Case No: E00YJ364

IN THE CENTRAL LONDON COUNTY COURT

Date: 6th November 2020

Before :

HHJ BAUCHER

- -

Between :

Abdul Mateen Omar Ali	**Claimant**
- and -	
The Home Office	**Defendant**

- -

- -

Mr Denholm instructed by the **Claimant**
Ms van Overdijk instructed by the **Defendant**

Hearing dates: 5th, 6th and 7th October 2020

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JUDGMENT

HHJ BAUCHER:

INTRODUCTION

1. This is the claimant's claim for false imprisonment, personal injury, aggravated and exemplary damages arising from his period of detention from 17th December 2014 to 24th March 2015 (a period of 98 days).

2. There is no dispute that the defendant had the power to detain the claimant in the first instance as he was a person who was liable to removal from the UK pursuant to Schedule 2, para 16(2) to the Immigration Act 1971.Beyond that there is little or any agreement between the parties.

3. The claimant was detained on the Detained Fast Track (DFT) and that formed the focus of much of the legal submissions. Following the exchange of detailed skeleton and written closing submissions it was common ground that I would need to determine four phases of detention and by reference to those periods: 1) the lawfulness of the detention in DFT in terms of sufficiency of enquiries. b) suitability and would the claimant have been detained if not routed to the DFT. 2) The lawfulness of the detention for Fast Track appeal- was the detention during the claimant's appeal process unlawful because the Fast Track Rules 2014 (FTR 2014) were unlawful, does the decision of the President of the First Tier Tribunal (FTT) of 15th October 2015 to set aside the FTT's determination of 26th January 2015 mean the detention was unlawful during the claimant's appeal process and if the quashing of the FTT decision did not in itself render the detention unlawful was detention unlawful because the appeals process was unfair? 3) Lawfulness of detention subsequent to Fast Track appeals process- detention unlawful because appeal process unlawful,

detention unlawful by reference to the *Hardial Singh* principles. 4) Missed detention reviews.

4. I heard oral evidence from the claimant and from Mr Gardner on behalf of the defendant. The claimant also relied upon a witness statement from his wife. I also heard oral evidence from consultant psychiatrists, Dr Apostolou and Dr Das for the claimant and defendant respectively. Mr Denholm and Ms van Overdijk appeared for the claimant and defendant. They prepared very detailed opening and closing written submissions for my consideration. I wish to express my gratitude to the thoroughness of their preparation and presentation.

THE FACTUAL BACKGROUND

5. On 11 November 2014, the claimant entered the UK lawfully on a visitor visa. This visa was granted until 5 December 2014. The claimant came to the UK as part of a delegation to the London Afghanistan Conference which was held on 3 and 4 December 2014. The claimant overstayed this visa. During his interview for asylum on 6 January 2015, the claimant stated that he did not claim asylum at the airport because he felt it was too dangerous for him for him to do so as he was with members of the delegation, they could have found out he was claiming asylum and this would have been a danger for his family in Afghanistan.

6. On 9 December 2014, the claimant claimed asylum at ASU Croydon. He stated that his life was in danger from the Taliban. In his asylum interview the claimant said that the reason he did not claim asylum before the visa ran out was because he did not know the procedure, and when he checked out of the

hotel he was staying at for the conference and moved to another hotel in Southall he claimed asylum.

7. On 17 December 2014, the claimant was detained on reporting. At the time of his detention, the defendant took possession of a valid Afghan passport for the claimant which was due to expire on 1 January 2015. Following the expiry of his passport, the claimant was removable with an EU letter. The defendant decided to detain the claimant on the DFT as it was believed the claimant's case could be determined quickly.

8. On 6 January 2015, the claimant's substantive asylum interview was conducted.

9. On 9 January 2015 the claimant's asylum claim was refused by the defendant.

10. On 13 January 2015 the claimant appealed against his asylum refusal decision.

11. On 26 January 2015 the claimant's appeal was dismissed by First Tier Tribunal Judge (**"**FTTJ") Plumptre.

12. On 3 February 2015, permission to appeal to the UT was refused by the FTT.

13. On 11 February 2015, permission to appeal to the Upper Tribunal ("UT") was refused by the UT. On this date, the claimant's appeal rights became exhausted.

14. On 27 February 2015 the claimant's solicitors submitted further submissions enclosing 14 items of new evidence and a further witness statement from the claimant.

15. On 17 March 2015 GCID records receipt of a fresh claim.

16. On 6 March 2015, the claimant made a bail application.

17. The claimant was removable on an EU letter (his passport having expired in January 2015) and on 23 March 2015 he was booked on the Ops Dickens Charter flight for the 21 April 2015.

18. On 23 March 2015, the claimant was granted bail. On 24 March 2015 the claimant was released from detention.

19. On 25 April 2015 the defendant wrote to the claimant's solicitors to inform them that the defendant was unable to accept the claimant's further submissions by post and the claimant would need to attend FSU Liverpool in person. The further submissions were returned in the post.

20. On 20 May 2015 the claimant's solicitors contacted the defendant to book an FSU appointment on 15 June 2015.

21. On 15 June 2015 the claimant made further submissions in person at FSU Liverpool.

22. On 24 August 2015 the claimant's further submissions were refused under paragraph 353 with no right of appeal.

23. On 6 September 2015, the defendant informed the claimant that the DFT process had been declared unlawful. The claimant was notified he could apply to the FTT to have his appeal determination set aside.

24. On 13 July 2016, the claimant's appeal was allowed by the FTT.

25. On 22 October 2016, the claimant was granted asylum. Leave to remain was granted for 5 years and is set to expire on 21 October 2021.

THE LAWFULNESS OF THE DETENTION IN DFT

Phase 1- 17th December 2014- 9th January 2015

Sufficient enquiries

26. Mr Denholm submitted that the defendant's officers failed to make sufficient enquiries to satisfy themselves that the claimant's asylum claim was one which could fairly and sustainably be determined within two weeks and that the claimant's case was unsuitable for the DFT. He said that there had been no exploration as to why the claimant was in fear of the Taliban and whether further enquiries were necessary, the documents provided had merely been recorded as certificates and no enquiry had been made as to whether translations were required or as to the specific nature of the documents.

27. In contrast Ms van Overdijk submitted that the officer was able to obtain sufficient information. She argued that the form was specifically designed to focus on the right questions and that was evident from section 4.2. of the form. She said that even if the documents had been incorrectly recorded as certificates the documents were all considered at the claimant's substantive asylum interview on the 6th January 2015.

Discussion

28. Mr Gardner is employed by the defendant as a Technical Specialist in Detained Asylum Casework (formerly DFT). He had no personal involvement

in the case but is very familiar with the process by which the claimant was detained. He accepted that one of the purposes of the screening interview was to elicit enough detail to make an informed decision as to whether the individual was suitable for the "DFT. He said that after considering the form in this case and the questions raised he was satisfied that the interviewing officer had sufficient material upon which to reach his decision. Mr Gardner said that he did not consider the case to be overly complex or unusual. He agreed that contrary to the Policy the category of the documents should have been recorded and the language used in the documents noted.

29. The DFT policy in force at the time was the version issued on the 14th October 2014. The Policy informs this issue and overlaps in respect of the issue of suitability so I consider it is expedient to set out the policy in relation to both issues as this juncture.

30. The purpose of the Policy is set out at 1.2 and it provides:

"This instruction lays out the policy which must be strictly applied to determine case suitability of entry to and continued management within, Detained Fast Track processes."

31. 2.2 – Quick Decisions

"The assessment of whether a quick decision is likely in a case must be made based on the facts raised in each individual case. Cases where a quick decision may be possible may include (but are not limited to):

-Where it appears likely that no further enquiries (by the Home Office or the applicant) are necessary in order to obtain clarification, complex legal advice

or corroborative evidence which is material to the consideration of the claim, or where it appears likely that any such enquiries can be concluded to allow a decision to take place within normal indicative timescales;

-Where it appears likely that it will be possible to fully and properly consider the claim within normal indicative timescales;

-Where it appears likely that no translations are required in respect of documents presented by the applicant, which are material to the consideration of the claim; or where it appears likely that the necessary translations can be obtained to allow a decision to take place within normal indicative timescales;"

32. 2.2.3 Timescales

"For DNSA cases, the indicative timescale from entry to the process in the appropriate Immigration Removal Centre to decision service will be around 10-14 days. For DFT cases, the respective indicative timescales for decision service will usually be quicker. The timescales are not rigid and must be varied when fairness or case developments require it."

33. 3.1 New Asylum Applications – Mandatory Referral by Screening Officers

"Screening Interview- Obtaining key information and Early Suitability Consideration

– The applicant must be fully screened (which must include fingerprinting and Eurodac checks) and they must be asked if they have any documents, statements or other evidence relevant to their claim, family life or other

personal circumstances that they wish to submit, whether at that instant or in the future. Where there are any such documents held or to be submitted, the specific nature of the documents (including language) must be ascertained and recorded;

– Follow- up questions must be asked and documented where relevant to the Suitability Policy. It is vital to obtain and consider relevant information where it can reasonably be obtained in a screening setting (or, for information not available at that instant, to consider the likelihood of its later submission and its probable materiality);"

34. Mr Denholm placed much reliance upon *JB (Jamaica v SS*HD [2014] 1 WLR 836 in relation to the screening process particularly Moore- Bick LJ at paragraphs 28, 29 and 30:

"28. The standard screening interview conducted in accordance with the limited requirements of Form ASL.3211 no doubt serves a valuable purpose in most cases, but the form was not designed with the DFT/DNSA policy primarily in mind. In particular, it does not direct the interviewing officer's attention to the need to investigate the nature and circumstances of the claim in a way that would enable an informed assessment to be made of the likelihood of being able to make a fair and sustainable decision within about two weeks. In this case the interviewing officer made no attempt by means of supplementary questions to ensure that the kind of detailed assessment required by the policy was carried out and as a result I do not think that in this case the respondent complied with her own policy."

29.On the face of it, therefore, the appellant did need additional evidence to support his claim and since some of that evidence was likely to be available only in Jamaica or elsewhere abroad, it was likely that he would need additional time in order to obtain it. A failure to allow him that time was likely to lead (as in the event it did) to a decision that was neither fair nor sustainable.

30.It is said that the case was on the face of it a simple one and indeed it may have appeared so, in the sense that it gave rise to only one question relating to the appellant's sexuality. However, it should have been obvious to anyone who considered the claim with care that the decision was not a simple one because of the difficulty of ascertaining where the truth lay. In my opinion no

reasonable person in possession of all the information about the appellant that could and should have been available if his case had been assessed in the manner required by the DFT/DNSA policy could have been satisfied at the time of his detention that a fair and sustainable determination of his claim could be made within a period of about two weeks."

35. Ms van Overdijk sought to distinguish the decision on the basis that the judgment was some 18 months prior to the claimant's detention and in that case the screening interview was undertaken using a different form. She also placed reliance in particular on *DA v SSHD* [2014] EWHC 2245(Admin) (DA1).

36. At one point I considered that Mr Denholm was challenging the screening process in a manner akin to an administrative challenge and indeed Ms van Overdijk sought clarification. Mr Denholm confirmed that his submissions were directed simply to the screening undertaken in the instant case and he was not seeking to challenge the screening process.

37. The claimant's interview was conducted on the basis of the pro-forma questionnaire. Ms van Overdijk rightly referred me to the opening paragraphs of the questionnaire and the statement read out to the claimant:

"The questions I am about to ask you relate to your identity, background and travel route to the United Kingdom. The information you will be asked to provide will be used mainly for administrative purposes. You will not be asked at this stage to go into detail about the substantive details of your asylum claim as if appropriate, this will be done at a later interview. However, some details you will be asked to provide may be relevant to your claim."

38. The context is important because as Ouseley J said in *DA* at paragraph 97:

"It is not the purpose of the interview to consider the detail let alone the substantive merits of the claim, or to go into detail which could lead to pressure at the screening interview, or contradictions at the later substantive interview. Rather it gathers basic personal data such as identity, method of arrival in the UK, travel history, identity documentation held if any, medical conditions, if female, whether pregnant and if so the due date, family in the

UK, what documents they have which may support the asylum application, convictions, support for organisations linked to terrorism or war crimes. They are asked to explain briefly the basis of their claim, and why they cannot return to their country of nationality: who they fear and why. The screening officer should ask supplementary questions about the basis of the claim; Mr Simm said that this "may help to establish its suitability for the DFT", as well as assist the interviewer at the substantive interview, and facilitate the applicant in accessing rights established by the Procedures and Reception Directives. This "considerable latitude" in questioning, accepted by the SSHD, led to a risk of arbitrariness according to the Claimant.

Applicants are now also asked if they have any further documentation which they wish to submit in support of their claim or personal circumstances. The length of time in which to obtain documents or other evidence to support a claim must be taken into account in deciding whether this would prevent a quick decision and therefore prevent entry into the DFT. This question was added as a result of R(JB)(Jamaica) v SSHD [2013] EWCA Civ 666, especially at paragraphs 28-30."

39. The application proceeded through the standard questions in respect of history, travel, identification and medical questions to the crux of this case. The claimant was asked what his reason was for coming to the UK. He was also asked why he had not told the immigration officer at the airport about his problems. The main focus of Mr Denholm's criticism rested with the screening officer's questioning under section 4.2.

40. On first consideration the answer to: "**Can you <u>BRIEFLY explain why you cannot return to your home country?</u>** Reply: "I was working in the social sector and because of that my life is in danger I was working with the youths in Afghanistan." seemed inadequate and in need of explanation. However, the form itself demanded only a brief reply as is evident from the emphasis as to how it appears, as set out above, on the form. Secondly, the form itself invited the screening officer to seek further information if the answer to that question was not clear. In this instance the screening officer did ask further answers specifically directed to that answer. The claimant was asked: "Who do your

fear?" Reply "Taliban and the intelligent services." He was then asked: "Why do you fear them?" Reply: "They tried to kill me but in response they killed my nephew on 17th November 2014." He was asked "When did your problems begin?" Reply: "September 2014." Finally, he was asked: "What do you fear will happen to you if you return to your home country?" Reply: "They will kill me."

41. Part 6 was left blank as inadvertently the screening officer marked the provided documents as: "Certificates" in the wrong section at Part 7. The claimant was also asked whether there was any reason why his claim was not suitable to be decided quickly and why he should not be detained pending that decision to which in answer to both questions he answered no.

42. I am not persuaded that on the facts of this case the screening officer was required to go further. This case is not analogous to *JB*. It was not a case where homosexuality played any part and more importantly where it was clear on its face that further enquiries were necessary. I also bear in mind that *JB* is a decision in respect of an earlier DFT form without the same detail. The claimant in this case had provided specific information about the threat, who it was from and provided the date when his nephew had been murdered. He had also stated his nephew had been killed instead of him. Whilst I appreciate the claimant would not have been au fait with the asylum process he was an educated man, who had attended a conference in the UK as part of a delegation. I consider that had he felt that more time was needed for his asylum claim to be reviewed he would have said so when asked in section 8.

43. Mr Denholm argued that the screening officer should have asked why the claimant was in fear of the Taliban, what evidence might be available and what further enquiries might be necessary to obtain corroborative evidence- no doubt having *JB* at the forefront of his mind when he made those submissions. I do not consider that given the extent of the questioning the screening officer was required to descend into the detail that Mr Denholm suggests. It was self-evident on the answers elicited why the claimant feared the Taliban. He had already told the officer they had killed his nephew by mistake. This was not like *JB* where the officer was required to ask for further supporting material or where further enquiries were necessary. The claimant had set out the basic facts; albeit in limited form. However as is often the case a balance had to be struck. The screening officer would have been mindful of the need to ensure that the claimant was protected from saying too much, in the absence of legal advice, when that could be used against the claimant in a more formal interview.

44. The defendant accepts that the clamant provided a large number of documents in support of his claim. Mr Denholm criticised the failure to adhere to the policy and enquire whether translations were required and to register the specific nature of the documents. It is unfortunate that the raft of documents provided by the claimant are recorded as: “certificates.” There is no doubt that the claimant did submit a number of certificates but there were also other documents. In my view they should have been appropriately listed so there was no room for uncertainty. However, I am not satisfied that the failure to record the documents in a comprehensive manner renders the decision to use the DFT unlawful.

45. The Policy allowed the claimant to be detained even if translation of documents was required if those translations could be dealt with within the: "normal indicative timescales." Those documents were considered in the interview on the 6th January. Further the asylum refusal decision letter dated 9th January 2015 specifically stated at paragraphs 29 -30:

> "Furthermore, it is noted that you have provided copious documents to demonstrate your claim to be the head of the civil society working with the youth. Particularly, you submitted a certificate which you claim shows your membership of the civil society. However, it is noted that the certificate does not purport to your membership of an organisation, rather it states that you participated in training on "civil society laws." Therefore, it is not accepted you were a member of the civil society as you claim.
>
> Furthermore, it is considered that no other documents you have submitted purports to show that you were in charge of the civil society…. Rather, it is noted these documents suggest you to have been in various lines of work…no contemporaneous evidence is provided which would substantiate any such claim that you were in charge of the civil society and as such you were recruited by the intelligence department because of your popularity with the youth."

46. FTTJ Plumtree was even more emphatic in the decision of the 23rd January holding: "I find that many of the documents that the appellant has produced positively undermine rather that support his claim."

47. I am satisfied that the inaccurate recording and bundling together of the documents as: "Certificates" had no material bearing. Whilst Mr Denholm referred to the translation policy, tellingly in his oral submissions he singularly failed to identify any documents to which this had any relevance. There was no suggestion at the interview on the 6th January that there was any problem with the translation of any of the documents.

48. I am satisfied that the screening officer could obtain sufficient information upon which to base a decision. He was not required to drill down any further

based on the information he had already elicited. A large number of documents had been provided to substantiate the asylum claim and whilst inaccurately recorded that had no material bearing. No documents which were unable to be translated within the fast track timeframe have been identified. Thus, I find that the decision to detain based on those enquiries was a reasonable one and one that the defendant was entitled to reach.

Suitability

49. Mr Denholm submitted that it was not open for the defendant to conclude that the claimant's asylum claim was suitable for DFT and that a fair and sustainable decision could be reached within 7-14 days. He argued that the later decision in the FTT on the 13th July 2016 showed how the claimant's case would have been advanced had he not been entered into the DFT scheme.

50. Ms van Overdijk submitted that the court should not consider the initial decision with the benefit of hindsight; but rather have regard to the information which had informed the screening officer.

Discussion

51. Notwithstanding the eloquence and force of Mr Denholm's oral submissions I am not persuaded that the initial decision to refer into the DFT should be considered in the light of the material which was subsequently before FTTJ Hopkins. The claimant filed a further witness statement, additional documentation and a statement from Haseeb Ullah Khuram for that hearing; none of which were before the screening officer. I consider it would be

speculative for this court to find that had the claimant not been detained under DFT that material would have been produced. If the claimant had not been detained under DFT I do not consider how the case was ultimately advanced affords a proper basis for considering what material would have been provided if the claimant had not been put in the DFT scheme. It is arguable the claimant may not have advanced his claim with the same material which FTTJ Hopkins ultimately considered. I find the proper course is for this court to consider the material before the screening officer and consider whether the claimant was suitable for admission to the DFT scheme. It is not for this court to look at the decision through the prism of hindsight.

52. I reject the proposition no reasonable properly self-directing screening officer could have concluded that this case was suitable for DFT. I found Mr Gardner to be an impressive witness. He is a very experienced officer with substantial experience and knowledge of the DFT system and its operation. He carefully and thoughtfully answered questions under cross-examination. He was clear and unequivocal that it was not every case where a threat of the Taliban was raised that was suitable for DFT but on the facts of this particular case the claimant was a suitable candidate. I accept that evidence and I concur with his view. There was more than enough material to warrant the screening officer to apply the scheme and I do not consider the officer was required to ask any further questions nor that failing to properly list the documentation has any material effect on the decision to detain under the DFT scheme.

53. For the sake of completionI need to deal with two further matters. In the Particulars of Claim the claimant alleged that he was not given access to

lawyers sufficiently in advance of his asylum interview. In his oral submissions Mr Denholm advised that the claimant was not pressing that point. For the avoidance of doubt I find that there is nothing in that allegation. There is no evidence of any unfairness. Secondly, the claimant's claim was refused 23 days after his admission into the DFT which the claimant submitted was: "significantly in excess of the maximum period of 14 days. Ms van Overdijk said that the claimant was entered into the scheme on the 19th December and the decision was made 21 days thereafter. Rightly Mr Denholm did not press that claim in oral submissions. The policy states that: "timescales are not rigid and must be varied when fairness or case developments require it." I consider that on the facts 21 days was not excessive.

54. I consider that the defendant was entitled to detain the claimant for the first phase from the 17th December to 9th January 2015.

55. In the light of my findings I consider it would be an artificial exercise to consider in any detail whether the claimant would have been detained under Chapter 55 of the Enforcement Instructions and Guidance policy. I explored the claimant's detention under this policy with both counsel during the course of their submissions. Mr Denholm placed emphasis on the absence of a criminal record, the time to consider any asylum claim and the low risk of absconding. Ms van Overdijk relied on Mr Gardner's evidence.

56. Mr Gardner said that:

> "the claimant was detained because he had committed a criminal offence by overstaying his visa, did not have enough close ties in the UK (for example family or friends)to make it likely that he would stay in one place, on initial

consideration it appeared that his asylum application could be decided quickly, and had previously failed or refused to leave the UK when required to do so. Whilst the asylum claim was a barrier to removal, it was considered that it could be considered within a short period of time….. if DFT had not been in operation the claimant would have met the criteria for lawful detention as set out in Chapter 55…"

57. Every case has to be considered on its facts and I am persuaded that the claimant could have properly been detained under the Chapter 55 policy. I accept that the claimant had not entered the UK by clandestine means but he had not made his asylum claim at the earliest opportunity and he had gone to Solihull before presenting at Croydon. Standing back objectively I am satisfied that the defendant would have been entitled to apply the Policy and detain the claimant.

THE LAWFULNESS OF THE DETENTION DURING THE FAST TRACK APPEALS PROCESS

Phase 2- 9th January 2015- 11th February 2015

58. This period begins with the defendant's refusal of asylum on the 9th January 2015 and ends when the claimant became appeal rights exhausted (ARE) on 11th February 2015.

Was detention during the claimant's appeal process unlawful for the sole reason that the Fast Track Rules 2014 (FTR 2014) were unlawful?

59. The claimant was detained during this period for his asylum appeal to be processed under the FTR 2014. The rules were declared unlawful in *Lord Chancellor v Detention Acti*on [2015] 1WLR 5341(DA6).

60. Mr Denholm conceded that in view of the decisions in *TN(Vietnam)v SSHD* [2019]1WLR 264 and *Hameed v SSHD* (CA)[2019]EWCA Civ456 he could not maintain his submission that as the FTR 2014 were declared unlawful the claimant's detention during the appeal process was unlawful. Thus, this sub-issue falls away.

Does the decision of the President of the FTT of 15th October 2015 to set aside the FTT'S determination of 26th January 2015 mean that detention was unlawful during the Claimant's appeal process?

61. The President of the FTT set aside the decision on appeal on 15th October 2015 stating:

"In the light of the decision in the Court of Appeal in… it appears to me that , in relation to the decision of the First- Tier Tribunal in this case:

a) there was a procedural irregularity in the proceedings….. b) it is in the interests of justice for the decision to be set aside

I now of my own motion SET ASIDE the decision of the First Tier Tribunal and DIRECT that the appellant's appeal be redetermined by a judge other than the judge who made the decision being set aside."

62. Mr Denholm argued that the claimant was entitled simply to rely upon the decision to set aside by the President. He said the defendant had not sought to set aside that direction and the: "procedural irregularity" thereby rendered the decision to detain unlawful. He said the Tribunal had not undertaken a factual enquiry as per *TN(Vietnam) v SSHD*[2019] 1 WLR 2647 but that had no bearing given the direction made by the President and the decision in *PN(Uganda) v SSHD* [2020] EWCACiv 1213.

63. Ms van Overdijk said that the fact the Rules were unlawful did not mean that the detention was unlawful. She submitted that just because the decision was set aside by the President, and not challenged by the defendant did not mean that the detention of the claimant was unlawful.

Discussion

64. Whilst the decision in ***TN*** relates to the 2005 rules given that there is no material difference between the two sets of Rules it is clearly of persuasive authority. In that case the claimant argued that once it was determined the Rules were ultra vires then decisions made under the Rules could not stand. That approach was rejected by the Court of Appeal. Singh LJ said at paragraphs 84,85, 89 and 90:

"In order to challenge the entire system of such rules it is not necessary to show that the rules will lead to unfairness in every case. Rather it is the creation by the rules of an "unacceptable risk" of unfairness which founds the ability of the court to strike them down. This is because it is important that rules which are systematically capable of creating unfairness should not be allowed to stand and should be removed or amended.

85. However, that does not entail the necessary conclusion that in each and every case decided pursuant to the ultra vires procedural rules a particular decision was itself procedurally unfair. This is reinforced by the consideration that, in *DA6* itself, the Court of Appeal said that the 2014 Rules would inevitably lead to unfairness in a "significant" number of cases. The court did not expand upon what that meant, for example whether it meant in a majority of cases or in a significant minority of cases. That was unnecessary. ….. It was the fact that a scheme was capable of creating unfairness in an unacceptable way which would render the scheme unlawful.

89. Finally, I would add that, as a matter of legal principle, if the appellants' submissions on the first "issue were correct, it would necessarily follow that even appeal decisions where the appeal was allowed would fall to be set aside, because they would be a nullity. That cannot possibly be correct. At the hearing before us Ms Lieven submitted that this was a theoretical point and not a real one, since in practice individuals will have been granted leave to remain

in the light of a successful appeal decision and this would not be curtailed. However, in my view, it is revealing that, if the logic of her submission were accepted, this would be the result as a matter of principle. That analysis of principle helps to test whether the submission can be correct.

90. For those reasons, I conclude on the first issue that the appellants' submissions must be rejected. It follows that it is necessary, if an application is made to set aside an earlier appeal decision, to assess whether there was procedural unfairness on the particular facts of that case. There may or may not have been. That will depend on a careful assessment of the individual facts. It is not enough to say that the 2005 Rules were ultra vires."

65. In *PN* at paragraph 34 Dingemans LJ considered the invalidity of the 2005 Rules and summarised the decision of the Court of Appeal in ***TN:***

"The court of Appeal held that in order to invalidate appeal decisions it was necessary to show that they had been influenced or infected by the ultra vires rules, which required a careful assessment of whether there had been procedural unfairness on the facts of the individual case."

66. Dingemans LJ then cited with approval what Ms van Overdijk referred to as the: "check-list" referred to in ***TN*** at paragraph 35 of the judgment.

67. Mr Denholm seized upon paragraph 86 of the judgement in *PN* in support of his submission that as there was no material distinction between quashing a decision and setting it aside the very fact of setting aside rendered the detention unlawful. I reject that submission. I do not consider that paragraph 86 and the words: "properly analysed, there had been no determination in the FTT" when read in context is supportive of Mr Denholm's submission. Dingemans LJ had already endorsed the decision of the Court of Appeal in ***TN*** in paragraphs 34 and 35 of his judgement. Further, in reaching his decision in relation to the last period of detention in paragraph 86 Dingemans LJ made it clear that his decision was predicated on the unlawful 2005 Rules and the unfair FTT

proceedings. I do not consider that at paragraph 86 Dingemans LJ was saying a non- determination was sufficient to render the decision to detain unlawful. It is evident Dingemans LJ was referring to both the unlawfulness of the Rules and whether or not the proceedings before the FTT were unfair.

68. If Mr Denholm’s argument held sway then the defendant would be required to challenge an administrative decision, resulting in an additional layer of delay, when the whole purpose of the decision by the President was to ensure that the claimant could have his appeal redetermined at the earliest opportunity without legal argument in respect of the setting aside.

69. I find the approach adopted by the President was one of administrative convenience. I do not consider that the decision made by the President rendered the decision to detain unlawful without more. I am not persuaded that some tortuous distinction should be made between cases where there has or has not been a fact sensitive approach in respect of the setting aside of the decision of the FTT. In my view such a finding would fly in the face of the principal authorities and equate to a decision that as the procedural rules were ultra vires then so was the detention if the original decision was set aside as a matter of procedure. I consider the same approach should be adopted.

70. If it is not sufficient for a claimant simply to refer to the invalidity of the rules it cannot be right that where, as a matter of administrative convenience, a decision is made, that the detention is thereby rendered unlawful. I find the President did not make a determination which equates to an analysis of the procedure. It therefore follows that the defendant is entitled to ask this court to

review whether the proceedings were in fact unfair which: "will depend on a careful assessment of the individual facts."

71. I do not consider the President's decision and the defendant's decision not to challenge renders the detention period as a whole unlawful.

<u>If the quashing of the FTT decision did not, in itself, render detention unlawful then was detention unlawful because the appeals process was, in fact, unfair.</u>

72. Mr Denholm submitted that the unfairness of the appeal process was demonstrated by the fact that when the claimant was not constrained by the DFT timescales he was able to provide much more detailed evidence in support of his claim for asylum.

73. Ms van Overdijk submitted that the claimant's detention should not be judged with hindsight; the claimant had been able to collate further evidence before his first appeal hearing and had not pointed to any material that he was prevented from presenting and therefore there was no prejudice in relation to his detention. Ms van Overdijk relied on the: "check list" at paragraph 103 of ***TN*** and submitted that when applied to the facts of the case the claimant had not been prejudiced.

<u>Discussion</u>

74. Singh LJ at Paragraph 103 and 104 of ***TN*** said:

> "103. For the future I would recommend that a court which has to consider an application to set aside an earlier appeal decision made under the 2005 Rules should approach its task having regard to the following:
> (1) A high degree of fairness is required in this context.
> (2) What the Court of Appeal said in *DA6 [2015] 1 WLR 5341* should be borne in mind: that the 2005 Rules created an unacceptable risk of unfairness

in a significant number of cases. Depending on the facts it may be that the case which the court is considering is one of those cases.
(3) There is no presumption that the procedure was fair or unfair. It is necessary to consider whether there was a causal link between the risk of unfairness that was created by the 2005 Rules and what happened in the particular case before the court.
(4) It should also be borne in mind that finality in litigation is important. There may be a need to ask how long the delay was after the appeal decision was taken before any complaint was made about the fairness of the procedure. There may also need to be an examination of what steps were taken, and how quickly, to adduce the evidence that is later relied on (for example medical evidence) and whether it can fairly be said that in truth those further steps were taken for other reasons, such as a later decision by the Secretary of State to set removal directions. This may suggest that there is no causal link between the risk of unfairness that was created by the 2005 Rules and what happened in the particular case before the court.

104. The above should not be regarded as an exhaustive checklist. At the end of the day, there can be no substitute for asking the only question which has to be determined: was the procedure unfair in the particular case? That has to be determined by reference to all the facts of the individual case."

75. When Judge Plumptre determined the claimant's appeal on the 26th January 2015 she had no less than 165 pages of material submitted by the claimant for her consideration. The claimant also submitted further documents at the hearing.The claimant also relied upon an expert report from Dr Glustozzi. In relation to the latter Judge Plumptre found the report of: "little assistance since despite having the opportunity to consider 18 documents listed in paragraph 2 of his report, he did not in fact comment on any of them and not even the two threating letters reportedly from the Taliban."

76. In reaching her determination the decision of Judge Plumptre is littered with references to the claimant being: "vague, evasive, unwilling to answer straightforward questions" and "inconsistent answers." She unhesitantly rejected the claimant's claim that he was wanted by the state authorities in Afghanistan and found that the claimant had never worked for the Intelligence/ Security Department. She said: "I find that many of the

documents that the Appellant has produced positively undermine rather than support his claim." Indeed, she went so far as to say a number of the documents had been fabricated. It is therefore evident that it was not the absence of documents and lack of time to prepare that caused the claimant's appeal to fail but the fact that he was not found to be a credible witness, he produced material that undermined his own position and some of those documents were found to be fabricated. Mr Denholm did not identify any aspect of the application of the Rules which he was able to identify made the procedure unfair; he simply submitted that further material relied on by the claimant later showed the unfairness. I reject that submission. I find, the further material was needed to counter the damning findings made by the FTT judge. In short it is the very: "further steps" that Singh LJ identified under item 4 of the: "check list." That further information had nothing to do with the speed of the process or the application of the Rules. Indeed, that the claimant had had time to prepare for the hearing before Judge Plumptre is shown, in my view, by the claimant's ability in the timeframe, not only to instruct an expert, but secure a report from him. The fact that the claimant submitted further evidence later does not per se equate to unfairness. Mr Denholm failed to identify any other factor beyond the filing of additional evidence for the second hearing to substantiate his submissions that the procedure was unfair. There is simply no substance in Mr Denholm's submissions. I am satisfied there is no causal link between the risk of unfairness and what happened in this case.

77. The only question for determination is: Was the procedure unfair? The answer is quite clearly no. The claimant's appeal failed, not through any procedural

failing, but due to the rejection of the claimant's evidence and because he was not a credible witness.

LAWFULNESS OF DETENTION SUBSEQUENT TO FAST TRACK APPEALS PROCESS

Phase 3- 11th February 2015 to 28th February 2015/17th March 2015

78. In the light of my earlier findings the claimant's arguments in relation to detention because the appeals process was unlawful fall away. I do not consider paragraph 86 of *PN* should be construed in the manner Mr Denholm sought. Dingemans LJ's finding was clearly predicated on the basis of the facts of that case and the court's finding that the 2005 DFT Rules were unfairly applied on that claimant's appeal.

79. Thus, the only sub- issue for my determination is:

Whether the detention was unlawful by reference to the Hardial Singh principles

80. There is a dispute between the parties as to the relevant date. This period commences on the 11th February 2015 and on the claimant's case ends on the 28th February 2015; on the defendant's case it ends on the 17th March 2015.The period covers the period when the claimant became appeal rights exhausted (ARE) and when further representations were received by the defendant. The claimant argues that is the earlier date.

81. Mr Denholm submitted that the claimant's detention, whether to the 28th February or the 17th March was in breach of EIG 55 and the third principle in *R v Governor of Durham Prison, ex parte Hardial Singh* [1984] WLR 704.

82. Ms van Overdijk submitted that the claimant was appeal rights exhausted, he had a failed appeal and there were no barriers to his removal and therefore there was no breach of the third principle.

Discussion

83. The disputed date relates to the date of receipt of the representations from the claimant's solicitors. The claimant's solicitors sent a letter to the correct address on the 27th February 2015 by Recorded Delivery. There is a proof of delivery slip dated 28th February 2015 and the name given on the receipt is "Ritesh". Mr Gardner was asked about that receipt in the course of his evidence. He accepted it was suggestive that the letter had been received but said that as he had not seen the envelope he could not say where the letter had actually been delivered. The defendant's own internal documents do not refer to those representations. The case record sheet only records the representations being received on the 17th March which is when the claimant re-submitted the February representations by fax.

84. I find the letter was sent on the 27th February, but I am not satisfied it was received by the defendant on that date. The signature and identity have not been formally linked to the defendant and I consider there is force in Mr Gardener's evidence that a Recorded Delivery signature is not a guarantee that the letter was actually received by the defendant. It could have been delivered and signed for elsewhere. My view is fortified by the fact that the defendant's

bail summary on the 16th March made no reference to the document and that the defendant immediately updated the case record the same day when the further representations were received by fax. I am satisfied that had the representations been received on an earlier date they would have been recorded on the case file. I find that the representations were received by the defendant on the 17th March.

85. The application of the *Hardial Singh* principles to the claim is common ground. These were summarised by the Supreme Court in *Lumba v Home Secretary* [2012] 1AC 245 at [22] (*per* Lord Dyson):

> It is convenient to introduce the *Hardial Singh* principles at this stage, since they infuse much of the debate on the issues that arise on this appeal. It is common ground that my statement in *R(I) v Secretary of State for the Home Department* [2002] EWCA Civ 888, [2003] INLR 196 para 46 correctly encapsulates the principles as follows:
>
> (i) The Secretary of State must intend to deport the person and can only use the power to detain for that purpose;
>
> (ii) The deportee may only be detained for a period that is reasonable in all the circumstances;
>
> (iii) If, before the expiry of the reasonable period, it becomes apparent that the Secretary of State will not be able to effect deportation within a reasonable period, he should not seek to exercise the power of detention;
>
> (iv) The Secretary of State should act with reasonable diligence and expedition to effect removal.

86. At this stage the claimant was appeal rights exhausted and there was no legal barrier to his removal. The claimant was referred to the defendant's removal team on 11th February 2015. The claimant's passport had expired but he was eligible for removal on an EU letter. The decision was taken that as he was an overstayer and had not abided by the immigration rules he was deemed to be

an absconder risk. I am satisfied that in the circumstances the defendant was entitled to detain the claimant for this period. The defendant was in a position to effect deportation within a reasonable period, it was simply a matter of processing the claimant through the system and securing a flight.

Phase 4- 17th March to 24th March 2015

87. Mr Denholm submitted that in the light of the claimant's legal representations there was now a legal barrier to removal and that removal within a reasonable period within the third *Hardial Singh* principle was not possible so that the defendant should not have detained the claimant.

88. Mrs van Overdijk accepted that once the defendant was in receipt of further legal submissions there was a legal barrier to the claimant's removal. However, she submitted that the receipt of the claimant's further submissions would not have prolonged the claimant's detention pending his removal on the 21st April 2015 so that the *Hardial Singh* principles could no longer be met. She submitted that had the claimant remained in detention then the requirement to submit further representations in person would have been waived and the consideration of the representations expedited before the date for the claimant's removal on the 21st April 2015.

Discussion

89. Once the defendant was in receipt of the claimant's representations on the 17th March there was now a legal obstacle to removal. At that stage the defendant had to assess: "whether and if so when, there is a realistic prospect that deportation will take place" (per Lord Dyson in *Lumba* at paragraph 103). I

am satisfied based on Mr Gardner's evidence that had the claimant remained in detention with removal directions in place the requirement to submit further submissions in person would have been waived and the further submissions expedited.

90. The defendant was entitled to consider the legal representations; and even Mr Denholm conceded 4 days in his closing written submissions. I do not consider 7 days was excessive. I am accordingly satisfied that there was no breach of the third principle.

91. I am satisfied that the defendant was able to detain the claimant for this period.

FAILURE TO REVIEW DETENTION

92. Mr Denholm submitted that there was no lawful review of the claimant's detention beyond 9th January 2015. He said that reviews were prepared on the 14th January,9th and 11th March but they were not authorised. Mr Denholm submitted that following the decision in *Kambadzi v SSHD* [2011] WLR1299 there was no lawful authority for the claimant's detention.

93. Ms van Overdijk relied on the evidence of Mr Gardner and said that the absence of signatures did not mean the detention had not been authorised.

Discussion

94. Mr Gardner accepted that there were no signed detention reviews after 9th January but he thought that the most likely explanation was that the original detention records were somewhere on the original file or had been lost. He

said that the reviewing officer had to consider the evidence in the case, conduct the review and then print the form and then walk over to the Executive Officer's desk, discuss the case and then have the detention authorised. Mr Gardner said he was certain the review had been done and printed but he could not say who had signed off the detention. He said that he could not see why the detention would not have been authorised and he said had the claimant's detention not been authorised the claimant would have been released.

95. Following Mr Gardner's evidence Mr Denholm conducted a further review of documentation and produced the CID Calendar Events. This document records, except for the 11th February, that the claimant's detention is: "completed."

96. It is unfortunate that this aspect of the claimant's case was not raised until the exchange of skeleton arguments giving the defendant little opportunity to carry out a thorough and further search of their records especially given Covid-19 restrictions. However, the further documentation which has been produced lends support to Mr Gardner's evidence that the claimant's detention was authorised. I am not persuaded that the absence of any signature on the detention records meant that the claimant's detention was unauthorised. I find it inconceivable that an officer would go to the trouble of reviewing all the evidence, expressing an opinion in respect of detention, print the form and then simply fail to walk a matter of yards to secure authorisation or otherwise. The continued detention or any individual involves the engagement of fundamental rights. Thus, the review of the file, recommendation and then

further review by a more senior officer is fundamental to the fairness of the process and protection of the individual's human rights. I do not consider that any officer would fail, not once but on the claimant's case on several occasions, to secure authorisation. In my view such a serious failing would not be an administrative error but given the liberty of an individual was at stake a serious dereliction of duty. I am not satisfied that there was such a fundamental failing. I find that the explanation for the absence of signatures is quite simply that the original documents have been misplaced and that the detention of the claimant throughout the requisite period was authorised.

CONCLUSION

97. The claimant was lawfully detained for the whole period of his detention and his claim fails. In the light of my findings there is no need for me to consider quantum but in deference to the submissions made by counsel I shall do so more briefly than would otherwise be the case.

QUANTUM

98. Before turning to the respective heads of loss I need to say something about the expert evidence in this case. I consider there was a significance divergence in the expert evidence. It is perhaps unfortunate that Dr Apostolou was unable to join the hearing by CVP but I do not consider that the presentation of her evidence was affected by the fact that she had to give evidence by speaker phone. I found her to be an extremely hesitant and unimpressive witness. I appreciate that time to reflect on a question can be a virtue and result in a considered response but I found that the hesitancy was caused by the simple fact that she had no answer to the questions which Ms van Overdijk fairly put

to her. Dr Apostolou had little or no experience with detainees. I was also unimpressed that without my permission she sought to access further information on her computer when giving her evidence. Her failings in presentation were compounded by her failure to consider the objective evidence when reaching her conclusions. I find that she deliberately prevaricated when she was cross- examined about the absence of any entries in respect of the GP entries in relation to the claimant's mental health. She accepted that this was a relevant factor but when she was asked whether that made her question the claimant's credibility she said at the time of her examination it did not. She was then asked whether it now affected her view. The answer, after a very long silence, was ultimately: "that is not my impression." I find she avoided providing the court with an answer on a fundamental issue.

99. In contrast, I found Dr Das to be an impressive witness. He has considerable experience of working with detainees both in immigration and prison settings. He provided a detailed comprehensive report and when cross-examined he explained fully and clearly the basis of his reasoning in a considered and professional manner. It follows that where there is a divergence in opinion, I prefer his evidence.

100. Dr Apostolou examined the claimant on 1st December 2018 and 19th January 2019 for her first report and on the 22nd April 2020. In her first report she concluded that the claimant was suffering from Post -Traumatic Stress Disorder (PTSD) because of his detention. By the time of her second report she thought there had been a significant improvement in his symptoms. Dr

Apostolou was asked to clarify her opinion in respect of PTSD and she stated at paragraph 25 of her report:

"Mr Ali insists that he was clinically well before his detention and it was only after that event that his symptoms started; I did not discuss this with Mr Ali on this occasion, given his clear opinion on the matter. Given his clear beliefs I can only offer my impression instead of clinical facts. I consider his clinical presentation to be of multi- factorial nature, although I also think it is entirely possible that, although there were factors contributing to his Post- Traumatic Stress Disorder that pre-existed the manifestation of the disorder, the clinical syndrome itself appeared after his detention compounded by the factors described above."

101. Dr Das examined the claimant on one occasion on the 27th January 2020. He did not accept the claimant had PTSD. He made specific reference to the definition in ICD10 and he concluded at paragraph 103 of his report:

"The situation of being detained for 3 months would have undoubtedly been distressing and upsetting for Mr Ali. However, despite this, in my opinion, this would not constitute a "stressful event or situation of an exceptionally threatening or catastrophic nature, which is likely to cause pervasive distress in almost anyone." I have concluded this by noting I have carried out over 50 assessments of people who have been detained in prison…. The vast majority of these patients did not have Post-Traumatic Stress Disorder. On the occasions that they had this diagnosis, without exception this was in relation to very traumatic incidents they had faced before they had come to detention…. I have not seen (or heard of) one single case where a person has developed Post-Traumatic Stress Disorder from the act of being detained itself.

Further, as stated the medical notes did not reflect any level of concern from the General Practitioner (despite him being reviewed regularly for other physical issues). Therefore, it did not appear that his mental health issues were significant enough to need any specific care. In my view, this is incompatible with this diagnosis; Post- Traumatic Stress Disorder is a serious, pervasive mental illness that requires a high level of support and treatment."

102. Dr Das concluded the claimant had mild depression present from about March 2017 which went into remission about May 2017.

103. In their joint statement dated 19th May 2020 the experts maintained their respective positions re the diagnosis. However, they both agreed the claimant was currently well and no longer suffering from any significant mental illness.

104. In his oral evidence the claimant did not consider his health had improved. He maintained that when he had visited his GP he had referred to his mental health issues. The claimant said his GP had told him that medication was not good for his long- term health and that is why he took matters into his own hands and went to an Afghan led counselling service.

105. I reject the claimant's evidence he advised his GP he was suffering from mental health issues. If the claimant had referred to such then the GP was required to make a note in the claimant's records. I find that the claimant's GP records are entirely silent on issues of mental health because the claimant never raised any problems with his GP. I have not seen any documentation in respect of the claimant's attendance at any external counselling service and I am not satisfied that any such service was offered or provided on any formal basis to assist the claimant.

106. Mr Denholm sought to persuade me that as Dr Das had accepted in cross-examination the incident with the claimant's nephew fulfilled the ICD criteria and that made the claimant more vulnerable I should prefer the evidence of Dr Apostolou. However, Dr Das was unequivocal that the claimant was not suffering from PTSD and for the reasons already expressed I prefer his evidence.

107. The claimant does not meet the ICD-10 definition and I find that Dr Apostolou had no answer on that issue. It was not a matter of: "clinical

impression" but whether the claimant met the definition. He did not. Further, the objective evidence in the form of the claimant's GP records did not support the diagnosis. Mr Denholm submitted that GP appointments are short and that a GP does not descend into detail but PTSD is a serious condition which requires careful noting. I find had the claimant been suffering from PTSD it is inconceivable there would not have been some reference to it in his medical records.

108. Thus, had I been required to do so I would have only awarded general damages for the claimant's mild depression. He was not suffering from any mental condition prior to his detention but appears to have developed it whilst detained. His symptoms were present from around March 2017 and have improved since. His detention was not the sole cause of his depression as he had suffered from earlier distressing events.

109. In accordance with the Judicial College Guidelines (15th Edition) he falls into category d) less severe. In view of the multi- factorial contribution to his condition I would have allowed £3,000 for damages.

110. In relation to damages for the claimant's detention the accepted approach is summarised in *MK (Algeria) v SSHD* [2010] EWCA Civ 980, *per* Laws LJ at [8]:

> There is now guidance in the cases as to appropriate levels of awards for false imprisonment. There are three general principles which should be born in mind: 1) the assessment of damages should be sensitive to the facts and the particular case and the degree of harm suffered by the particular claimant: see the leading case of *Thompson v Commissioner of Police* [1998] QB 498 at 515A and also the discussion at page 1060 in *R v Governor of Brockhill Prison Ex Parte Evans* [1999] QB 1043; 2) Damages should not be assessed mechanistically as by fixing a rigid figure to be awarded for each day of

incarceration: see *Thompson* at 516A. A global approach should be taken: see *Evans* 1060 E; 3) While obviously the gravity of a false imprisonment is worsened by its length the amount broadly attributable to the increasing passage of time should be tapered or placed on a reducing scale. This is for two reasons: (i) to keep this class of damages in proportion with those payable in personal injury and perhaps other cases; and (ii) because the initial shock of being detained will generally attract a higher rate of compensation than the detention's continuance: *Thompson* 515 E-F.

111. In that case an award of £12,500 was made for 24 days loss of liberty. Adjusted for inflation and Simmons this equates to £18,100 or £14,600 applying RPI. There was no history of criminality or past detention.

112. In *Muuse v SSHD* [2009] EWHC 1886 (QB) the High Court awarded £25,000 for a period of unlawful detention of 128 days. The Claimant in that case had a background of criminality and the judge held (at [111]) that "*having already had considerable experience of custody, [he] would not have been subject to the initial shock and experience that firs time custody can bring*." When adjusted for inflation that equates to £37,460.

113. In *PB v SSHD* [2008] EWHC 3189 (Admin) a potentially vulnerable detainee was unlawfully detained within the DFT regime for a period of about six months. The basic damages were £32,000, which equates to £48,492 once adjusted.

114. In *AS v SSHD [2015] EWHC 1331 (QB) (13 May 2015),* an age disputed detained child case, £23,000 (now worth around £24,475) basic damages was awarded for 61 days' detention (detention aggravated AS's PTSD and anxiety and a shock element was awarded).

115. In *R v Special Adjudicator v SSHD ex parte Bouazza / AKB [1998] INLR 315 (17 December 1997),* £10,000 (now worth around £17,215) were awarded in basic damages for 63 days of detention but this was following 313 days of lawful detention, hence there was no element for shock of arrest.

116. In *R (Chaparadza) v SSHD [2017] EWHC 1209 (Admin)* (24 May 2017), a detainee was awarded £10,000 in respect of 70 days of unlawful detention.

117. In *R (Santos) v SSHD* [2016] EWHC 609 (Admin) (23 March 2016), Lang J awarded the claimant £40,000 (now worth around £42,150) in basic damages for unlawful detention of 154 days (around five months) (at [149]) (in *AXD*, Jay J treated this as daily rate of £260). This was a case where the claimant had applied for an EEA residence card. The defendant made had a number of fundamental errors in the handling of his application and his detention. He had never been imprisoned previously and was therefore significantly shocked and distressed by it.

118. In *AXD v Home Office* [2016] EWHC 1617 (QB), Jay J assessed quantum for the unlawful detention as follows:

i. 20 months and 5 days / 1,090 days (£80,000) – daily rate of £73.39;

ii. 13 months and 5 days / 400 days (£62,000) – daily rate of £155; and

iii. 11 months and 5 days / 339 days (£58,000) – daily rate of £171.09.

119. In *KG (Sri Lanka) v SSHD*[2018] EWHC 3665 (Admin) basic damages of £17,500 (adjusted £18,000) were awarded for 30 days when the initial detention of 24 hours had been lawful.

120. The precedential effect of any of the cases relied upon needs to be considered. It is clear from the legal authorities that the cases are illustrative only. I do not consider that they provide any formal framework as they are all fact-sensitive. The evaluative exercise I would have been required to undertake is therefore not precise. Clearly any findings would relate to the period of detention and as to whether any of the detention periods had been lawful. I therefore propose simply to give a figure for the overall period of detention given the academic nature of the exercise. I would have awarded a figure of £20,000.

121. Mr Denholm did not pursue a claim for exemplary damages.

122. The final issue is aggravated damages. The claimant pursued a claim for: "insulting, humiliating, degrading, distressing and outraging (sic) circumstances of his detention." He relied on the lack of any considered analysis of the decision to route his claim to DFT and the impact upon him of the injustice of his detention.

123. In his witness statement the claimant advised that for the first two nights of his detention he shared a room with an in-room toilet with no curtain. When cross-examined he changed his evidence to say the curtain was torn and the rod was broken. I consider there is a material distinction between no curtain and a defective one and I am not satisfied that the conditions were as the claimant described. Even if I had been so satisfied I do not consider that in isolation would have been sufficient to ground any claim for aggravated

damages. The other complaints merely relate to the legal application of the DFT. There is nothing in any of the pleaded allegations that my view would have aggravated any illegality of detention and nothing in the manner in which the detention was continued which added insult to any injury. I would have made no award.

124. The claimant's claim is dismissed.