

**THE HIGH COURT  
JUDICIAL REVIEW**

[2022] IEHC 280

[Record No. 2020/1026JR]

**IN THE MATTER OF SECTION 5 OF THE ILLEGAL IMMIGRANTS (TRAFFICKING ACT)  
2000 (AS AMENDED)**

**AND**

**IN THE MATTER OF THE INTERNATIONAL PROTECTION ACT 2015**

**BETWEEN**

**Z.A.**

**APPLICANT**

**AND**

**THE INTERNATIONAL PROTECTION APPEALS TRIBUNAL  
THE MINISTER FOR JUSTICE AND EQUALITY  
IRELAND AND THE ATTORNEY GENERAL**

**RESPONDENTS**

**JUDGMENT of Mr. Justice Heslin delivered on the 8th day of April 2022**

**Introduction**

1. The primary relief sought in these proceedings is an order of *certiorari* quashing the decision of the International Protection Appeals Tribunal (hereinafter the 'Tribunal') dated 20 October, 2020 (hereinafter 'the Decision') made under s.46 of the International Protection Act 2015 ('the 2015 Act') and communicated to the Applicant by letter dated 22 October, 2020.
2. The hearing proceeded on the basis of the Applicant's Amended Statement of Grounds dated 18 January, 2021. The Applicant swore a grounding affidavit which is dated 17 December, 2020 and his solicitor swore an affidavit on 5 January, 2021 with regard to compliance with Practice Direction HC81. The Respondents' Statement of Opposition is dated 5 March, 2021. I have carefully considered the contents of all the foregoing.
3. I want to express my thanks to Mr. Moroney BL for the Applicant and to Ms. Dempsey BL for the Respondent, both of whom provided the court with detailed written submissions which they supplemented by means of skilled oral submissions during the hearing. I have carefully considered all submissions, written and oral, in addition to the authorities to which this Court's attention was directed and will refer to the principal submissions in the course of this judgment.

**Issues arising**

4. On behalf of the Applicant, four issues were identified in the following terms:
  - (1) Whether the Tribunal erred in law at paras. [4.19] and [4.20] of the Decision insofar as it rejected the material element of the Applicant's claim to be a bisexual who had relationships which led to his arrest and detention by impermissibly and/or irrationally relying on the Applicant's delay in seeking international protection in breach of the legislative scheme set out in s.28 of the 2015 Act and/or Article 4 of the Qualification Directive 2011/95/EU ('QD');

- (2) Whether, in the alternative, the Tribunal erred in law insofar as it acted irrationally and/or disproportionately at para. [4.6] of the Decision when considering the Applicant's explanation for this delay to be one which "seriously undermines his credibility" and that his "entire claim must be assessed from that point of view";
- (3) Whether the Tribunal erred in law at paras. [4.19] and [4.20] insofar as it rejected the material element of the Applicant's claim to be a bisexual man who had relationships which led to his arrest and detention, by irrationally and/or in breach of fair procedures, by determining that material submitted cannot be relied on as their provenance has not been established on the balance of probabilities;
- (4) Whether the Tribunal erred in law at paras. [4.19] and [4.20] insofar as it rejected the material element of the Applicant's claim to be a bisexual man who had relationships which led to his arrest and detention, by irrationally rejecting the passage of time as a tenable basis for the Applicant being vague and/or vague and evasive in respect of his past relationships on the premise that the Applicant could have applied in the UK when matters were fresh in his mind?

### **Background**

5. The Applicant is a male aged 34. He is a national of Pakistan. He is a single man without issue. He has made a claim for international protection on the basis that he is bisexual and fears that if he is returned to Pakistan he would face persecution and/or a real risk of suffering serious harm by reason of his sexual orientation. The Applicant claims that he was caught on three occasions engaging in sexual relations with other men and that after the third incident, when threatened with being reported to the police, he left college in Pakistan, travelling to the UK on a student permission.
6. The Applicant has had fifteen years of formal education. His parents, three sisters and a brother all currently reside in Pakistan. The Applicant left that country on 14 January, 2011 and lived in the UK on a study visa from 14 January, 2011 until February 2014. Thereafter, he continued to reside illegally in the UK from February 2014, until September 2016. The Applicant did not seek international protection in the UK where he studied and worked.
7. The Applicant arrived in this State on 15 September, 2016. Following his arrival in this State the Applicant did not seek international protection. The Applicant made a 'fake' ID. This came to the attention of An Garda Síochána. He was arrested and released on bail. His criminal case concluded in April 2018 and he was released on probation.
8. He first made an application for international protection on 28th June, 2018. After an initial interview at the International Protection Office ('IPO'), the Applicant completed an application for International Protection Questionnaire on 7 August, 2018. The Applicant was further interviewed pursuant to s.35 of the 2015 Act on 13 August, 2019 with the assistance of an interpreter.

9. As regards the Applicant's familiarity with the English language, he avers at para. 11 of his 17 December, 2020 affidavit that "whilst I availed of the assistance of an interpreter in the course of my application, I have sufficient command of the English language for the purpose of swearing this affidavit." By letter dated 26 November, 2019 the IPO recommended that the Applicant should be given neither a refugee declaration nor a subsidiary declaration. The relevant decision pursuant to s.39 of the 2015 Act is dated 26 November, 2019.
10. The Applicant lodged an appeal with the Tribunal on 16 December, 2019 and his appeal came on for hearing on 5 October, 2020. The Applicant, through his solicitors, provided an additional document to the Tribunal by email on 6 October 2020, which was acknowledged the following day. The Tribunal's decision of 20 October, 2020 was communicated to the Applicant by letter dated 22 October, 2020, received on 23 October, 2020. The decision affirmed the recommendation that the Applicant should be given neither a refugee declaration, nor a subsidiary protection declaration. During the hearing, no issue was taken by the Respondents with regard to any delay in seeking and obtaining leave to seek judicial review.

#### **Legal principles**

11. At this juncture, it is useful to make reference to certain legal principles of relevance to the determination of the present application. At the risk of stating the obvious, the present proceedings do not constitute an appeal against the Tribunal's decision. Judicial review is concerned with the lawfulness of a decision made. Thus, this Court has the jurisdiction to look at the manner in which a decision was reached but it is impermissible for this Court to adopt a merits-based approach to a determination of a challenge to the decision. Therefore, it is entirely impermissible for this Court to purport to 'step into the shoes' of the Tribunal and to assess a decision with reference to what the court believes it would have done, had it been entrusted with the making of the decision.
12. A number of other well-settled principles from administrative law generally are worth emphasising. It is for the Applicant to discharge the onus of proof insofar as an assertion of unlawfulness is made with respect to the decision. A corollary of the foregoing is that administrative decisions are presumed to be valid. There is also a presumption that material has been considered if the decision says so and, in the manner discussed presently, that is the position with regard to the impugned decision in the present application. It is also appropriate to emphasise, at this juncture, that it is a well-settled principle of administrative law that the weight to be given to evidence is quintessentially a matter for the decision-maker.
13. A very helpful summary of relevant principles can be found in a recent decision by Barr J. in *M.A.S. v. International Protection Appeals Tribunal & A and R* [2021] IEHC 841, as follows:-

"47. The principles which must be applied by a decision maker when assessing the credibility of an applicant for international protection are well known. The principles

were first set down in *IR v. Minister for Justice and Equality* [2015] 4 IR 144. Those principles are very well known and need not be repeated.

48. In *RK v. IPAT & Ors.* [2020] IEHC 522, Burns J. stated that the decision maker should apply their knowledge of life and common sense to the evidence before him or her. She stated as follows at paras. 23 and 24:-

“23. A fact finder is not obliged to accept the evidence given. Rather, a fact finder must analyse and assess the evidence to determine whether she accepts the evidence and what weight she attaches to it. To conduct that exercise, a fact finder should apply their knowledge of life and common sense to the evidence. In asylum cases, because a fact finder is dealing with different cultures and norms, it is necessary to take account of the different cultures and conditions in the country in question when analysing the evidence. An assessment of what one might reasonably expect in a situation, having regard to the different culture and conditions in the country in question, should be carried out so that a rational assessment of the evidence given can be engaged in.

24. This is precisely the exercise which the Respondent engaged in with respect to her analysis of Applicant's evidence. Rather than her comments being speculation or conjecture, they are instead an assessment of what one would reasonably expect in the situation asserted by the Applicant. Having carried out this exercise, the Applicant's evidence can then be assessed and measured with reference to that expectation.”

49. Similar comments were made by McDermott J. in *KR v. RAT* [2014] IEHC 625, where he stated as follows at para. 23:-

“23. It is important to recall that the jurisdictional limit in this court is to assess the manner in which the decision was reached. The court is not a court of appeal in relation to the merits of the case. Many of the grounds advanced in this case are simply arguments that a contrary conclusion might or ought to have been reached on the merits. They are attempts to deconstruct the decision of the Tribunal and to invite the court to substitute its own view for that of the primary decision maker. This is contrary to the guiding principles set down at para .11 of the judgment of Cooke J. in *I.R. v. the Minister for Justice, Equality and Law Reform and the Refugee Appeals Tribunal* [2009] IEHC 353. In particular, it is important to realise that the assessment of credibility is to be made by reference to the full picture emerging from the available evidence and information taken as a whole “when rationally analysed and fairly weighed”. For that reason the decision on credibility must be read in the round and as Cooke J. noted:-

‘The court should be wary of attempts to deconstruct an overall conclusion by subjecting its individual parts to isolated examination and disregard of the cumulative impression made upon the decision

maker especially where the conclusion takes particular account of the demeanour and reaction of the applicant when testifying in person.’ Furthermore, there is no general obligation to refer in a Tribunal decision in respect of credibility to every item of evidence and every argument advanced provided the reasons stated enable the applicant and the court to understand the substantive basis for the conclusion on credibility and the process of analysis or evaluation by which it has been reached.”

50. Finally, the duty to give reasons for a decision is well established in Irish law. In the context of asylum or international protection applications, Humphreys J. in *MEO v. IPAT & Ors.* [2018] IEHC 782, stated that the duty to give reasons is only a duty to give the main reasons; a decision maker is perfectly entitled to identify only the main reasons for their decision. He stated that where the applicant's credibility is rejected generally, the decision maker does not need to engage in micro-specific analysis further to that. In support of that proposition he referred to the decision in *Oguekwe v. Minister for Justice Equality and Law Reform* [2008] IESC 25, where Denham J. (as she then was) also referred to the lack of a need for “micro-specific format” in relation to reasons. (See para. 23 of the judgment of Humphreys J.).

#### **Section 39 report**

14. Among the exhibits to the Applicant’s 17 December, 2020 affidavit grounding the present application was the report, dated 29 October, 2019, pursuant to s.39 of the 2015 Act which accompanied the letter from the IPO to the Applicant, dated 26 November, 2019 informing him of the reasons why the IPO recommended that he be given neither a refugee declaration nor subsidiary protection. The said report comprises 29 pages and internal pages 7 to 14, inclusive, address the Applicant’s claim under the heading “The Applicant is bisexual and engaged in same-sex relations”. With reference to information contained in the questionnaire previously completed by the Applicant, the report concludes with the following statement on internal page 14:

“The Applicant’s account of facts relating to this element of his claim are vague, internally inconsistent and implausible. His responses to the numerous credibility issues arising does not resolve the said issues, but raises even more questions. Considering all of the above, I find on the balance of probabilities that the Applicant’s claim that he is bisexual and he engaged in same-sex relations in Pakistan is not credible.”

15. Internal pages 14 to 18 addressed the Applicant’s claim under the heading “Threats to the life of the Applicant in Pakistan because he is bisexual”. The IPO rejected this aspect of the Applicant’s claim stating *inter alia*, (at internal p. 18 of the report) that: -

“The Applicant’s claim that he is bisexual and he has engaged in same-sex relations in Pakistan has not been accepted as credible. Consequently, his claims of facts regarding attacks on him in Pakistan, threats to his life, and fear for his life in Pakistan is on the balance of probabilities, not accepted as credible.”

16. In submissions on behalf of the Applicant, it was accepted that the IPO rejected the Applicant's credibility. It was also acknowledged that the IPO found certain of the Applicant's responses to be vague. However, counsel for the Applicant submitted that these adverse credibility findings were not incapable of being reversed on appeal. The gravamen of the submission was that the Tribunal acted unlawfully in reaching adverse credibility findings. An element of this submission was to suggest that the IPO engaged with the evidence before it in order to reach the conclusions it came to whereas, it was submitted, the Tribunal did not. According to the Applicant, the Tribunal focussed unduly on the issue of delay and allowed this to colour their views, resulting in irrational and unlawfully made credibility findings.

### **The Decision**

17. Given its relevance to the present application it is appropriate to quote at some length from the Decision. Part [1] concerns the "Introduction & Case History". The essence of the Applicant's claim and the documents considered were referred to as follows: -

"[1.3] The basis of the Applicant's claim is that he is a bisexual man who was caught on three occasions engaged in sexual interactions with other men. His claim was rejected on the basis that he had not established his credibility.

[1.4] The list of documents submitted by the appellant is set out in the IPO's decision. One further document was submitted at the oral appeal which, due to Covid-19 restrictions, had to be transmitted electronically to the Tribunal. This additional document is a court document from 11 January, 2007. The Tribunal has considered all the documents on file and as submitted."

18. The list of documents referred to in the IPO's decision appears on internal p.3 (of 29) of the 29 October, 2019 s.39 report and comprises the following: -

- "- national ID card (original)
- Pakistani passport no. [specified] valid from 18/11/2009 to 17/11/2014 (copy).
- Secondary school certificate (annual) examination results dated 12/09/2005 (copy).
- Intermediate (annual) examination results dated 20/4/2005 (copy).
- University of Punjab Bachelor of Commerce Degree dated 11/2008 (copy).
- Letter from Dr. John Lally, Galway Medical Centre dated 02/2018 (copy).
- Radiology department CT lumbar spine test results dated 20/03/2017 (copy).
- CMI Level 7 Diploma in Strategic Management and Leadership (QCF) 19/01/2012 (copy).
- CMI Credit Certificate dated 19/01/2012 (copy).

- Bahauddin Zakariya University, Multan Result Card for Master of Commerce Part I, dated 22/04/2010 (copy).
- Application document to the court given to the area Magistrate (Urdu) (copy).
- Medical report (Urdu) (copy).
- Session Code for the court (Urdu) (copy).
- Application given to police before the session code (Urdu) (copy).
- Summary of applications (original).
- Writ petition dated 24/08/2007 (copy).
- Punjab Health Department, Legal Examination Certificate dated 23/07/2007 (copy)."

19. The document dated 11 January, 2007 which was referred to by the Tribunal at para. [1.4] comprises part of exhibit "ZA2" to the Applicant's 17 December, 2020 affidavit. It is a translation of a document in Urdu. It begins in the following terms: -

"For the attention of Mr. C.P.O. Faisal Abad.

Application for the lodgement of a case against ZA son of MI resident at...Raza Abad, Faisal Abad.

Respected Sir,

This is stated that the Applicants of this application are the residents of Raza Abad, Faisal Abad. The accused person is a man of bad character and is a resident of our area..."

20. Section [2] of the Decision sets out an "Outline of claim and evidence at oral hearing" whereas section [3] comments on "Nationality/statelessness". Section [4] comprises the Tribunal's "Assessment of facts and circumstances" and the Tribunal sets this out from para. [4.1] to [4.21] before detailing its "Conclusions" at para. [4.22]. Given that it relates to the core of the Applicant's claim, it is appropriate to set out s. [4] of the Decision *verbatim* and in full which I now do, as follows.

21. Part [4] of the Tribunal's Decision appears in the following terms: -

"[4] Assessment of facts and circumstances

Delay

The Tribunal does not lightly consider the delays in bringing an application for International Protection as an adverse credibility finding. This is because it can often distract from a consideration of the core issues and it is not the case that

such delays will always amount to adverse credibility findings. In *SZ v. RAT* [2013] IEHC 325, the Hon. Mr. Justice MacEochaidh found that the implication that a person genuinely fearing persecution will seek asylum in the first safe country is a logical and lawful conclusion.

[4.2] Where this line of reasoning is invoked, care must be taken to ensure that it is a safe and logical conclusion in the particular circumstances of the individual appellant. For example, it would not be safe to draw such an inference where a person spends some time in a country which is not a signatory to the UN Declaration on the protection and status of refugees, or where the person has other problems in that country.

[4.3] The Tribunal notes that the appellant claims to have left Pakistan in 2011 and lived in the UK on foot of a student permission until 2014. He remained in the UK until November 2016, at which point in time he travelled to the State with neither permission to enter/reside in the State nor such visa from the UK as would permit him to enter the State. He remained in the State without permission (although he did make an application for permission to remain in August, 2017) until he made his application for international protection in June 2018. The appellant lived a reasonably normal life in the UK and in the State prior to his claim. He went to college, he speaks English (although he spoke Urdu throughout the appeal, the earlier stages of his claim were dealt with in English and the tribunal is satisfied that he had no difficulty at that point in time expressing himself in English), he worked, albeit unlawfully during that time and he was able make rational (albeit unlawful) decisions about his circumstances, such as travelling to Ireland and using his driver's licence as ID.

[4.4] The appellant was asked why he didn't apply for asylum/International Protection earlier and stated that he felt safe so didn't feel the need to apply. The Tribunal does not consider this a sufficient explanation for him not seeking international protection, either when his permission lapsed in the UK in approximately 2014 or when he first arrived in the State in November 2016. He claims that he didn't even know about the asylum/International Protection system. However, the appellant is well educated and his stated reason for leaving Pakistan was defined protection abroad. This latter explanation, while not directly contradicting the first, sits uneasily beside it – his explanation that he didn't apply because he felt safe there and that, at Q 87 of his s. 35 interview, that his friends told him that if he applied for asylum he would be sent back. In those circumstances, and based on his particular and individual circumstances, the Tribunal is not satisfied that he has a reasonable explanation in relation to the delay in the making of his application.

[4.5] Thus, the general inference that a person genuinely feeling persecution would apply at the first reasonable opportunity applies in this case. Moreover, the tribunal considers the delays highly relevant in this case given that, as will be set out below,

the appellant's claim is very vague and there are serious concerns regarding the authenticity and provenance of his supporting documentation.

[4.6] Thus, the Tribunal considers, in the particular and limited circumstances of this appeal, that his failure to seek international protection in the UK and his failure to seek it between arriving in the State in November 2016 and his ultimate application in June 2018, choosing instead the unlawful option of living and working in the State without permission, without a reasonable excuse for this behaviour, seriously undermines his general credibility and considers that his entire claim must be assessed from that point of view. That is not to say that this is a credibility finding that could not be overcome, but that it requires more careful consideration of the core elements of his claim within that context, that might be applied to a person who makes an application at the first reasonable opportunity.

#### Documents

[4.7] The appellant provided a number of documents to the Tribunal, all of which have been considered. In particular, the tribunal considered that the documents that the appellant claims to be from the courts and police to be the most relevant. When asked about where he obtained these, the appellant stated that he had contacted his lawyer, and his lawyer provided them, but he did not know how his lawyer got them. The tribunal considers this to be a significant concern in relation to the claim. The tribunal asked the appellant if he knew that such documents existed, or inquired into them but said he did not, he just told the lawyer what he needed and the lawyer provided them. This is highly suspicious, given that the documents purport to be over a decade old. It is not impossible that a lawyer would have kept the documents for this long, but it is not considered likely that he would have had them to hand. The appellant was asked about this but was unable to provide further information as to how his lawyer got them, and it was clear to the Tribunal that the appellant lacked any curiosity or insight as to how these documents were procured. The fact that he didn't ask his lawyer if he had any documents, but told him what he needed are, in conjunction with the time that has passed, highly suspicious circumstances.

[4.8] At the oral hearing, the appellant provided a new document. This was from the 11th January 2007. This is in contrast to the document of the 18th January 2007. The appellant now claims that there were in fact two complaints made by the same people within a week of each other, and the reason for same is that when he was released from the police station they went to the police again to make a second complaint and this time it was listened to. The tribunal notes that at Q 77 of his interview, the appellant was asked to explain why the document provided at that stage was dated the 18th January when in his questionnaire he said it was the 11th January and the appellant stated that "an application was made to the CPO which I am waiting for and as I mentioned, I just got a few pictures". However, when asked about it in the Tribunal, the appellant was vague as to how he was only providing

this document at the time of the hearing, stating that maybe his lawyer had found it, having previously overlooked it.

[4.9] Taking into account the significant concerns as set out above, the Tribunal is not persuaded that these documents can be relied upon as their provenance has not been established on the balance of probabilities.

#### His relationships

[4.10] A significant adverse credibility finding in the s. 39 report is that he is very vague about the details of the men whom he had relationships with, and the duration of those relationships. He did not know Zeeshan's full name when asked, he said "I don't know, Mohammed Zeeshan" (Q. 28) and said that they started having sex during his graduation (Q. 24) and that they had first met in the canteen during graduation (Q. 29 – 31). Although he describes graduation as being a period of time rather than a specific event, he ultimately describes this as being the period from 2005 – 2007 [Q. 32]. In the oral hearing, he states that they had a relationship for about a month which ended when the complaint to the police was made in January 2007, so they must have met around November, 2006. The tribunal considers this to be very vague. That they would have known each other for a considerable period of time and have been in a relationship for a month but he didn't know his full name is not considered credible, and the vagueness of the timing of his relationship makes it difficult, if not impossible, to properly assess it.

[4.11] In relation to Sullaman, he does not know his surname. This is despite them being in a relationship for 4 months and Sullaman's father bringing a criminal complaint against the appellant (such complaint allegedly having Sullaman's father's name on the court documents). The Tribunal considers the narrative of how Sullaman's father caught them to be highly unusual – he claims that Sullaman's father came to his house and caught them engaged in sexual intercourse in the sitting room. When asked why he considered that they would not be caught having sex in the sitting room, he stated that when men are in the sitting room, people do not come in without knocking. When asked how Sullaman's father knew he was there, the appellant gave a vague account about Sullaman's father travelling around the area looking for his son and trying the appellant's house on a speculative basis. It was put to the appellant that the documents provided stated that Sullaman's father "went to his son's close friend ZA's house and the door to the sitting room was locked". The Tribunal asked the appellant if Sullaman's father knew they were friends and he said 'yes in the beginning' and when asked if they had been introduced he said 'not an official meeting but they had met in Sullaman's house. The Tribunal does not find his account of his relationship with Sullaman and, in particular, the incident involving Sullaman's father, to be coherent or plausible.

[4.12] In relation to his relationship with Bholo, the same vagueness as to details of their relationship was present here. However, a more fundamental problem is that the appellant claims that this took place when he was in college in Layyah and

after being found he left the college without completing it in January, 2009. However, he has provided a document from Bahauddin Zakariyay University in Multan which referred to exams held in December 2009 to January 2010. The appellant was unable to satisfactorily explain this document. He stated that his college in Layyah was a private college and this was the sponsoring university. However, he has no documents from Layyah itself and when asked why not, he said he didn't consider it relevant to keep them. When asked about the exam dates, he stated that he only sat the first group and not the second. The tribunal does not consider these explanations to be reasonable.

[4.13] He was also vague about the incident where he claims he was caught with Bholo. He was asked if the door was locked and he said he didn't know, that Bholo would look after that. He was asked why the warden was inspecting the room and he said he didn't know but thought it was routine. While not implausible, these answers are nevertheless vague and evasive and do not provide a cogent and detailed account of this incident.

[4.14] The Tribunal notes that in addition to basic details, such as names and dates, it is reasonable and appropriate to inquire as to the personality aspects of a relationship e.g. what their shared interests were, what the other people were like etc. When asked, the Tribunal, (sic) stated that Zeeshan liked cricket, Sullaman liked volleyball and Bholo liked eating out in restaurants. He could not remember any other details about them when asked. He was asked if he went to matches with Zeeshan or Sullaman and said yes, but again was very vague about it. He never went to cricket matches but claimed that he did go to see Sullaman play volleyball once, but they didn't go together. While this latter explanation is consistent with, for example, a covert relationship, it doesn't make any sense in the context of his claim that he was overtly friends with Sullaman. In any event, the Tribunal does not consider it credible that they would have had a relationship for approximately 4 months but the appellant is unable to provide any clear information about what Sullaman was like as a person, let alone what his full name was.

[4.15] The Tribunal must consider whether some allowances or credit ought to be given to the appellant for the vagueness of his claim in circumstances where it was over a decade ago. However, given that the appellant had the opportunity to apply for asylum in the UK when these events were still relatively fresh in his mind but did not do so, and perhaps more importantly these relationships, if true, would have had a dramatic impact on his life, in terms of being both formative experiences and also in terms of them being directly linked to him being persecuted, the tribunal is not satisfied that the vagueness and lack of detail in his claim can be overcome by reference to the passage of time on the particular facts of this appeal.

[4.16] Having regard to all of the above, the Tribunal is not satisfied that the appellant was involved in any of the relationships that he claims that he was involved in.

#### Arrests, beatings and prosecutions

[4.17] As set out above, the appellant's claim in relation to his relationships has not been accepted. As his claims to have been arrested and prosecuted stem directly from those relationships, it follows that those claims are not accepted. The Tribunal further notes that the documents which he provided to support the claim that he was prosecuted are not accepted as reliable, and the appellant claims to have been beaten when arrested but there is no coherent medical evidence to support that claim. The appellant has some medical evidence of degenerative disc disease and "inflammatory spinal disorder". However, he does not link this to his claimed experiences. He does claim that his Obsessive – Compulsive Disorder arises from his experiences and he has sought a Spirasai report in this regard but no such report was provided to the Tribunal.

[4.18] Having regard to all of the above, it follows that as his claimed relationships are not accepted, that his claimed arrest, beating and prosecution are not accepted, and there is nothing else in the claim which, when the evidence is assessed holistically, would support any finding to the contrary. Accordingly, the Tribunal does not accept his account of being arrested, beaten and prosecuted on the balance of probabilities.

#### Bisexuality

[4.19] The appellant's narrative in relation to his relationships, arrests, beating and prosecutions has not been accepted. Nor have the documents which he relies upon to support his claim that he was prosecuted by the authorities been accepted. However, the Tribunal can consider whether, notwithstanding that his claimed past prosecution is not accepted, his claim that he is bisexual could still be made out.

[4.20] It is difficult to assess a person's sexual preference. The Tribunal's rejection of his claim in relation to his relationships is a negative factor, but in the appellant's favour he has given a coherent description of being aware all his life that he was attracted to both men and women. His claim in relation to his attraction to women is somewhat vague – he claims that he never had a relationship with a woman. However, this does not undermine his claim that he is, nevertheless, attracted to women as well as men. There are thus some positive credibility factors in this case. However, ultimately the appellant gave a narrative of his past relationships that is not credible, and that was the basis of his whole claim. Accordingly, the Tribunal considers that in the particular circumstances of this case, the rejection of the narrative of his previous relationships and prosecution is sufficient to reject his claim to be bisexual on the balance of probability.

### Benefit of the doubt

[4.21] The benefit of the doubt may arise in case of uncertainty or where there is no documentary support for a claim which is otherwise coherent, plausible, not contrary to C.O.I. and where the general credibility of the appellant has been established. The Tribunal was able to determine all aspects of the appellant's claim on the balance of probabilities.

### Conclusions

[4.22] The Tribunal is satisfied that the appellant is a Pakistani national but is not satisfied in relation to any other material element of his claim".

22. The only aspect of the appellant's claim which the Tribunal accepted as credible was that he is a Pakistani national and, having reviewed the country of origin information, the Tribunal came to the view that there was nothing to suggest that being a Pakistani national alone was a basis to consider that there was a real chance of persecution in Pakistan. This is clear from s. [5]; and, at s. [6], the Tribunal confirmed its conclusion, namely, to affirm the recommendation of the IPO that the appellant not be given a refugee declaration. At s. [7] the Tribunal went on to analyse whether, on the facts established, there was a basis for a finding that the appellant would face a real risk of serious harm if returned to Pakistan. The Tribunal did not so find and confirmed, at s. [8], that the appellant was not entitled to subsidiary protection.

### **Submissions**

23. A principal submission made on behalf of the Applicant is that the Tribunal focused unduly on delay and it is contended that it was irrational and impermissible to reject the material element of the Applicant's claim to be a bisexual man who had relationships with men which led to his arrest and detention. The Applicant submits that the Tribunal failed to carry out an assessment of the relevant facts and circumstances in accordance with s. 28 of the 2015 Act and/or Article 4 of the Q.D. In both written and oral submissions, it was made clear that the Applicant's case is, in the main, about the decision-maker's alleged reliance on the Applicant's delay in seeking international protection, having regard to the Tribunal's obligations to assess the relevant elements of the application which, in turn, consists of the Applicant's statements and all documents submitted by him or her regarding, *inter alia*, his or her reasons for applying for international protection.
24. At the hearing, it was made clear that the Applicant was resiling from any argument that the Tribunal was not entitled to have regard to delay. It was stressed, however, that delay alone is not fatal to an application for international protection. Moreover, it was made clear that the Applicant does not resile from the argument that, even where there has been delay in seeking international protection, there was an obligation on the part of the Tribunal to go on to consider the whole case; and it was submitted that this was not done, or not lawfully done.

25. It was contended on behalf of the Applicant that there was no real engagement with the material element of his claim. It was submitted that the tenor of the Decision is that, because of the Applicant's delay, the Tribunal was prevented from engaging, in the manner required, with the statements and arguments submitted by the Applicant. A variation on this theme was that the manner in which the Tribunal dealt with delay was to impose, unlawfully, a presumption that the Applicant was not entitled to international protection and to place an additional and impermissible burden on the Applicant, as regards the consideration of the material element of his claim.
26. It was also submitted that a decision-maker may come to a lawful view that an Applicant has not applied for protection at the earliest possible time or demonstrated good reason for not having done so, but the Tribunal may still be satisfied that the Applicant has established his or her general credibility. It was submitted that, in the present case, the Tribunal, in effect, made an adverse finding, at the outset, based on delay which, in effect, unlawfully resulted in an automatic adverse credibility finding in respect of the core of the Applicant's claim. It was also emphasised on behalf of the Applicant that the position of the UNHCR is that:-

"[T]he credibility of an Applicant's statements should not be considered undermined merely on the grounds that he or she did not apply for international protection as soon as possible. Neither should a delay in application constitute grounds to increase the threshold of credibility for the Applicant."

It was submitted that the foregoing is all the more so in the present case, having regard to the documents submitted by the Applicant.

27. The Applicant also made submissions with reference to the prior statutory scheme pursuant to the Refugee Act, 1996 (as amended) ("the 1996 Act"). Under the 1996 Act, if the Office of Refugee Applications Commissioner ("ORAC") made a recommendation that an Applicant should not be declared a refugee, and such a recommendation came with a s. 13(6)(c) finding that "the Applicant, without reasonable cause, failed to make an application as soon as reasonably practicable after arrival in the State", this had the effect of creating a shorter deadline for submitting an appeal against this recommendation (namely 10 days as opposed to the 15-day time limit otherwise provided for in the absence of such a finding) and that such an appeal would be determined without oral hearing. The Applicant submitted that the case of *U.P. v. Minister for Justice, Equality and Law Reform & ors* [2014] IEHC 567 – where the validity of the application of s. 13(6)(c) was challenged – indicated that an Applicant's general credibility and any failure to make an application as soon as reasonably practicable after arrival in the State, were entirely separate matters falling to be considered, even if a finding on the latter might permissibly further underpin a clear assessment of the former.
28. It was also submitted that, were this Court to take the view that the legislative scheme permitted the Tribunal to consider the Applicant's delay in seeking international protection as a matter going to his general credibility, such a finding was impermissibly relied upon in the present case. The essence of this submission was that, rather than delay forming

part of the overall assessment by the Tribunal of the Applicant's core claim, the Tribunal unlawfully regarded delay as the basis from which its assessment fell to be considered, the submission being that the Tribunal placed delay to the foreground in an unlawful manner which, in effect, coloured and constrained any proper assessment of the Applicant's claim.

29. Submissions were also made on behalf of the Applicant with reference to the decision of MacEochaidh in *S.Z. v. R.A.T.* [2013] IEHC 325. In that case, significant adverse credibility findings were made by the Respondent, one of which related to the Applicant's failure to claim asylum in Spain where he spent a month, en route to Ireland, and the relevant report stated that "it is clear from the Applicant's testimony that Ireland was not the first safe country since departing China". At the appellate stage, the Applicant's claim was also rejected on credibility grounds in a manner which the High Court described (in para. 12) as "very similar to those made at first instance". It was submitted that, in contrast to the decision regarding the Applicant in the present case, there was no *carte blanche* rejection of a claim primarily on the basis of an Applicant's failure to seek protection in another safe country. The thrust of the submission was that, in *S.Z.*, all relevant material was properly considered and weighed by the decision-maker "in the round", including all the Applicant's statements and all documents submitted by him regarding, *inter alia*, his reasons for applying for protection. The submission was made that the Tribunal in the present case adopted *S.Z.* as an authoritative basis to rely on the Applicant's failure to seek protection in the UK as a *prima facie* basis to reject his claim.
30. The Applicant accepts (as per para. 24 of the judgment in *S.Z.*) that a failure to apply in a previous safe country is "a matter which the Tribunal member was entitled to weigh in the balance in respect of credibility". However, the Applicant submits that the foregoing is not, by itself, a basis to reject a claim, the submission being that this is what occurred in the present case. Similarly, the Applicant argues that a finding that he failed to apply for protection in a previous safe country cannot lawfully form the primary basis for a rejection of the Applicant's core claim which, in the present case, is said to have involved a failure to consider either at all or properly the facts and circumstances. It was also submitted that by saying, of the delay issue, that it was one which "seriously undermines his credibility" and that his "entire claim must be assessed from that point of view", the Tribunal, in effect, unlawfully took the delay issue as the "sole" basis, or the "main" basis, to fundamentally reject the Applicant's credibility, thereby resulting in no "real" consideration of any other aspect of his claim, notwithstanding his statements and arguments.
31. The Applicant was clear to stress that no specific finding on delay is contested in the present proceedings. Rather, the challenge is based on the rationality of the approach taken by the Tribunal having regard to the legislation, relevant authorities and the nature of the overall conclusions reached which, according to the Applicant, impermissibly flow directly from the delay issue. It was contended that the Tribunal failed to adopt a "holistic" approach to its obligations, which required the Tribunal to assess the relevant elements of the application which, in turn, consist of the Applicant's statements and the

documents submitted by him regarding, *inter alia*, his reasons for seeking international protection.

32. Although put in a range of ways, the principal assertion made by the Applicant is that the Tribunal, in effect, impermissibly regarded the Applicant's delay as a 'bar' to his claim succeeding; and regarded delay as a 'stand-alone' basis to reject his claim in its entirety. It was submitted that, even if a delay finding was upheld, an additional basis to reject the Applicant's claim would also have to emerge from the impugned decision, in order for it to survive or merit non-intervention by this Court. The logic of that submission is that, apart from delay, an analysis of the Tribunal's decision reveals no additional basis to reject his claim.
33. The Applicant also relied on the decision of the UK Court of Appeal in *R v. Immigration Appeal Tribunal, ex parte Davila-Puga* [2001] EWCA Civ 931, wherein Laws L.J. determined that an adjudicator may not apply the "illegitimate compartmentalised approach" of reaching a view on the appellant's credibility as a "distinct and prior exercise" to the assessment of the documentary corroboration. The gravamen of the submission was that this occurred in the present case. The Applicant drew the court's attention to the following statement by Laws L.J.:-

"I certainly accept that the genuineness of an asylum claim has to be judged by reference to the evidence as a whole, including... such documents as are relied on, unless of course they could, on the particular facts, be peremptorily dismissed as inauthentic."
34. The Applicant also drew this Court's attention to the decision in *M.T. (Credibility Assessment Flawed – Virjon B Applied) Syria* [2004] UKIAT 00307, where the adjudicator had said that "in view of my findings of the appellant's credibility, I give no weight" to documents from the country of origin (which on their face supported the appellant's case). Drawing a comparison with the treatment of medical evidence in *Virjon B v. Special Adjudicator* [2002] EWHC 1469 (Admin) (para. 26.53), the UK Immigration Appeal Tribunal held (at para. 7) that this was "plainly... putting the cart before the horse". With reference to the foregoing, it was submitted that the Tribunal in the present case, albeit in a different context, adopted a similar approach.
35. The submission was that the Tribunal in the present case reached a preliminary adverse credibility finding on the discrete issue of delay and manifestly allowed this finding on delay to colour its assessment, under s. 28 of the 2015 Act, of the relevant elements of the Applicant's claim, including the Applicant's general credibility. Thus, it was argued, the Tribunal unlawfully permitted a preliminary adverse credibility finding to be determinative of the entire claim. It was submitted that the Tribunal failed to adopt the correct approach, i.e. for an adverse credibility finding on the issue of delay to constitute a factor falling to be weighed when assessing the relevant elements of the Applicant's claim, including general credibility, in the round.

36. The Applicant also submits that the Tribunal acted irrationally and in breach of fair procedures insofar as rejecting the material element of the Applicant's claim by determining that the provenance of documents relied upon by the Applicant had not been established on the balance of probabilities. It was submitted that the documents are material and, on their face, are capable of supporting his application.
37. The Applicant referred to *K.M. (Pakistan) v. The International Protection Appeals Tribunal & ors* [2018] IEHC 510, wherein (at para. 16) Humphreys J. indicated that a decision-maker can lawfully find a document to be *prima facie* reliable or not to be reliable, or by way of an intermediate position, not to be particularly reliable, where, for example, it cannot be verified and could easily be forged. Furthermore, a decision-maker can also lawfully avoid having to decide that issue by stating that, even if the document is reliable, it does not significantly advance the Applicant's claim. The Applicant submitted that any such decision is perfectly permissible as long as it is rational and lawful. However, according to the Applicant, the position here is that the Tribunal determined that the documents are not thought to be reliable on the basis of questionable provenance.
38. The Applicant acknowledges that there is no general obligation on a decision-maker to authenticate a document. Insofar as the Tribunal in the present case was "not persuaded that these documents can be relied on as their provenance has not been established on the balance of probabilities", the Applicant submits that this was a finding based on nothing more than the Tribunal's own 'opinion'. It was submitted that the view which the Tribunal came to as regards the documents was one which should have been based on evidence; as well as a view which was required to be rational and lawful. It was submitted that the evidence the Tribunal drew upon was confined to its own inquiry at the appeal hearing, as to how the documents were acquired, and to the Tribunal deeming their apparent ready-to-hand existence to be highly suspicious, given the passage of time and the seeming lack of insight on the part of the Applicant as to how his solicitor acquired the documents.
39. The submission was made that, whilst the Tribunal did not preclude the possibility that the Applicant's lawyer would have kept the documents for this long, it was not considered likely that the Applicant's lawyer would have them to hand. The submission was made that such a finding, made on the balance of probabilities, assumes that the documents were to hand, as opposed to being sought out by the lawyer. It was submitted that there is nothing in the Decision itself which grounds this factual assumption and, thus, the finding was contended to be one based on little or no evidence. It was submitted that the finding fails to appreciate, as a matter of reasonable logic, the possibility (irrespective of any discernible or knowable probability) that the lawyer may have, on the Applicant's request, sought out the documents – as opposed to what was characterised as an evidentially groundless presumption that same were in fact conveniently to hand. It was submitted that, with regard to the Tribunal not relying on the substantive content of the documents as corroborative of the Applicant's claim, the reasons do not stand the test of rationality and the finding requires to be quashed.

40. It was also submitted that, where the Tribunal determined that it was “not persuaded that these documents can be relied on as their provenance has not been established on the balance of probabilities”, the Tribunal was, in effect, casting a burden on the claimant to demonstrate that a document is genuine, whilst also reaching an adverse credibility finding because the Applicant has failed to discharge that burden. The Applicant also contended that there was a ‘fair procedures obligation’ to draw to the attention of the Applicant or his advisors, any issue of concern to the Tribunal – in this case the provenance of the documents – regarding a matter which may be of substance and significance in relation to the Tribunal’s determination. The thrust of the submission was that this issue was not put to the Applicant in any meaningful way, so as to allow him an adequate opportunity to address the Tribunal’s concerns. In respect of the foregoing argument, reliance was placed on the principles in *B.W. v. R.A.T. & ors* (No. 2) [2015] IEHC 759; *S.K. v. R.A.T.* [2015] IEHC 176; *B.Y. v. R.A.T.* [2015] IEHC 60; and *Idiakheua v. The Minister for Justice, Equality and Law Reform* [2005] IEHC 150.
41. It was further submitted that the Tribunal erred in law by irrationally rejecting the passage of time as a tenable basis for the Applicant being ‘vague’ and/or ‘vague and evasive’ about his past relationships on the premise that the Applicant could have applied for protection in the UK when matters were fresh in his mind, insofar as the Tribunal rejected the material element of the Applicant’s claim.
42. The Applicant accepted that a decision-maker assessing the credence of a protection claim may take into account the level of detail and specificity provided by an Applicant. However, it was submitted that the Tribunal did so by recognising, on the one hand, that such absence of detail may be explained by the passage of time, only to discount this very recognition as a matter of reasonable logic, on the basis that the Tribunal was not satisfied that the “vagueness and lack of detail can be overcome by reference to the passage of time on the particular facts of this application”.
43. It was submitted that the passage of time either operates in the mind of any rational decision-maker to explain the lack of detail or it does not, for any reasons to be given. It was submitted that such reasons must logically be tied to that consideration alone and not, as here, any failure on the part of the Applicant, as already relied on against him, to apply for protection prior to his doing so, simply because in that unrealised eventuality, matters then would have been fresh in his mind.

#### **Discussion and decision**

44. At this juncture, it is important to make reference to certain principles I touched earlier in this judgment. Firstly, it is settled law that there is a presumption of validity in respect of administrative decisions. Thus, it is the Applicant who must displace this presumption. Furthermore, the Tribunal is presumed to have considered all relevant material, including all statements and documents put forward by the Applicant, in arriving at its decision, in circumstances where, in addition to hearing the Applicant’s oral testimony at a hearing which took place on 5 October 2020, it was explicitly stated at para. [1.4] that “the Tribunal has considered all the documentation on file and as submitted.” It should also be said that there is simply no evidence to the contrary.

### **The manner the Tribunal expressed itself**

45. Another important point to make, and one which flows from the foregoing, is to highlight the distinction between, on the one hand, a Tribunal decision which lacks a narrative discussion of the type an Applicant contends it should contain and, on the other hand, a decision made where lack of consideration of a relevant issue or issues can be demonstrated. There is a fundamental difference between the two and it seems to me that, inherent in the submissions made by the Applicant in the present case, is the contention that, because the manner in which the Tribunal chose to express its decision differed from the approach taken by the IPO at first instance, this Court should take it that "there was no real engagement" by the Tribunal with the evidence before it. That submission seems to me to be flawed in logic and in law.

### **Unitary whole**

46. The present proceedings do not constitute a critique with regard to the manner in which the Tribunal decided to express the decision it reached. Rather, the question for this Court is the lawfulness of the decision, the Applicant's fundamental contention being that the Tribunal acted irrationally. It seems to me, however, that in approaching the Tribunal's decision, it is important for this Court to look at the decision as unitary whole. In other words, it is not appropriate for this Court to take a phrase or sentence from the decision and to subject it to microscopic scrutiny, in isolation, divorced from the decision of which it forms a part, thereby depriving it of context. Yet, this seems to be the very approach contended for by the Applicant.

47. It is clear from the decision that the Tribunal, as it was entitled to, carried out a consideration in respect to the Applicant's delay in seeking international protection. It is incontrovertible that there was very significant delay between the point at which the Applicant claims to have left Pakistan (January 2011) and making a claim for international protection (June 2018). The care with which the Tribunal considered the issue of delay is plain from the decision wherein, at para. [4.1] the Tribunal noted in explicit terms that it did "not lightly consider the delays in bringing an application for international protection as an adverse credibility finding". It went on to note, firstly, that such delays "can often distract from a consideration of the core issues" and, secondly, "it is not the case that such delays will always amount to adverse credibility findings".

48. The Tribunal went on to refer to the *S.Z.* case, wherein MacEochaidh J, as the Tribunal put it: "found that the implication that a person genuinely fearing persecution will seek asylum in the first safe country encountered is a logical and lawful conclusion". The foregoing principle undoubtedly emerges from the learned judge's decision in *S.Z.* and it is appropriate at this juncture to quote as follows from para. 24 of MacEochaidh J's decision: -

"It is clear from the decision in suit that the fact that the Applicant spent a month in Spain and did not claim asylum suggested that he was not truly fleeing persecution. The implication here is that a person genuinely fearing persecution will seek asylum in the first safe country encountered. That, in my view, is a logical and lawful conclusion for a Tribunal Member to reach and where a person reaches a safe

country and spends a month there and does not seek asylum, it is open to a decision maker to draw an adverse inference as to credibility therefrom.”

49. The decision in the present case evidences that the Tribunal carried out a careful assessment of the facts which included that the Applicant, who travelled from Pakistan to the UK in 2011, did not seek asylum in the first safe country, nor did he make an application for international protection upon arrival in this State in November 2016. Among the facts in the present case, all of which were considered by the Tribunal, was that the Applicant first sought international protection in June 2018 and, in the context of considering all facts and circumstances, the Tribunal plainly considered the Applicant’s evidence when asked why he did not seek international protection earlier, namely, his response that “he felt safe so didn’t feel the need to apply”. The Tribunal was entitled to consider the foregoing not to be a sufficient, or a reasonable, explanation in relation to the delay in the making of his application. There is no irrationality disclosed in the Tribunal’s decision, in the sense in which that term is understood in judicial review. It was open to the Tribunal, having regard to the evidence, to take the view it did. Given the facts and circumstances of this case, all of which were considered with care by the Tribunal, the latter was entitled to take the view which it expressed in the following at para. [4.5]: -

“Thus, the general inference that a person genuinely fleeing persecution would apply at the first reasonably opportunity applies in this case. Moreover, the Tribunal considers the delays highly relevant in this case given that, as will be set out below, the appellant’s claim is very vague and there are serious concerns regarding the authenticity and provenance of his supporting documentation.”

50. In the manner expressed at para. [4.6] the Tribunal considered, in the particular circumstances of the case before it, that the Applicant’s failure to seek international protection in the UK and his failure to seek international protection between his arrival in this State, in November 2016, and his ultimate application, in June 2018, choosing instead the option of living and working in this State without permission: “without a reasonable excuse for this behaviour, seriously undermines his general credibility, and considers that his entire claim must be assessed from that point of view. That is not to say that this is a credibility finding that could not be overcome, but that it requires more careful consideration of the core elements of his claim within that context, than might be applied to a person who makes an application at the first reasonable opportunity.”
51. It is perfectly clear from the foregoing that the issue of delay was not dealt with in isolation or divorced from the facts and circumstances of the case generally. In other words, this Court cannot hold that the Tribunal, in essence, seized on the delay issue and, thereafter conducted no ‘real’ engagement with the Applicant’s core claim, as is submitted. Rather, a consideration of the Tribunal’s decision as a whole demonstrates that the Tribunal took account of the Applicant’s delay with regard to the seeking of international protection, in the context of the entire claim, and did so in a manner both permissible and rational. On the evidence before it, the Tribunal was lawfully entitled to

come to the view that the Applicant did not seek international protection at the earliest possible time and had not proffered a good reason for this. The foregoing was a factor which the Tribunal was entitled to consider in the context of the Applicant's overall credibility. It was not, however, the only factor.

52. Any common sense reading of the Tribunal's entire decision demonstrates that it was by no means the sole or principal issue in determining credibility. Rather, the Applicant's undoubted delay, and failure to proffer a sufficient and reasonable explanation for the delay in seeking international protection, constituted a factor which "seriously undermines his credibility" in the Tribunal's view. The thrust of submissions made on behalf of the Applicant is that the Tribunal essentially went no further in its assessment. It is contended on behalf of the Applicant that the Tribunal essentially considered the foregoing to be an absolute 'bar' to the Applicant's core claim ever succeeding. That contention is simply not borne out by an examination of the Tribunal's decision in the round. It is perfectly clear from a reading of the entire of the decision that the Tribunal proceeded to assess the Applicant's entire claim and the evidence before this Court does not allow for a finding that the Tribunal constrained its consideration of the Applicant's core claim.
53. Looking at the Tribunal's decision as a whole, it is clear that the Applicant's delay in seeking international protection constituted a factor which the Tribunal took into account in the overall assessment of credibility. The adverse findings as to credibility made by the Tribunal can be supported by the evidence which was before the Tribunal. Insofar as the Applicant draws this Court's attention to certain observations in "Beyond proof – credibility assessment in EU asylum systems" (a May 2013 UNHCR publication), the Respondent has not demonstrated that the Tribunal regarded the Applicant's late submission of an application for protection as increasing the standard of proof which he faced. Nor could this Court fairly hold that the Applicant's claim was either rejected, or excluded from examination, on the sole ground of the Applicant's delay in seeking international protection. On the contrary, it is plain that the Tribunal conducted a careful examination of the Applicant's core claim. The Tribunal made explicit that delay, of itself, was no bar to a claim succeeding and, in the present case, was alert to the appropriateness of a most careful consideration of the core elements of the Applicant's claim, in light of his delay. To consider something very, or more, carefully is not unlawful, not does it prove, in any way, that an impermissible standard of proof was set.

#### **Core claim**

54. On the evidence before it, the Tribunal was entitled to reject the account given by the Applicant regarding his core claim to be a bisexual man who had been caught on three occasions engaging in sexual relations with other men, vagueness being a feature of the Applicant's case, as found by the Tribunal.

#### **Vague**

55. There has been no challenge in the present proceedings to the various findings by the Tribunal that the Applicant was vague in his account and it is useful to recall that this was a finding which the Tribunal came to, on the evidence before it, in respect of a number of issues, the following being extracts from the Decision (my emphasis):-

- With regard to why the Applicant had furnished a document dated 18th January when, in his questionnaire, he said it was 11th January, the Tribunal stated, at para. [4.8]:-

“However, when asked about it in the Tribunal, the appellant was *vague* as to how he was only providing this document at the time of the hearing, stating that maybe his lawyer had found it, having previously overlooked it.”;

- With regard to the relationship which the Applicant claims to have had with men, the Tribunal carefully analysed, at para. [4.10], the Applicant’s evidence concerning his relationship with Zeeshan. The Tribunal noted that the Applicant did not know Zeeshan’s full name. The Applicant said they started having sex during his graduation and, although he describes graduation as being a period of time, rather than a specific event, the Applicant ultimately describes this as the period from 2005-2007. In the oral hearing, the Applicant stated that they had a relationship for about a month, ending when a complaint was made to police in January, 2007. The following is what the Tribunal stated at the end of para. [4.10] and it is not a finding which is challenged:-

“The Tribunal considers this to be *very vague*. That they would have known each other for a considerable period of time and have been in a relationship for a month but he didn’t know his full name is not considered credible, and the *vagueness* of the timing of the timing of his relationship makes it difficult, if not impossible, to properly assess it.”;

- As regards the relationship which the Applicant claims to have had with Suliman, the Tribunal noted that the Applicant did not know Suliman’s surname, despite them being in a relationship for some months and Suliman’s father bringing a criminal complaint against the Applicant, such complaint allegedly having had Suliman’s father’s name on the court documents. In the manner described at para. [4.11], the Tribunal also considered the narrative as to how Suliman’s father caught them to be “highly unusual” and the Applicant’s account was set out at para. [4.11]. It included the Applicant’s evidence that:-

“When men are in the sitting room, people do not come in without knocking. When asked how Suliman’s father knew he was there, the appellant gave a *vague account* about Suliman’s father travelling around the area looking for his son and trying the appellant’s house on a speculative basis. It was put to the appellant that the documents provided stated that Suliman’s father ‘went to his son’s close friend ZA’s house’ and the door to the sitting room was locked.”

- At the end of para. [4.11], the Tribunal expressed the following views which, like the foregoing, are not challenged:-

“The Tribunal does not find his account of his relationship with Suliman and, in particular, the incident involving Suliman’s father to be *coherent* or *plausible*.”

56. A finding that an account was very vague has nothing to do with delay. Finding that an account lacks coherence has nothing to do with delay. Nor does a finding that an account

is not plausible. Similarly, to find that a narrative was highly unusual has nothing to do with delay. Yet, these were all findings made by the Tribunal on the evidence before it, as regards key elements of the Applicant's core claim. Those findings can be supported by the evidence which the Tribunal considered, and the reasons for those findings are clear from the decision. The foregoing are not the only instances where the Tribunal found the Applicant's account to be vague and where this vagueness impacted on the credibility of the account proffered by the Applicant. At para. [4.12], the Tribunal found that:-

"In relation to his relationship with Bholo, the same *vagueness* as to detail of their relationship was present here." (emphasis added)

57. In the manner explained by the Tribunal in the balance of para. [4.12], it also found the Applicant to have given unsatisfactory and unreasonable explanations in respect of the Applicant's account of having left college in January 2009 without completing same, yet having provided a University document referring to exams held in December 2009 or January 2010.

58. At para. [4.13], the Tribunal found:-

"He was also *vague* about the incident where he claims he was caught with Bholo. He asked if the door was locked and he said he didn't know, that Bholo would look after that. He asked why the warden was inspecting the room and he said he didn't know but thought it was routine. While not implausible, these answers are nevertheless *vague* and *evasive* and do not provide a *cogent* and *detailed* account of this incident." (emphasis added)

#### **Evasive**

59. A finding of evasiveness has nothing to do with delay. It is a finding which is not challenged. It also seems to me to be a finding which the Tribunal was in the optimum position to make, or not, in circumstances where the Tribunal had the benefit of seeing and hearing and observing the Applicant, insofar as the giving of his testimony was concerned. A finding of evasiveness has an obvious relevance for credibility. Plainly, it is a factor which any decision-maker would be entitled to take into account, in the context of an overall assessment of a claim.

#### **Not cogent / detailed**

60. Similarly, for a decision-maker to find that an account given lacked detail and was not cogent is something the decision-maker is entitled to have regard to in the context of assessing evidence and attributing weight to same. Plainly, the Tribunal gave careful consideration to these matters and none of them relate to delay. Yet a central theme in the Applicant's case is that the Tribunal, in essence, never saw beyond delay. That contention is simply not supported by a reading of the Tribunal's decision as a unitary whole. The foregoing brings me back to an observation I made earlier in this judgment, namely, that, with great skill and conviction, counsel for the Applicant seeks to 'zone in' on small sections of the Tribunal's decision, whilst ignoring the balance. Doubtless this is done to try and assert the Applicant's claim in the most skilful manner, but it seems to

me to involve a quest for irrationality which is simply not present in the Tribunal's decision, when looked at as a whole.

61. On the evidence before it, the Tribunal also found that, other than saying that Zeeshan liked cricket, Suliman liked volleyball and Bhola liked eating out in restaurants, the Applicant "could not remember any other details about them when asked". As well as the Tribunal finding the Applicant's account to be scant in terms of detail, it also found the Applicant's evidence to be vague, stating, *inter alia*, at para. [4.14] that:-

"He was asked if he went to matches with Zeeshan or Suliman and said yes, but again was *very vague* about it." (emphasis added)

As to the Applicant's evidence that he did go to see Suliman play volleyball once, but they did not go together, the Tribunal found that whilst this explanation was "consistent with, for example, a covert relationship, it *doesn't make sense* in the context of his claim that he was overtly friends with Suliman" (emphasis added). The Tribunal went on to state that it did not consider it "credible" that the Applicant would have had a relationship with Suliman of approximately four months, yet was "unable to provide any clear information about what Suliman was like as a person, let alone what his full name was" (emphasis added). Again, it seems appropriate to point out that there is no challenge made in relation to the foregoing findings. Indeed, nowhere does the Applicant suggest that the account of the evidence provided by the Tribunal is other than accurate.

62. In submissions, the suggestion was made that the relationship with Suliman was claimed by the Applicant to have lasted less than four months but, quite apart from the fact that no challenge is made to any of the facts as set out in the Tribunal's decision, nothing turns on whether the relationship was said to have been for one month or four months, or otherwise. Either way, the Tribunal found that the Applicant (i) did not know the gentleman's full name; (ii) could not remember any details about the individual other than he liked volleyball; and (iii) was unable to provide any clear information about what Suliman was like as a person. The foregoing findings by the Tribunal, which are clearly explained in its decision, were findings open to the Tribunal to make having regard to the evidence before it and they are findings with an obvious relevance to the credibility of the Applicant.

#### **Formative experiences**

63. At para. [4.15] of the decision, the Tribunal stated, with regard to the three relationships which the Applicant claimed to have had with Zeeshan, Suliman and Bhola, that "...these relationships, if true, would have had a dramatic impact on his life, in terms of them being both formative experiences and also in terms of them being directly linked to him being persecuted...". The foregoing finding is one which it was open to the Tribunal to make on the evidence before it. It is a finding which flows from relevant material and could, in no sense, be characterised as irrational. The Tribunal went on to hold that it was "...not satisfied that the *vagueness* and *lack of detail* in his claim can be overcome by reference to the passage of time on the particular facts of this appeal" (emphasis added). Again, there was nothing irrational about such a finding on the part of the Tribunal. It was

a finding which also reflected the care taken on the part of the Tribunal to see if the passage of time could account for the vagueness and lack of detail in the Applicant's account of his core claim. The Tribunal felt that, in the particular facts and circumstances, it could not. The Tribunal also explained very clearly why it came to this view. It was a view which neither defied logic, nor common sense. Rather, it was a view which was open to the Tribunal to form, having regard to the evidence which it carefully considered. In short, there is simply no question of the Tribunal having relied exclusively on delay to reject the Applicant's credibility, or having failed to properly assess his core claim based on an impermissible focus on delay.

64. The Applicant has not established a breach of s. 28 of the 2015 Act. At this juncture, it is useful to note that s. 28(7) of the 2015 Act provides that:-

"Where aspects of the Applicant's statements are not supported by documentary or other evidence, those aspects shall not need confirmation where the international protection officer or, as the case may be, the Tribunal, is satisfied that—

- (a) the Applicant has made a genuine effort to substantiate his or her application,
  - (b) all relevant elements at the Applicant's disposal have been submitted and a satisfactory explanation regarding any lack of other relevant elements has been given,
  - (c) the Applicant's statements are found to be coherent and plausible and do not run counter to available specific and general information relevant to the Applicant's case,
  - (d) the Applicant has applied for international protection at the earliest possible time, unless the Applicant can demonstrate good reason for not having done so, and
  - (e) the general credibility of the Applicant has been established."
- (emphasis added)

65. The Applicant's general credibility was not established and, therefore, s. 28(7) was not applicable. As held by Humphreys J. in *J.H. (Albania) v. I.P.A.T.* [2018] IEHC 752 (at para. 8):-

"The Applicant claims breach of s. 28(7) of the International Protection Act 2015 by the rejection of his credibility in the absence of documentary evidence. Rejecting credibility in the absence of documentary evidence is not a breach of s. 28(7). The submission made is a complete misunderstanding of that provision. *Section 28(7) does not apply unless the Applicant's general credibility is established.* Thus, the point made is inherently self-contradictory. This Applicant's general credibility was not established - therefore the provision does not apply." (my emphasis)

66. The Applicant has not established that the Tribunal's finding that the delay "seriously undermined his credibility" acted as some pre-determination by the Tribunal, as regards the Applicant's general credibility in respect of his claim. Rather, the Tribunal commenced

its decision by looking at the delay issue, but undoubtedly went on to assess, carefully, the Applicant's core claim in light of the evidence. There was no blanket rejection of credibility with reference to delay and no automatic adverse determination of the Applicant's general credibility with respect to his core claim.

67. Why the Tribunal chose to address the question of delay at the start of its decision seems entirely obvious. It seems uncontroversial to say that, in many instances, a person fleeing persecution will seek international protection at the earliest opportunity and in the first safe country. That was not done here, but the fact that the Tribunal chose to refer to this issue earlier in its decision does not prove that the Tribunal unlawfully and irrationally permitted its view as to delay and as to the Applicant's failure to provide a good excuse for same, to determine the outcome of the application as a whole, without any fair or lawful assessment of all the facts and circumstances as regards the core claim. The contrary is clear from an objective reading of the entirety of the Tribunal's decision.
68. Delay plainly formed part of the overall assessment as is evident from, *inter alia*, the contents of para. [4.1]. Indeed, the Tribunal was very much alive to the fact that delay "can often distract from a consideration of the core issues and it is not the case that such delays will always amount to adverse credibility findings" Any objective reading of the Tribunal's decision demonstrates that it did not permit delay to distract from a consideration of the Applicant's core claim nor did delay result in an 'automatic' adverse credibility finding. Rather, delay was one of the factors considered (as was vagueness, lack of detail, evasiveness, lack of cogency, lack of credibility and implausibility, in the manner found by the Tribunal)
69. Earlier in this decision, I made reference to the decision of MacEochaidh in *S.Z.*, to which the Tribunal referred at para. [4.1]. On the evidence which was before the Tribunal in the present case, it was open to it to find that the Applicant, having spent a prolonged period of time in the first safe country and not having sought international protection, gave rise to a suggestion that the Applicant "was not truly fleeing persecution". This is something the Tribunal was entitled to have regard to, but it is perfectly clear from the Tribunal's decision that it did not form the *prima facie* basis relied upon by the Tribunal to reject the Applicant's claim. Rather, having noted the failure of the Applicant to seek international protection as soon as practicable and the adverse inference given rise to, the Tribunal went on to consider, carefully, the core element of the Applicant's claim and assessed all aspects of same in a lawful manner, looking separately at material aspects of the core claim as same related to the particular facts and circumstances.

#### **Evidence as a whole**

70. It is also clear that the Tribunal assessed the evidence before it as a whole. Indeed, the Tribunal's decision contains an explicit statement to that effect. In this regard, it is appropriate to refer to para. [4.18] where the Tribunal stated that:-

"Having regard to all of the above, it follows that as his claimed relationships are not accepted, that his claimed arrest, beating and prosecution are not accepted, and there is nothing else in the claim which, *when the evidence is assessed*

*holistically*, would support any finding to the contrary. Accordingly, the Tribunal does not accept his account of being arrested, beaten and prosecuted on the balance of probabilities.” (emphasis added)

### **Documentation**

71. With regard to the Applicant’s reliance on documentation, the Tribunal set out, at paras. [4.7] to [4.9] the reasons why the Tribunal came to the view that the documents could not be relied upon “as their provenance has not been established on the balance of probabilities”. The Tribunal explained in a rational manner the reasons for doubting the provenance of the documents. It will be recalled that, as made clear at para. [1.4] of the Tribunal’s decision, the documents before the Tribunal comprised the list of documents set out in the first-instance decision, together with one further document, dated 11 January 2007. It is a fact that the Tribunal considered all documents submitted. As per the list of documentation (on internal page 3 of 29 in the Section 39 Report dated 29 October 2019, which was enclosed with the IPO’s letter to the Applicant dated 26th November 2019), the vast majority of documents submitted were “copy” documents. As per para. [4.7] of the Tribunal’s decision, the latter considered to be of most relevance the documents which the Applicant claimed “to be from the courts and police”. The Applicant’s evidence as to where he obtained these documents was that “he had contacted his lawyer and his lawyer provided them, but he did not know how his lawyer got them”. When asked by the Tribunal if he knew such documents existed or made enquiries regarding same “he said he did not, he just told the lawyer what he needed and the lawyer provided them”. The Tribunal found the foregoing to be “highly suspicious, given that the documents purported to be over a decade old”. There is nothing irrational about such a view, having regard to the evidence which was before the Tribunal. It was a view open to the Tribunal to come to, based on the evidence before it. Furthermore, the Tribunal went on to observe that “it is not impossible that a lawyer would have kept the documents for this long, but it was not considered that he would have had them to hand. The appellant was asked about this but was unable to provide further information as to how his lawyer got them, and it was clear to the Tribunal that the appellant lacked any curiosity or insight as to how these documents were procured.” The foregoing were views which the Tribunal was entitled to express in light of the evidence before it. Para. [4.7] concludes with the Tribunal stating that “the fact that he didn’t ask his lawyer if he had any documents, but told him what he needed are, in conjunction with the time that has passed, highly suspicious circumstances”. Again, the foregoing view cannot be said to fly in the face of reason or common sense, having regard to the evidence which the Applicant gave, and which was plainly carefully considered by the Tribunal. At this point, it is useful to re-state the basic principle that this Court is not the decision-maker. The approach of this Court cannot be to place itself ‘in the shoes of’ the Tribunal and opine on what decision this court might have come to from a merits-based perspective. That is wholly impermissible. What is at issue, and the only thing at issue, is whether the Tribunal acted lawfully. I am satisfied that it did.
72. Remaining with the topic of documentation, and in the manner explained at para. [4.8] of the Decision, the Tribunal plainly had other concerns as to the reliability of the

documents, having regard to the fact that the Applicant provided a 'new' document, dated 11 January 2007, at the oral hearing, whereas the document provided previously was dated 18 January 2007. At para. [4.8] the Tribunal stated:

"The Tribunal notes that at Q.77 of his interview, the appellant was asked to explain why the document provided at that stage was dated the 18th January when in his questionnaire he said it was the 11th January and the appellant stated that 'an application was made to the CPO, which I am waiting for and as I mentioned, I just got a few pictures'. However, when asked about in the Tribunal, the appellant was *vague as to how he was only providing this document at the time of the hearing*, stating that maybe his lawyer had found it, having previously overlooked it". (emphasis added).

73. It is important to make the point, once more, that the various findings made by the Tribunal, including that the Applicant was vague as to how he was only providing the 11th January 2007 document at the oral hearing) are not the subject of any challenge. Nor is there any challenge to the Tribunal's finding that the Applicant "lacked any curiosity or insight" as to how the documents in question were procured. The reasons why the Tribunal had significant concerns in respect of the reliability of the documents are clearly set out and they are squarely based on the evidence which was before the Tribunal. There is no general obligation on a decision-maker to authenticate a document. The Tribunal's reasons for doubting the provenance of the documents were open to the Tribunal to form, and were rational and lawful, having regard to the evidence.

#### **Oral hearing**

74. It should also be noted, at this juncture, that the Tribunal (in contrast to this court) had the benefit of hearing the Applicant's evidence and observing his demeanour during the oral hearing. I am obliged to reject the submission made that the assessment of the reliability of the documents in question was based on nothing more than the Tribunal's own 'opinion'. A careful examination of the Tribunal's decision wholly undermines that submission. Nor has the Applicant established that the approach taken by the Tribunal, with regard to documents, created an additional or unlawful burden on the Applicant to demonstrate that the documentation was genuine. It is clear that the Tribunal's view that the provenance of the documents had not been established on the balance of probabilities was expressed in the context of assessing the Applicant's core claim in all its aspects. The mere fact that a document (or a copy document) is produced by an Applicant does not require a Tribunal to accept the authenticity and reliability of same. The Tribunal was entitled to assess the extent to which weight should be given to the documents before it, in the context of a consideration of all the evidence and this was done in the present case.
75. It is also clear that questions were put to the Applicant with regard to the documents. This is wholly apparent from paras [4.7] and [4.8] of the Tribunal's decision. Thus, the Applicant has not established that he was not offered an opportunity to provide such explanations as he wished to provide, in the context of the questions raised by the Tribunal. Submissions made on behalf of the Applicant with reference to the decision in

*B.W. v R.A.T. & Ors* (No. 2) [2015] IEHC 759 cannot avail the plaintiff. The Applicant has not established that he did not have a meaningful opportunity to address the Tribunal's concerns in respect of the documents which he purported to rely upon. The contrary is evident from paras. [4.7] and [4.8] of the Tribunal's decision.

76. At this point it is appropriate to refer to an authority to which Counsel for the Respondents drew this Court's attention. In the decision in *M.Z. (Pakistan) v I.P.A.T. & Ors.* [2019] IEHC 125, Mr. Justice Humphrey's held (at para. 17) of his judgment that:

"17. On the specific sub-points pleaded under Ground 2, the position is as follows:

- (i). It is claimed that the tribunal acted unfairly in not accepting the Applicant's account due to failure to mention the acid attack at an earlier stage. But that is not unfair. *Failure to mention something in an earlier account is a legitimate feature of evidence which may assist a fact-finder to weigh the credibility of a particular account.*
- (ii). It is claimed the tribunal acted unfairly in rejecting that part of the report that said that some scars were probably due to caustic acid. But this again misunderstands the concept of fairness. The tribunal considered that point and weighed it against all the evidence. *Not upholding the Applicant's claim under this heading is the Tribunal's considered assessment having taken into account all the evidence and having had the benefit of seeing and hearing the Applicant. The Statement of Grounds conflates the concept of fairness of procedure with a non-existent right of an Applicant to win his case.* Furthermore, the report was not 'rejected' in the sense of the Applicant's pleadings. The tribunal did not accept the Applicant's account of persecution or serious harm. That is not necessarily to be equated with denying that some incident caused the scars – just not an incident entitling the Applicant to international protection.
- (iii). It is claimed that the tribunal unfairly dismissed the documentation on the basis of the Applicant's testimony and erred in not granting the Applicant the benefit of the doubt. This misunderstands the concept of the benefit of the doubt. *As the Tribunal found, the Applicant's credibility generally was not accepted; therefore the benefit of the doubt could not be extended as explicitly provided for in the qualification directive, s. 28(7)(e) of the International Protection Act 2015 and para. 204 of the UNHCR Handbook, as indeed was made clear in cases such as J.U.O. and R.S. (Ukraine).* Mr. Dornan's point under this heading was thus a misconception. *The fact that the Applicant's credibility was accepted on some points does not amount to the establishment of his general credibility and does not entitle the Applicant to the benefit of the doubt.* Nor is it unfair to decline to extend the benefit of the doubt in such circumstances. Indeed, such an approach is positively required if general credibility is not established. Insofar as it seemed to be being argued that the issue of general credibility was only one of a number of factors to be taken into account, this unfortunately overlooks the word 'and'

at the end of s. 28(7)(d). The criteria in sub-section (7) are cumulative, not alternative, and if any one of them is not satisfied the benefit of the doubt does not apply. That is clear from both the ordinary meaning of the English language (not that that deters the Applicant) and from international law and practice." (emphasis added)

77. In the present case, the Tribunal did not accept the Applicant's account. That was a view the Tribunal was entitled to come to on the evidence. It was neither irrational nor unlawful. The probative value or weight to attach, or not, to the documentary evidence is quintessentially a matter for the decision-maker. This is clear from inter alia the decision of Birmingham J. (as he then was) in *M.E. v R.A.T.* [2008] IEHC 192, wherein (at para. 27) the learned judge stated that:

"In my view, the assessment of whether a particular piece of evidence is of probative value, or the extent to which it is of probative value, is quintessentially a matter for the Tribunal Member. In this instance, there were a number of factors present which could have led the Tribunal Member to the conclusion that she reached."

78. The foregoing comments seem to me to be equally relevant in the present case. The conclusions reached by the Tribunal were rational and lawful.

**When matters "were fresh in his mind"**

79. The Applicant also submits that the Tribunal erred in law at paras. [4.19] and [4.20] by, the Applicant contends, "irrationally rejecting the passage of time as a tenable basis for the Applicant to be vague and/or vague and evasive in respect of his past relationships on the premise that the Applicant could have applied in the UK when matters were fresh in his mind."
80. The essence of the Applicant's submission is that, at para. [4.15], the Tribunal allowed for the passage of time being a rational explanation as to why an Applicant might give an evasive and vague account. Thus, contends the Applicant, it was irrational for the Tribunal not to accept the passage of time as being the factor which excused and explained the Applicant being vague and evasive in the present case.
81. Regardless of the skill and, indeed, ingenuity with which the submission is made, I am satisfied that it is fundamentally flawed. I say this for several reasons.
82. Any objective reading of para. [4.15] reveals that the Tribunal was very conscious of whether some allowance ought to be given to the Applicant "for the vagueness of his claim in circumstances where it was over a decade old". In other words, the Tribunal, very understandably and appropriately, posed that 'open' question. The Tribunal did not, however, adopt the position that in every case, or in this particular case, vagueness and evasiveness would necessarily be excused by virtue of the passage of time. Having posed the foregoing question, the Tribunal went on to note that the Applicant could have applied for asylum in the UK "when these events were still relatively fresh in his mind but did not do so". Thus, as part of a consideration of the open question (as to whether some

allowance, or credit, should be given to the appellant for vagueness and/or evasiveness) arising out of delay, an issue which the Tribunal took account of was the undoubted failure on the part of the Applicant to seek international protection at a much earlier stage when events were still relatively fresh in his mind.

83. The foregoing was by no means the end of the Tribunal's analysis, however, because it then moved to another issue which the Tribunal regarded as more important, namely, "these relationships, if true, would have had a dramatic impact on his life, in terms of them being both formative experiences and also in terms of them being directly linked to him being persecuted...". It was having considered the foregoing that the Tribunal came to the view that the "vagueness and lack of detail" in the Applicant's claim (findings which are not challenged) could not "be overcome by reference to the passage of time on the particular facts of this appeal". There was no legal error in respect of the foregoing on the Tribunal's part. The view which the tribunal came to was one which it was entitled to form, having regard to the evidence which it considered.
84. In short, the Tribunal made a lawful assessment of the credibility of the Applicant's narrative. It reached adverse credibility findings and did so on a rational, logical and lawful basis, providing reasons for the views it formed. The Applicant's credibility was not established and the following views by Mr. Justice Cooke in *I.R. v R.A.T.* [2009] IEHC 353 (at para. 3) bear repeating:

*"... it is not the function of the High Court in judicial review to reassess credibility and to substitute its own view for that of the decision maker. Its role is confined when a finding of lack of credibility is attacked, to ensuring that the process by which that conclusion has been reached is legally sound and not vitiated by any material error of law."* (emphasis added)

85. The Tribunal was tasked with analysing the evidence and coming to a view. It did so lawfully. The Tribunal found that the appellant gave a narrative of his past relationships which was not credible. That narrative concerning his past relationships was the basis of his whole claim. The Applicant's general credibility was not established and the answer to all four questions posed by the Applicant (and set out at para. 4 of this judgment) is in the negative. Thus, the Applicant is not entitled to any relief and his application must be dismissed.
86. On 24 March 2020, the following statement issued in respect of the delivery of judgments electronically: "The parties will be invited to communicate electronically with the Court on issues arising (if any) out of the judgment such as the precise form of order which requires to be made or questions concerning costs. If there are such issues and the parties do not agree in this regard concise written submissions should be filed electronically with the Office of the Court within 14 days of delivery subject to any other direction given in the judgment. Unless the interests of justice require an oral hearing to resolve such matters then any issues thereby arising will be dealt with remotely and any ruling which the Court is required to make will also be published on the website and will include a synopsis of the relevant submissions made, where appropriate."

87. Having regard to the foregoing, the parties should correspond with each other, forthwith, regarding the appropriate form of order, including as to costs, which should be made. In default of agreement between the parties on that issue, short written submissions should be filed in the Central Office within 21 days, (taking account of the Easter vacation). An effort has been made in this judgment to make redactions so as to prevent the identification of the Applicant. In the event that further or other redactions are felt necessary, the parties are invited, within the said 21 day period, to submit agreed proposals in that regard.