or trafficking as a result of his experiences in Libya, the central question being whether the Defendant erred in concluding that actions taken in respect of the Claimant by the means described were not for the purposes of exploiting him. I mean no disservice to the comprehensive and helpful written and oral submissions of counsel by setting out only a summary of those submissions here.
44. As set out above, the Claimant contends that the exploitation of him consequent upon his kidnap comprised his being induced to enable another person to acquire benefits for the purposes of r.3(6)(d)(iii) and/or being induced to provide services for the purposes of r.3(6)(d)(i) of the 2022 Regulations and that, accordingly, he should have been the subject of a positive decision as to reasonable grounds. On his behalf, Ms Butler submits that, for the purposes of Art 4 of ECAT and r.3(6)(d)(iii) of the 2022 Regulations, having had his travel facilitated by others using kidnap within the meaning of r.3(1)(a) and r.3(5)(a)(ii) with a view to his being exploited pursuant to r.3(1)(b), the Claimant was thereafter subjected to force, threats or deception designed to induce him to enable the kidnappers to acquire a benefit, namely ransom from his family and from other families, and was thus exploited for the purposes of the 2022 Regulations. In such circumstances, Ms Butler submits that the Claimant was plainly exploited in the manner contemplated by Art 4 of ECAT and the 2022 Regulations and that, in deciding that there were no reasonable grounds for concluding that the Claimant had been trafficked, the Defendant misdirected herself as to the meaning of the word “exploitation” in Art 4 of ECAT and r.3(6)(d) of the 2022 Regulations, adopting too narrow a meaning.
45. Similarly, but perhaps more optimistically, Ms Butler submits that for the purposes of Art 4 of ECAT and r.3(6)(d)(i), having had his travel facilitated by others using kidnap within the meaning of r.3(1)(a) and r.3(5)(a)(ii) with a view to his being exploited pursuant to r.3(1)(b), the Claimant was thereafter subjected to force, threats or deception designed to induce him to provide forced services, namely the service of asking his family to pay money to the kidnappers and was thus, again, exploited for the purposes of Art 4 of ECAT and the 2022 Regulations.
46. The Defendant submits that she adopted the correct approach to the meaning of exploitation and that on the facts the Claimant fails to fulfil the “purpose” element of the definition of trafficking in Art 4 of ECAT and r.3 of the 2022 Regulations, i.e. the purpose of exploitation. The Defendant submits that being kidnapped and held for ransom is not modern slavery nor is it akin to modern slavery. The Defendant further contends that it was the fact of his kidnap, rather than the Claimant himself, which induced the payment of the ransom by which the kidnappers acquired a benefit. Accordingly, Mr Anderson submits that the Claimant was not subjected to exploitation as the result of his kidnap and the ransom demands made by his captors. The Defendant further submits that requesting payment from his family as a consequence of being kidnapped is not akin to providing a forced service.

DISCUSSION

47. Having considered carefully the evidence and submissions, I am satisfied that the Claimant's claim for judicial review must be allowed. My reasons for so deciding are as follows.
48. Paragraph 2.4 of the Statutory Guidance makes clear that human trafficking consists of three basic components, namely action, means and purpose, the purpose being exploitation. The Defendant accepts that the Claimant was subjected to an act of transportation and harbouring whilst in Libya, fulfilling the 'action' element of the definition of trafficking. The Defendant further accepts that the Claimant experienced a threat or use of force or other form of kidnap and being in a position of vulnerability, fulfilling the 'means' element of the definition of trafficking. This leaves the question of exploitation. I am satisfied that the Defendant's approach to that question was too narrow in this case.
49. As I have noted, on behalf of the Defendant, Mr Anderson submits that the approach of the Defendant did not amount to an error of law in circumstances where there is nothing in the United Kingdom's domestic legal framework that supports the contention that the United Kingdom has adopted what he terms an expanded definition of "exploitation" to that set out in Art 4 of ECAT that encompasses kidnapping for ransom. However, that submission ignores the fact that the definition of "exploitation" in Art 4 of ECAT is expressed as a minimum and, within that context, the fact that kidnap is *expressly* included as a method pursuant to r.3(5) of the 2022 Regulations that may lead to one of the forms of exploitation set out in r.3(6) of the 2022 Regulations.
50. By r.3(5)(ii) of the 2022 Regulations, Parliament recognised and intended that the act of kidnap (defined in the OED as "carry off (a person etc.) by illegal force or fraud esp. to obtain a ransom") is a means *capable* of leading to exploitation of a person for the purposes of r.3(6). Under the regulations the kidnap of a person is one of the means by which a person can be exploited by being "subjected to force, threats or deception designed to induce" that person "to provide services of any kind; to provide another person with benefits of any kind, or to enable another person to acquire benefits of any kind." To conclude otherwise would render the inclusion of the word "kidnap" in r.3(5)(ii) otiose. Parliament would not have used the term kidnap, which given its ordinary meaning includes the possibility of being ransomed, as one of the means by which a person could be exploited so as to render them a victim of trafficking if that means was not capable, in any circumstances, of fulfilling the purpose of exploitation.
51. In so far as it purports to exclude kidnap for ransom as a form of human trafficking, the Defendant's case is accordingly undermined by the *express* terms of the 2022 Regulations. It is plain from reading Art 4 of ECAT and r.3 of the 2022 Regulations as a whole that kidnap for ransom can, depending on the facts of the individual case, be for the purpose of or with a view to exploitation such that the victim of kidnap for ransom is a victim of trafficking as defined by Art 4 of ECAT and r.3 of the 2022 Regulations. In these circumstances, and in line with the ECAT Explanatory Report, the domestic legislation is drafted to "target other forms of exploitation" in addition to the non-exhaustive examples provided in Art 4 of ECAT, the 2022 Regulations going further than both the Palermo Protocol and ECAT (which refer to "abduction") when referring to "abduction, kidnap and false imprisonment". In the foregoing circumstances, I cannot accept the Defendant's submission that kidnap for ransom or

extortion is simply outside the contemplation of the international and domestic provisions defining exploitation for the purposes of identifying victims of human trafficking.

52. Whether a person *is* a victim of trafficking by reason of their kidnapping for ransom being for the purpose of or with a view to their exploitation will, of course, depend on whether the facts of the case come within Art 4 of ECAT and r.3(6) of the 2022 Regulations. On behalf of the Defendant, in this regard Mr Anderson concentrated his submissions on seeking to demonstrate that it was reasonable for the Defendant to conclude that the Claimant *was* not induced to enable his kidnappers to acquire benefits of any kind in circumstances where, as Mr Anderson would have it, the kidnappers acquired benefits by the fact of the Claimant's captivity and ill-treatment and his parents desire for his release. The Defendant further submits that it cannot be said that the Claimant *was* induced enable his kidnappers to acquire benefits from other families on the basis that the sound of his being beaten might encourage those other families to pay a ransom for their relatives.
53. As Ms Butler pointed out during the course of her oral submissions however, it is important to pay careful regard to the wording of Art 4(a) of ECAT and r.3 of the 2022 Regulations as they relate to exploitation. In particular, Art 4(a) refers to actions and means that are "for the purposes of exploitation". As I have noted, the Statutory Guidance makes clear at paragraph 2.24 that it is the fact that specified actions are carried out for the *purpose* of exploitation, rather than whether or not exploitation has *actually* occurred that is relevant. Pursuant to r.3(1) of the 2022 Regulations, what is required is that the Claimant had his travel arranged or facilitated by the method of kidnap *with a view* to the Claimant being exploited. Further, pursuant to r.3(6), what is required is that the Claimant was subjected to force, threats or deception designed to induce him to enable his kidnappers to acquire a benefit. As such, to obtain a positive reasonable grounds decision, the Claimant is not required to show that he *was* exploited by his kidnap, but merely that his kidnap was undertaken for the purpose of or with a view to exploiting him. Likewise, to obtain a reasonable grounds decision the Claimant does not need to show that he was induced to enable his kidnappers to acquire a benefit, merely that he was subjected to force, threats or deception *designed* to induce him to enable them to do so.
54. In the circumstances, in determining whether there were reasonable grounds to believe that the Claimant is a victim human trafficking, the questions that arose for the Defendant were (i) did the Claimant have his travel arranged or facilitated (the action), (ii) did those arrangements or that facilitation involve the threat or use of force or other coercive behaviour, abduction, kidnap or false imprisonment, fraud or other deception, abuse of power or a position of vulnerability or the giving of payments or other benefits to achieve consent (the means) and (iii) were those arrangements or that facilitation for the purpose of, or with a view to, the Claimant being exploited in one or more of the ways described in r.3(6), including being subjected to force, threats or deception designed to induce that person to provide services of any kind, to provide another person with benefits of any kind, or to enable another person to acquire benefits of any kind pursuant to r.3(6)(d) (the purpose).
55. The decision of the Defendant of 12 January 2023 that the actions taken in respect of the Claimant in Libya by the means described were not for the purposes of exploiting him, and therefore there were no reasonable grounds to believe he was the victim of

trafficking, was reached on the basis that the Claimant was not subjected to forced labour, nor was there any intention to subject him to this. There was no consideration by the Defendant at all of whether the kidnap of the Claimant was for the purpose of, or with a view to, his exploitation through being subjected to force, threats or deception designed to induce that him to provide services of any kind, to provide another person with benefits of any kind, or to enable another person to acquire benefits of any kind.

56. The Defendant took this narrow approach notwithstanding that kidnap is expressly referred to in the 2022 Regulations as a means capable of leading to exploitation of a person for the purposes of r.3(6) and, ordinarily, a person kidnapped is utilised or taken advantage of against their will and for the kidnapper's own ends, with both the act of kidnap itself, and actions taken by the kidnappers subsequently being designed, in part, to prevail on or persuade the person kidnapped to act in a manner that furthers the kidnapper's aims. The person kidnapped may be induced to enable the kidnappers to achieve their aims in many ways. For example, by being forcefully detained, discouraged from escape, providing the kidnappers with details of relatives or friends who may be willing to pay ransom or communicating with relatives or friends in order to plead for payment of ransom. The person kidnapped may be thus induced by a spectrum of behaviour covering persuasion, coercion and torture. In this case, the Defendant accepted that the Claimant was taken captive with others by unidentified armed men, had his money, phone and passport taken, was isolated in the desert and deprived of food and water, witnessed violence and was beaten, was required to speak to his family and tell them to send money in the sum of a \$7,000 ransom demand, thereafter to inform his family that the ransom was \$5,000 and then inform them that they would have to pay \$4,000 for his release and that when other captives were speaking to their families, the Claimant would be beaten with sticks so that his cries could be heard as an inducement to payment. Once again, The Statutory Guidance makes clear at paragraph 2.3 that "The essence of human trafficking is that the victim is coerced or deceived into a situation where they are exploited".
57. In the foregoing circumstances, I am satisfied that in taking her decision on 12 January 2023 that there were no reasonable grounds to believe that the Claimant had been trafficked, the Defendant erred in law in adopting too narrow an approach to the question of whether the Claimant's kidnap for ransom was for the purpose of or with a view to his exploitation such that he was a victim of trafficking as defined by Art 4 of ECAT and r.3 of the 2022 Regulations. I am further satisfied that the Defendant did not engage fully with the case advanced by the Claimant in not considering the extent to which the facts of the case accepted by the Defendant supported the conclusion that the Claimant had been subjected to force, threats or deception *designed* to induce him to provide services of any kind, to provide another person with benefits of any kind, or to enable another person to acquire benefits of any kind for the purposes of r.3(6)(ii) of the 2022 Regulations. As I have noted, within the context of the 2022 Regulations, the Claimant is required to demonstrate only that his kidnap was undertaken *with a view* to exploiting him and that he was subjected to force, threats or deception *designed* to induce him to enable his kidnappers to acquire a benefit. It is clear from the Defendant's decision that there was no consideration by the Defendant at all of whether the action (the arrangement or facilitation of travel by another person pursuant to r.3(1)) and the means (kidnap pursuant to r.3(5)(ii)) accepted by the Defendant as having befallen the Claimant was for the purpose of or with a view to his exploitation for the purposes of r.3(6).

58. In concluding that the Defendant adopted a too narrow approach to the question of exploitation and did not engage fully with the case advanced by the Claimant, I note that whilst the decision of the Defendant of 12 January 2023 makes reference to the Palermo Protocol and Art 4 of ECAT, the decision makes no reference to the 2022 Regulations, which entered into force on 28 July 2022 and were in force at the time the decision under challenge was made. In these circumstances, the Defendant's decision references the formulation of "means" used in Art 4 of ECAT (i.e. "abduction") but not the broader formulation of means used in r.3(5) of the 2022 Regulations (i.e. "abduction, kidnap and false imprisonment"). Likewise, the Defendant's decision references the formulation of 'exploitation' contained in Art 4 of ECAT ("at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs") rather than the more detailed and subdivided formulation used in r.3(6) of the 2022 Regulations.
59. Finally, and as set out above, on behalf of the Claimant, Ms Butler also submitted that the Defendant adopted an overly restrictive approach in failing to conclude that, having been subjected to kidnap within the meaning of r.3(1)(a) and r.3(5)(a)(ii) and thereafter subjected to force, threats or deception designed to induce him to provide services, namely asking his family to pay money to the kidnappers, the Claimant was exploited for the purposes of Art 4 of ECAT and r.3(6)(d)(i) of the 2022 Regulations. My conclusions with respect to the Claimant's primary submission under r.3(6)(d)(iii) are sufficient to deal with the claim and, accordingly, I need not deal with the second submission in detail. However, I am satisfied that the Claimant's second submission stretches the application of the statutory language too far. Pursuant to r.2 of the 2022 Regulations, a person is a victim of slavery if, having regard to all of the circumstances of the case, he has been subjected to slavery, servitude or forced or compulsory labour, which includes forced services. However, I am satisfied that it strains the ordinary meaning of the word "services" beyond endurance to suggest that a victim of kidnap who is coerced into requesting payment of ransom is performing a service for his or her kidnappers.

CONCLUSION

60. For the reasons set out above, I am satisfied that the Claimant's claim for judicial review must be allowed. The Defendant's decision was unlawful for applying an incorrect and unduly restrictive approach to the question of whether there were reasonable grounds for believing that the Claimant was a victim of trafficking. In the circumstances, the decision of the Defendant that there were no reasonable grounds that he was a victim of trafficking must be quashed and the Defendant must make a lawful decision as to whether the Claimant was a victim of trafficking. I will invite counsel to draw an order accordingly.
61. It was submitted on behalf of the Claimant that his claim raises an important point of principle, namely whether abduction, detention and torture for the purpose of extracting payment from family members of a ransom for release constitutes "exploitation" for the purposes of ECAT and r.3(6)(d) of the 2022 Regulations. However, whilst I have reached the conclusion in this case that the Defendant's decision in this case was unlawful for applying an incorrect and unduly restrictive approach, it is important once again to emphasise that whether, in a given case, kidnap for the purpose of extracting payment from family members of a ransom for release constitutes "exploitation" for

the purposes of ECAT and r.3(6)(d) of the 2022 Regulations will be fact specific having regard to the principles articulated above.