



**In the Upper Tribunal
(Immigration and Asylum
Chamber)
Judicial Review**

In the matter of an application for Judicial Review

THE KING on the application of RG

1st Applicant

and

THE KING on the application of BAA & CAC

2nd & 3rd Applicants

- and -

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

ORDER

BEFORE Upper Tribunal Judge Mandalia and Upper Tribunal Judge Blundell

HAVING considered all documents lodged and having heard Chris Buttler KC and Jack Boswell of counsel, instructed by Duncan Lewis, for the first applicant and Chris Buttler KC and Natasha Simonsen of counsel, instructed by Leigh Day, for the second applicant and Edward Brown KC and Jack Anderson of counsel, instructed by GLD, for the respondent at a hearing on 11 November 2025

AND UPON the Tribunal's judgment allowing the Applicants' claims to the extent set out in the declarations below

IT IS DECLARED THAT:

1. The Respondent's decision to vary the Applicants' leave to remain by imposing a "No Recourse to Public Funds" condition was unlawful.
2. The Respondent's decision to vary the Applicants' leave to remain by imposing a "No Recourse to Public Funds" condition breached the Applicants' rights under Article 1 Protocol 1 of the European Convention on Human Rights, contrary to section 6 of the Human Rights Act 1998.
3. The Respondent's decision to vary CAC's leave to remain by imposing a "No Recourse to Public Funds" condition breached her rights under Article 14 of the European Convention on Human Rights, contrary to section 6 of the Human Rights Act 1998.

IT IS ORDERED THAT:

4. The Respondent's decision to vary the Applicants' leave to remain by imposing a "No Recourse to Public Funds" condition is quashed.
5. The Respondent is to make a payment on account of each Applicant's costs, following the directions at (a)-(c) below for the determination of the amount:
 - a. The Applicants will file and serve a costs schedule within 21 days of this sealed order together with proposals as to the amount payment on account.
 - b. The Respondent may file and serve comments on the schedules within 7 days of their receipt together with its response to the Applicants' proposals as to the amount payment on account.
 - c. In default of agreement as to the payment on account of costs, the Tribunal will consider the schedules and comments without a hearing and will direct the amount of the payment on account and the date by which it must be made.
6. The Applicants' claims for damages are to be assessed by the Upper Tribunal, reserved to Judge Mandalia and Judge Blundell, following the directions at (a)-(c) below.
 - a. The Applicants are to file written submissions addressing quantum of damages within 14 days, to be no more than 10 pages in length.
 - b. The Respondent is to file written submissions in response within 14 days thereafter, to be no more than 10 pages in length.
 - c. A hearing is to be listed before Judge Mandalia and Judge Blundell at the earliest available date, having regard to counsel's availability, to determine quantum of damages, with a time estimate of half a day.
7. The Respondent is to pay the Applicants' costs of the claims, to be assessed if not agreed. The question whether the Respondent is to pay the Applicants' costs on the standard or indemnity basis is to be determined following the assessment of damages.
8. There is to be a detailed assessment of the Applicants' legally aided costs in accordance with the Civil Legal Aid (Costs) Regulations 2013.
9. Permission to appeal is refused for the reasons in the judgment.
10. Liberty to apply.

Signed: **Mark Blundell**

Upper Tribunal Judge Blundell

Dated: **3 March 2026**

The date on which this order was sent is given below

For completion by the Upper Tribunal Immigration and Asylum Chamber

Sent / Handed to the applicant, respondent and any interested party / the applicant's, respondent's and any interested party's solicitors on (date): 03/03/2026

Solicitors:
Ref No.

Home Office Ref:

Notification of appeal rights

A decision by the Upper Tribunal on an application for judicial review is a decision that disposes of proceedings.

A party may appeal against such a decision to the Court of Appeal **on a point of law only**. Any party who wishes to appeal should apply to the Upper Tribunal for permission, at the hearing at which the decision is given. If no application is made, the Tribunal must nonetheless consider at the hearing whether to give or refuse permission to appeal (rule 44(4B) of the Tribunal Procedure (Upper Tribunal) Rules 2008).

If the Tribunal refuses permission, either in response to an application or by virtue of rule 44(4B), then the party wishing to appeal can apply for permission from the Court of Appeal itself. This must be done by filing an appellant's notice with the Civil Appeals Office of the Court of Appeal **within 28 days** of the date the Tribunal's decision on permission to appeal was sent (Civil Procedure Rules Practice Direction 52D 3.3).



Case No: JR-2025-LON-002557 & JR-2025-LON-002679

IN THE UPPER TRIBUNAL
(IMMIGRATION AND ASYLUM CHAMBER)

Field House,
Breams Buildings
London, EC4A 1WR

3 March 2026

Before:

UPPER TRIBUNAL JUDGE MANDALIA
UPPER TRIBUNAL JUDGE BLUNDELL

Between:

THE KING on the application of RG **First Applicant**
and

THE KING on the application of BAA & CAC **Second & Third Applicants**

- and -

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT **Respondent**

Chris Buttler KC and Jack Boswell
(instructed by Duncan Lewis for the first applicant)

Chris Buttler KC and Natasha Simonsen
(instructed by Leigh Day for the second and third applicants)

Edward Brown KC and Jack Anderson
(instructed by the Government Legal Department) for the respondent

Hearing date: 11 November 2025

J U D G M E N T

JUDGE BLUNDELL:

1. These linked cases concern the lawfulness of the Secretary of State's decision that the applicants' access to public funds should be discontinued by the application of a condition which was attached to their leave to remain. Throughout this judgment, to which we have both contributed, we will refer to that condition as the "No Recourse to Public Funds" condition or "NRPF" for short.

FACTUAL BACKGROUND

2. It is necessary to set out a good deal of the history of these cases because the detail of the chronology bears directly on the applicants' grounds. In the interests of brevity, however, we have taken a conscious decision not to describe the extensive litigation of which this judgment forms a small part. We have made the same decision in respect of the voluminous medical evidence which is before us. We did not consider it necessary to make reference to those aspects of the evidence in order to explain the conclusions which follow, although we have obviously read that evidence.
3. The applicants are not related to each other; it is as a result of the common issues in their cases that they were heard together.
4. The applicants are of Tamil ethnicity. The first applicant, RG, was born in 1989. The second applicant, BAA, was born in 2001. The third applicant, CAC, was born in 1990.

Flight from country of origin and arrival on Diego Garcia

5. The first applicant was born in Sri Lanka and is a national of that country. He states that he was raped and tortured by the Sri Lankan security forces on account of his support of the Tamil National Alliance. In April 2022, he and others left Sri Lanka on a boat which they believed to be bound for New Zealand. The vessel broke down and they were stranded on a desert island. They were discovered by a patrol vessel from the British Indian Ocean Territory ("BIOT") and taken to the island of Diego Garcia. He arrived on the island on 20 April 2022 and he remained there until he was relocated to the United Kingdom in December 2024.
6. The second applicant was born in a refugee camp in Tamil Nadu, India. He says that he is stateless. He states that he was subjected to abuse, torture and rape by the Indian authorities on account of his family's ongoing support for the Liberation Tigers of Tamil Eelam

("LTTE"). In September 2021, he and 89 others boarded a boat which they believed to be bound for Canada. The boat became unseaworthy and sailed towards the nearest land, which was BIOT. The boat was discovered by a Royal Navy vessel and taken to Diego Garcia. The second applicant was medically evacuated to Rwanda in February 2023 but he was returned to Diego Garcia the same month. He was medically evacuated to Rwanda once more in March 2023. On that occasion, he did not return to Diego Garcia and it was from Rwanda that he was relocated to the United Kingdom in December 2024.

7. The third applicant was born in Sri Lanka but left that country when she was very young. She and her family claimed asylum in India and were issued with refugee cards by the Indian authorities. She maintains that she is stateless. She was raised in a refugee camp and she met her husband in a camp in Madurai. Their two children were born in December 2011 and June 2016. She states that her husband was detained and ill-treated by the Indian authorities as a result of his association with the LTTE. The four of them left India on the same boat as the second applicant, and were also rescued by the British Navy and taken to Diego Garcia. They arrived there on 3 October 2021, and remained until they were brought to the United Kingdom in December 2024. The applicant's husband and their two children are named in her claim form.
8. Diego Garcia is a military facility which is used by the governments of the United Kingdom and the United States for defence purposes. Access is in general restricted to members of the armed forces of the two countries, representatives of their governments, plus a Commissioner and public officers and whatever contractor personnel are required. BIOT is administered from London by the Commissioner, who carries out the functions of both government and legislature.
9. The applicants made claims for international protection when they arrived on Diego Garcia. The claims of the first and second applicants were in due course accepted to be well-founded by the Commissioner, who issued non-refoulement decisions as a result of that conclusion. The third applicant was a dependent on her husband's application, which was originally rejected but was the subject of reconsideration at the point that they left Diego Garcia. Whilst they were on Diego Garcia, the applicants were housed in tents in a part of the island called Thunder Cove.

Conditions on Diego Garcia

10. It is not necessary to describe the conditions in the camp in any detail because the conditions and the lawfulness of the applicants' detention was considered by the Supreme Court of BIOT in a

judgment which was handed down on 16 December 2024: R (VT & Ors) v the Commissioner for the British Indian Ocean Territory BIOT SC 15 and 16 2023. The Supreme Court found that all of the individuals who were held in the camp, including 16 children, had been detained, and that their detention had been unlawful throughout. The Commissioner's appeal against the Supreme Court's decision was dismissed by the BIOT Court of Appeal on 16 December 2025: [2025] BIOT CA (Civ) 1.

11. The BIOT Supreme Court's judgment records that the UNHCR had visited the detainees and had noted that self-harm and suicidal ideation in the camp were prevalent; that gender-based violence was not being adequately addressed; and that communal tensions were evident. It also stated that the "detention of and associated impact on children is of particularly grave concern." The Acting Judge of the Supreme Court of BIOT noted that this latter conclusion was accepted by the former Commissioner, who had recorded in a ministerial submission in June 2024 that the needs of the children "cannot be addressed sufficiently on BIOT". He therefore formally invited the Foreign Secretary to arrange for the entire cohort to be transferred to the United Kingdom immediately.
12. Each of the applicants suffered whilst they were on Diego Garcia. We need not go into great detail. Their experiences are set out in comprehensive witness statements, which we have considered thoroughly. For present purposes, we consider it sufficient to mention the following.
13. The first applicant suffered mental health problems and self-harmed many times. The second applicant's mental health suffered a significant decline and his two medical evacuations were brought about as a result of suicide attempts. He cut himself, took overdoses and swallowed sharp objects. He was also on hunger strike for a period.
14. The third applicant describes how the conditions in the camp were very difficult for her and her family. They were required to share a tent with others they did not know; there was a rat infestation; and she and her husband were concerned that their children would often not eat the food which was provided. The children received no proper schooling, and suffered psychologically because they witnessed incidents of violence and self-harm, including one incident in which a resident set himself on fire. Her daughter had her first period in the camp and they were concerned for her safety as she attained sexual maturity. The third applicant's husband self-harmed on a number of occasions, which was particularly distressing for the children. He was also attacked by other residents on one occasion, necessitating a period of treatment in Rwanda, after which he was returned to Diego Garcia. The third applicant's daughter also self-

harmed whilst she was on the island, by cutting herself with a blade from a pencil sharpener.

Scrutiny of events on Diego Garcia within the Home Office

15. The events on Diego Garcia were under scrutiny by the Foreign, Commonwealth and Development Office (“FCDO”) and the Home Office. The relevant events within the Home Office are detailed in a witness statement made by an official named Nick Wale, who is the Head of Domestic Asylum Policy in the Home Office’s Asylum and Protection Unit. We must describe those events in some detail, given their particular relevance to the issues before us.
16. On 5 November 2024, a ministerial submission was sent to the Home Secretary from the Head of Policy, Planning and Operational Interface of the Home Office’s Migration and Borders Crisis Response Hub. We have reproduced that submission verbatim and in full at Annex A to this judgment. For present purposes, it suffices to note the following about its contents.
17. The submission began by recording that the Home Secretary had met with officials on 31 October 2024, and had intimated that she was minded to “relocate the BIOT migrants (those on Diego Garcia and those who [sic] were transferred to Rwanda), other than those with specific criminality or undergoing criminal investigation, direct to the UK, subject to certain conditions.”
18. The submission set out “detail of how such a transfer would take place”. Five specific recommendations were then made. We need not make reference to the first, which was concerned with migrants who had criminal convictions or investigations. The second was that the Home Secretary should use her discretion to grant leave outside the Immigration Rules (“LOTR”) to the remaining 61 migrants. The third was that the LOTR should be “for 6 months with recourse to public funds.” The fourth concerned the waiving of application fees and is immaterial for present purposes. The fifth invited the Home Secretary to agree

“that costs attached to the relocation of the migrants, and whilst in the UK on LOTR, should be borne by the FCDO [Foreign Commonwealth and Development Office].”
19. The remainder of the submission put flesh on the bones of the officials’ recommendations. Paragraph 7 reminded the Home Secretary that she had a discretion as to the duration and conditions of any permission granted to the migrants. Paragraph 9 recommended granting leave with recourse to public funds “to facilitate access to wider resources that the migrants may require access to, such as housing” and noted that this would “facilitate the FCDO to covering [sic] the cost of the migrants’ wider support in the

UK, including accommodation, by providing the funds to the relevant departments.” We must reproduce the next four paragraphs in full:

Support in the UK

[10] Given the vulnerabilities of many of the BIOT cohort (mental health issues, previous self-harm, 16 are children) and the fact HMG is actively bringing these migrants to the UK, we do not consider it reasonable to allow them to be (potentially) destitute on arrival.

[11] We have very little information from the BIOT Administration as to what, if any, means the migrants have to support themselves. However, planning for the migrants to come to the UK is not for the HO to coordinate; you provided a clear steer that the funding of the relocation and wider support in the UK should sit with FCDO, as the lead department. We will continue to support FCDO to engage with the relevant other departments, such as HMT, MHCLG, DfE and DHSC to ensure that the relevant wrap around was agreed, funded and in place ahead of their arrival, but the Home Office will not assume any financial or practical responsibility for accommodating or supporting those relocated.

Interaction with the Asylum Process

[12] We anticipate that the majority (if not all) of the BIOT cohort will claim asylum once in the UK. This may be on arrival direct to a Border Force Officer, or within the duration of their permission to enter. Border Force are putting measures in place that, should this happen, they have resources in place to conduct the initial asylum screening of these individuals upon arrival. We have scope within our policy and operational practice to expedite the consideration determination of an asylum claim. That said, claimants can actively slow down the progress of their claim (and are more likely to do so if they anticipate a refusal) so there are limits to the control over timings we have. Once an asylum decision has been made, assuming that at least some would be refused, the migrants would have a right of appeal. This process can take several years (particularly if there are multiple appeals). Reaching a position where individuals from the BIOT cohort might be removable from the UK is therefore likely to take considerable time, and in the case of families, given the restrictions on enforcing removal of children, removal is unlikely.

[13] We cannot (and indeed would not) encourage the migrants to claim asylum on arrival. However, should they claim asylum, we anticipate that the majority would meet the eligibility threshold to access asylum support, so they would benefit from the established support system we provide for any vulnerable asylum seekers in the UK, and at that point would not need anything bespoke and should not be treated differently; we assume they would go into the asylum estate as any other

destitute claimant and their accommodation and subsistence costs would be absorbed within the asylum support budget. It also allows for decisions to be made on their asylum claims and where these are unsuccessful, for them to be considered for return to their country of nationality.
[**emphasis** in original]

20. Under the sub-heading “Financial Implications”, the author of the submission stated that there would be limited impact on the Home Office, noting that wider costs including “providing accommodation and wraparound support” were to be borne by the FCDO. It added that the costs associated with asylum applications, if they were made, would be “covered by existing resources and roles.”
21. On 8 November 2024, the Home Secretary’s Private Office confirmed that she agreed to the recommendations made in the submission. The Home Secretary’s agreement to that proposal resulted in offers being made to the applicants who were within its scope. The precise terms of the offers are in the papers before us. They were invited to make applications and enrol their biometrics. Subject to there being no adverse information revealed by that process, they were offered “relocation to the UK for a period of six months outside of the Immigration Rules”. The offer was made “to enable you to consider your long-term options”. Appended to the offer was a list of seven Frequently Asked Questions. We need only reproduce the fourth and fifth of the questions and answers:

What happens at the end of my period of leave?

You will need to consider whether you have a basis to remain in the UK or whether you need to depart to another location at the end of the six months. If you think you do have a basis in which to remain in the UK, you will need to submit an application for permission to stay before the end of your period of leave. More information on all routes available for a person to apply for permission to stay in the UK can be found here: <https://www.gov.uk/browse/visas-immigration>

What happens if I don’t want to leave at the end of the six months?

You must have valid leave to remain to continue living in the UK lawfully. If you stay in the UK after the expiry date of this period of leave without submitting any further applications to remain lawfully, you may become subject to enforcement measures, including return to your country of origin, and you will no longer be able to work, study, or access public funds in the UK. Failing to comply with the conditions of this limited leave may also affect your ability to re-enter the UK or settle here in future.

22. All of the migrants accepted the offer, including the applicants before us.

23. A further submission was made on 19 November 2024. We have reproduced that submission in full at Annex B to this judgment. It suffices for present purposes to note the following features of it.
24. The issue which was identified was that a decision was needed “on the detail for the conditions attached to the LOTR granted to migrants from BIOT on arrival to the UK.” The Home Secretary was invited to agree to two recommendations. Firstly, that the migrants should not be granted the right to work or study in the UK as conditions of the LOTR offered. Secondly, that there should be “an explicit expiry date to the grant of recourse to public funds for the cohort”.
25. Paragraphs 5-13 of the submission provided advice on the recommendation that the applicants should not be permitted to work and study during their six months LOTR. Reference was made once again to the FCDO’s agreement to finance accommodation, wraparound support and (where appropriate) subsistence for the cohort for the six months LOTR period. It was said that this would ensure that the cohort was not destitute whilst they considered their options in the UK. At [9], the Home Secretary was advised that “refusal to grant permission to work will impact [sic] of preventing the cohort from access to Universal Credit and other benefits through DWP [Department of Work and Pensions]”. Further advice was provided about that statement. Then, at [11]-[13], consideration was given to the possibility of the members of the cohort seeking asylum, and the implications that would have on the leave and conditions on which they were admitted to the UK:

[11] Consideration must also be given to the likely scenario of the cohort claiming asylum or submitting other permission to remain applications during their 6 months in the UK. Section 3C of the Immigration Act 1971 allows an applicant to extend their existing leave until another application is decided or withdrawn.

[12] In practice, this means that, upon application for asylum or other permission to remain during the validity of their LOTR, the individuals of this cohort will benefit from the continuation of any conditions attached to the initial LOTR until that application and any further appeals are concluded. However, under the terms of the agreement between the Home and Foreign Secretaries, the FCDO will not be responsible for the public funds to which the migrants will have recourse after 6 month LOTR period.

[13] By granting the right to study in the UK even on a temporary basis (e.g. up to 6 months, as per Visit Visa conditions), individuals in this cohort would benefit from continuing access to study in the UK until their asylum claim was decided and any resulting appeal rights were exhausted (if their asylum claim was

unsuccessful) for an indefinite period of time while any other applications are considered. This may increase the chances of having a claim to remain on human rights Article 8 (family and private life grounds).

[**emphasis** in original]

26. Then, under the sub-heading “Imposing a time restriction to recourse to public funds”, the Home Secretary was provided with the following advice, and asked to “agree to attach an explicit time limit on recourse to public funds for the cohort”.

[14] We are considering the option of explicitly indicating to the migrants that there is a time limit of six months on the duration of recourse to public funds, in order to align with the LOTR validity and FCDO’s funding commitment. In practical terms this would mean that at the end of the LOTR the migrants, if they had claimed asylum, would likely be classed as destitute and therefore fall into the wider Asylum support which provides them with accommodation and support.

[15] Irrespective of any claim to asylum, no further FCDO support or accommodation would be provided beyond the six month point. If no claim for asylum had been made, the cohort would then need to find alternative means of supporting themselves (if they had applied to remain through another route), return to their country of origin, or they would be subject to enforcement action.

27. That submission was not considered by the Home Secretary but by Dame Angela Eagle, then Minister of State for Border Security and Asylum. On 21 November 2024, her Private Office confirmed that the submission had been delegated to her for consideration and that both suggestions had been approved.
28. That approval resulted in further communication to the migrants on Diego Garcia. Mr Wale exhibits to his witness statement the text of a speech which was delivered to the migrants about the arrangements which had been made to transfer them to the UK in early December 2024. We need not reproduce those parts of the script which deal with the flights and other such matters. At [4], the migrants were informed that they would be provided with certain support during the six months LOTR. They were told that they would initially be in a hotel whilst a longer-term solution was found for the remainder of the six month period.
29. There were then two sections of the script, concerning the “Arrival and Initial Period” and “After 6 months”. The first section made reference to medical services and other such matters and, at [8], it said this:

After an initial period, you are likely to be moved out of your hotel into other accommodation for the rest of the 6 months. In this

accommodation you will be expected to be independent, including cooking and shopping for yourself. In this new accommodation, you will be provided with:

- A small amount of money on a regular basis for expenses;
- Medical care;
- The local authority will continue to provide you with social work support;
- Information on the local area, including local and community amenities and services.

30. Paragraph [9]-[10] covered the period after six months. The first of those paragraphs was in these terms:

AFTER 6 MONTHS: your period of immigration leave in the UK will come to an end. If you want to stay in the UK after your current permission ends you must make a new application for permission to stay before your current permission ends. The enhanced offer of assisted voluntary return remains open to those of you with a negative protection decision from BIOTA.

31. Each migrant was also provided with a letter in these terms:

Information about your Leave outside the Immigration Rules

You have been granted entry clearance to the United Kingdom outside of the Immigration Rules **for a period of six months** to enable you to consider your long term options. This offer does not constitute permanent settlement in the UK or recognition of refugee status by the UK government.

This letter is to outline what you are permitted and prohibited from doing during these six months:

- **It is a condition of your leave that you will not be allowed to work in the UK.**
- **It is a condition of your leave that you will not be allowed to study in the UK unless you are aged 16 or under.** If you are 16 or under, you are required by law to go to school.
- The Home Office has not restricted access to public funds for the duration of your 6-month leave. This is in order for you to access funds from FCDO, which will cease after six months.

Note on conditions

- Failure to comply with the conditions of your permission is a criminal offence and may also lead to your permission being cancelled and future applications being refused.
- These conditions apply to the current entry clearance to the UK.

Note on entry clearance

If, on arrival to the UK, you seek entry on any other basis, you will be deemed to have reached a decision on your options. It is possible that you will be examined to determine whether there has been a change of circumstances since your leave was

granted, and your leave may be suspended pending completion of that examination. This is in line with normal procedure for arrivals at the border who seek an alternative basis for entering the UK.

When your permission to stay ends

If you want to stay in the UK after your current permission ends you must make a new application for permission to stay before your current permission ends. Details of how to apply to do this can be found on the GOV.UK website.

[**emphasis** in original]

Relocation to the United Kingdom

32. The migrants were duly relocated to the United Kingdom over the course of 2 and 3 December 2024. The first applicant came from Diego Garcia, as did the third applicant and her family. The second applicant came from Rwanda. All 61 individuals transferred from Diego Garcia to the UK were accommodated in a hotel in West Sussex.
33. The first applicant remained at that hotel until 30 May 2025. He states that he was happy there. He initially received £8.86 per week in addition to full board accommodation at the hotel. He also had a bus pass. In February 2025, he applied for Universal Credit. He received just under £400 of Universal Credit on 4 April and 2 May 2025, and just over £400 on 2 June 2025. He describes at [11] of his witness statement that the receipt of Universal Credit was “a sufficient amount to help me rebuild myself in the UK.” He was able to afford clothes and shoes and to have a haircut. He considered joining a gym.
34. The second applicant had difficulty at the hotel, where he was mocked by other residents for being effeminate. He lost weight because he could not eat the food. As a result of the sexual assaults he suffered in India, he was suspicious of the food and worried that it was contaminated with semen. He also received just under £9 per week initially, and found that he was unable to support himself on that sum. He was moved to private accommodation in January 2025 and he started to receive Universal Credit in February. This enabled him and his flatmate (who had also been relocated from Rwanda) to cook for themselves, to buy cleaning and laundry products and to top up his mobile phone.
35. The third applicant and her family found their time at the hotel very difficult. They also found the food to be largely inedible. The whole family had to share a single room. They were given £8.86 per week for each member of the family but were largely dependent on charity for clothes and toys. They were relocated to private accommodation in West Sussex at the end of January 2025. They received Universal

Credit. They were able to cook for themselves. They had their own space. They were able to buy things for the children. They were also able to visit family and different places, including London and Brighton.

36. The two children started attending a school in West Sussex in January. The school made additional provision for them from April 2025, to enable them to catch up to the level of other students. The children were also able to join after-school clubs. Their daughter took up dancing, singing and basketball. The children did well at their time at this school. Amongst other achievements, their son achieved a gold medal in javelin at the school sports day.

Asylum Claims

37. Each of the applicants claimed asylum shortly after they arrived in the United Kingdom, well before the expiry of their six months' leave to remain.
38. The first and second applicants made representations to the Secretary of State before their screening interviews took place. In both cases, it was submitted that she should exercise her discretion to omit a personal interview. Reference was made in both letters to paragraph 339NA(i) of the Immigration Rules, which provides that a personal interview may be omitted when the Secretary of State is able to take a positive decision on the basis of the evidence already available. Reference was made, in particular, to the process which had been followed by the Commissioner of BIOT in deciding that the applicants could not be returned to Sri Lanka.
39. On 31 March 2025, in accordance with the timetable set out in an order of the High Court, the Secretary of State accepted that she should exercise her discretion to omit personal interviews in the first and second applicants' cases. The letters were signed by a Senior Caseworker named Niall O'Hagan. The letters were materially identical, and it suffices to reproduce the material parts of the letter to the second applicant:

I am writing with regards to the Consent Order sealed on 4 February 2025 for claims AC-2024-LON-001076 & AC-2024-LON-001080 and the requests made on behalf of RG, HK, BAA and BAB to omit the personal asylum interview in line with Immigration Rule paragraph 339NA.

The information submitted on behalf of your client [BAA] has been carefully considered by an asylum decision maker on before of [sic] the Secretary of State for the Home Department.

I can confirm that sufficient information has now been submitted to omit the asylum interview and consider the asylum claim on

papers [sic]. The asylum claim is currently under consideration and a decision will be made in line with our usual timescales. Your client will be notified of the outcome of their asylum claim as soon as a decision has been made following our usual processes.

40. RG and BAA were granted refugee status on 19 September 2025. CAC's asylum claim remains outstanding to date.

The Imposition of the NRPF Condition

41. On 7 May 2025, the applicants' solicitors wrote to the respondent on behalf of all asylum seekers from Diego Garcia, seeking clarification as to what arrangements (if any) had been made for them upon their "transition to section 3C leave on 30 May 2025". The letter noted that section 3C of the Immigration Act 1971 applied to those who had been granted LOTR and had sought asylum before its expiry. It set out the current provision made by West Sussex County Council for the cohort, and it invited the Secretary of State to "confirm what arrangements are in place for the continued provision of accommodation, wraparound support and financial support" upon the expiry of their initial LOTR. Paragraph 10 of the letter stated:

We emphasise that our clients are extremely vulnerable individuals and it is essential that suitable arrangements are in place to ensure that (i) all our clients are provided with suitable accommodation, (ii) all our clients are provided sufficient financial support, (iii) we are given notice of any change to the current arrangements, and (iv) any transition from the current arrangements is as smooth as possible.

42. The respondent replied to that letter on 13 May 2025, stating that she would impose a NRPF condition on 29 May 2025. The letter acknowledged that section 3C applied so as to extend the LOTR of those who had claimed asylum. It continued materially as follows:

Your clients' six month LOTR was granted with a condition that they would have recourse to public funds. As set out in our letter dated 29 November 2024, this was to enable your clients to access the bespoke scheme of temporary support provided by the Foreign Office. This bespoke temporary scheme will come to an end at the expiration of the six months.

Consequently, your clients' access to public funds will now be restricted. Accordingly, pursuant to Section 3(3)(a) of the [Immigration Act], the Home Office will vary the conditions of your clients' leave to "No Recourse to Public Funds" from 29 May 2025. This is necessary to enable your clients who have made an application for asylum, and who otherwise would be destitute, to be able to access Home Office asylum accommodation and subsistence support. It will also bring your clients' entitled in line with other applicants for asylum in the UK.

43. The respondent invited the applicants to apply for asylum support under s95 of the Immigration and Asylum Act 1999. They did so, and were granted s95 support accordingly. The first and second applicants continued to be supported in that way from 29 May 2025 until they were granted asylum on 19 September 2025. The third applicant and her family continue to be supported in that way to date.
44. The applicants describe the consequences of the NRPf condition in their witness statements.
45. The first applicant was moved to a different hotel in West Sussex on 29 May. He was once again provided with £8.86 per week on a pre-paid card. In his second witness statement, he summarised his situation at that hotel as being “lonely, depressed, anxious and penniless”. He remained at that hotel until 11 September 2025. There was a protest outside the hotel on 23 August. He found that to be frightening. He was informed on 2 September that he was to be moved to new, self-catered accommodation in Braintree, Essex. That move occurred on 11 September. The applicant was granted asylum eight days later, as a result of which he is once again entitled to access public funds.
46. The second applicant lived in private accommodation with his friend from Diego Garcia from January 2025 until 29 May. He was initially moved to a hotel in Horley, West Sussex, but he was moved to another hotel in Crawley when he asked to remain with his friend. He was provided with £8.86 per week on a pre-paid card, and found it difficult to afford basic items such as toiletries. He no longer has a bus pass. He was dependent on taxis provided by the Home Office for journeys in excess of 3 kilometres. He once again had difficulty with the food which was provided for him (for the reasons at [34] above) and lost weight. His mental health problems worsened and he received support from the NHS and the Samaritans. He was granted asylum on 19 September 2025 and was once again entitled to access public funds. At the time that he made his second statement in these proceedings (dated 28 October 2025), he and his friend were searching for private accommodation in the Crawley area, and both had been offered employment.
47. The third applicant and her family were moved from the house which we have described at [35] above into a single hotel room at the end of May 2025 and their entitlement to Universal Credit came to an end. At the time of her second statement in these proceedings (dated 28 October 2025), her daughter was 13 and her son was 9 years old. She states that it is “extremely difficult” for them to share the space for all daily activities, including eating, sleeping and doing schoolwork. There have been fights and protests at the hotel and they do not feel safe. The children are no longer able to attend

afterschool clubs because they cannot afford the bus fares. They cannot afford to travel to see friends or family. At the time of making her second statement, the third applicant had been notified that they were to be dispersed to Harwich in Essex at the end of October. She was concerned that they would be leaving behind what connections they had been able to make in West Sussex, including the friendships that the children had made at school. (That transfer was effected on 30 October 2025.)

48. Pre-action correspondence was entered into but the Secretary of State maintained that the decisions to impose NRPF conditions were not vitiated by public law error.
49. These claims were lodged at the start of August 2025. RG's claim was issued first. BAA & CAC's claims were lodged together, one week later. UTJ Ruddick ordered anonymity and made directions linking the two sets of proceedings on 13 August 2025. UTJ Norton-Taylor granted permission on 10 September 2025. He observed in RG's case that although "certain aspects of the applicant's challenge may have greater merit than others, the summary grounds of defence do not in my view present any "knock-out blows" and all aspects of the challenge meet the permission threshold of arguability."

THE GROUNDS FOR JUDICIAL REVIEW

50. Four grounds were advanced in each case:

Ground 1: the decision was unlawful and unreasonable and failed to take account of the Applicants' particular circumstances and/or the Respondent had unlawfully fettered her discretion.

Ground 2: the imposition of a NRPF condition is a disproportionate interference with the Applicants' rights under Article 1 of the First Protocol ("A1P1") of the European Convention on Human Rights ("ECHR").

Ground 3: the imposition of a NRPF condition is a Thlimmenos breach of Article 14 of the ECHR because the Respondent failed to treat the applicants differently from the other migrants from Diego Garcia, despite their situations being materially different.

Ground 4: the decision was made in such a way that it was procedurally unfair, in that the Applicants were deprived of an opportunity to draw the Respondent's attention to relevant matters that weighed against the decision.

51. We have before us a composite hearing bundle which runs to 2853 pages. There is also a bundle of authorities which runs to 1908 pages. In addition to the written evidence, we received oral evidence

from Mr O'Hagan, the Senior Caseworker who decided to omit personal interviews in the cases of RG and BAA. He gave oral evidence pursuant to an order which was made by UTJ Blundell on 27 October 2025, acceding to an application made by the applicants on 21 October 2025. We will return to Mr O'Hagan's evidence and our conclusions upon it below.

52. The applicants developed detailed arguments orally and in writing. What follows is necessarily a summary of the essential parts of those arguments, shorn, in the interests of brevity, and as far as possible, of reference to authority.

THE APPLICANTS' SUBMISSIONS

53. Mr Buttler KC asked us to note that the backdrop to the events in the UK was detailed in the judgment of the Supreme Court of BIOT, which was under appeal but remained in force. The applicants had been falsely imprisoned in inhumane conditions for a lengthy period. The UNHCR had expressed serious concern about their circumstances on Diego Garcia.
54. The respondent had communicated with the applicants in writing before they were relocated to the UK. They were told that they would be permitted to access public funds for six months. They were not told that there would be a NRPF condition after six months. During the period of LOTR, the applicants had accessed Universal Credit, which was designed to cover their costs of living including their housing costs. Each of the applicants had applied for asylum before the expiry of their leave to remain, the effect of which was that their leave (and any conditions attached to it) was statutorily extended by section 3C of the Immigration Act 1971. The imposition of the NRPF condition was therefore a variation of their conditions under s3(3)(a) of the same Act. The applicants had not been forewarned that the condition would be imposed, and this was a "bolt from the blue".
55. The consequence of the NRPF for each applicant had been serious. Their cash income fell to £8.86 per person. The first and second applicants were in that position from the end of May 2025 until the decision to grant refugee status on 19 September. The third applicant and her family remained in that position. The first and second applicants therefore sought a declaration that the imposition of the NRPF condition was unlawful in public law and ECHR terms, whereas the third applicant sought an order quashing the imposition of the condition on the same bases. Damages were also sought.
56. Mr Buttler took us in some detail through the ministerial submissions which we have reproduced at Annexes A and B to this judgment. He asked us to note that the Secretary of State was not asked, in the first submission, to consider what should happen in the event that

the applicants sought asylum during their LOTR, although it was anticipated that a number of the cohort would do so. In the second submission, the Minister was asked to attach an explicit expiry date to the provision of public funds but the advice to the Minister contained a clear error of law because the prohibition on working did not prevent access to Universal Credit. The advice she received was premised on that error.

57. Mr Buttler made two overarching points on the second submission and the Minister's agreement with it. Firstly, it was clear that she was not being asked to decide that Universal Credit would end after six months. Secondly, she was not being asked to make an advance decision to impose a NRPF condition on all of the applicants in May 2025. There was no request for such decisions in the submission. It was also notable that the applicants had not been told that an advance decision had been made to impose NRPF conditions on any applicants who claimed asylum during their LOTR. In any event, the Minister could not lawfully make an advance decision as to how she would exercise the discretion conferred by s3(3)(a) of the 1971 Act. To do so was contrary to the non-fettering principle; the exercise of such a discretion must take account of the circumstances at the relevant time. In the third applicant's case, there was a further point, which was that the respondent was obliged to take account of the welfare of any relevant children in exercising her discretion. She could not have taken account of their circumstances in May 2025 when she considered the submissions which were made to her in November 2024.
58. Mr Buttler noted that it was the Secretary of State's case that the decision to impose the NRPF condition had effectively been taken in November 2024, and that there were no departmental records or any other evidence to show what had been taken into account in May 2025, when the condition was actually imposed. That, in his submission, was an extraordinary feature of the cases. The GLD had provided post hoc reasons but that was inadequate because there was no evidence of a reasoned evaluative judgment having been made at the relevant time. The short letter which had been sent to the applicant's solicitors on 13 May 2025 (the material parts of which we have reproduced at [42] above) was flawed for a number of reasons. The applicants were entitled to Universal Credit and did not require asylum support to prevent destitution. The May 2025 decisions suffered from defects of process rationality and were consequently unlawful.
59. It was no answer to suggest, as the respondent had done in responding to pre-action correspondence, that the decisions had been taken in November 2024 and had not been challenged. Neither the Secretary of State nor the Minister had been asked to take such a decision and any such decision would have been contrary to the non-

fettering principle in any event. It was unlawful simply to implement a ministerial decision from six months previously without taking any account of the current situation. Mr Wale suggested in his witness statement that the objective was to bring the applicants into line with other asylum seekers but that was inconsistent with what had been said by the GLD. His logic was also flawed because the applicants continued to enjoy access to Universal Credit until a positive decision was made to remove their recourse to public funds.

60. It was evident, in any event, that the decision maker in May 2025 did not afford any opportunity to make representations, and did not consider the individual circumstances of the applicants. The respondent had not acted in conformity with settled principles of procedural fairness. Had they been given an opportunity to make representations, there was much that would have been said concerning their individual circumstances and the reasons why the imposition of NRPF conditions would be inappropriate. Mr Wale evidently knew nothing of their circumstances. The decisions were not deliberately cruel, but were taken in ignorance of the applicants' situations.
61. Recalling that the duty to act fairly is context-specific, Mr Buttler emphasised that there was a significant difference between imposing a NRPF condition on asylum seekers when they first arrived in the UK, and imposing such a condition on claimants who had been entitled to public funds for months. In the circumstances of these claimants, something meaningful was being taken away and the duty to act fairly was necessarily to the fore. The Secretary of State's published guidance did not cover cases in which access to public funds was removed but it clearly required decision-makers to take account of the circumstances of the individual case. That guidance applied a *fortiori* when the respondent considered whether to take away a previous entitlement to public funds. Here, however, the respondent had no regard to the individual circumstances and mandatory material considerations had been left out of account.
62. Mr Buttler summarised the domestic legal errors as follows. Firstly, the respondent wrongly thought that the decisions had been taken in November 2024, whereas they were taken in May 2025. Secondly, in the alternative, if the decisions were taken in November 2024, they were vitiated for want of compliance with the non-fettering principle. Thirdly, it was seemingly thought to be "necessary" to impose the NRPF conditions so as to avoid destitution but it was not; leave would have continued on the same conditions because of s3C. Fourthly, the respondent did not act fairly because there had been no opportunity to make representations. Fifthly, the respondent failed to take the applicant's individual circumstances into account. Sixthly, in respect of the third applicant and her family, the respondent had

failed to consider the best interests of the children in accordance with her statutory duty.

63. Mr Buttler moved on to the ECHR grounds. He submitted that the authorities showed that the applicants had a property right under Article 1 of the First Protocol (“A1P1”) to the public funds they had accessed before the end of May 2025. Any removal of that property right had to be in accordance with domestic law, and the establishment of a public law error such as those adumbrated above would be fatal. It was in any event necessary to consider whether an interference was proportionate, in which respect the burden was on the respondent. She was unable to discharge that burden in circumstances in which there was no rational connection between the objective and the means employed to achieve it. The respondent sought in her skeleton argument to advance a different reason, and submitted that the tribunal should afford substantial deference to the Secretary of State’s personal decision but that was to mischaracterise the decisions which had been taken in November 2024. The tribunal was in effect being invited to defer to a judgement which had not been exercised by the respondent. Even if that judgement had been exercised by the Secretary of State or the Minister, the objective was outweighed in this case by the individual circumstances of the applicants. There had accordingly been no fair balance struck.

THE RESPONDENT’S SUBMISSIONS

64. Mr Brown KC invited the tribunal to consider what was known to the Secretary of State when the decisions were taken. These applications for judicial review focused on a very specific question but were part of long-running litigation concerning the BIOT cohort. The applicants had been on Diego Garcia for a long time, and the circumstances of their accommodation were unsuitable. They were also accommodated on an island which was strategically important for UK and US defence. Concerns had been raised regarding the criminality of some individuals. All of this had resulted in a “rolling programme” of decisions which were made personally by the Secretary of State, in consultation with other senior ministers, including the Foreign Secretary and the Prime Minister.
65. It was fallacious to suggest, as the applicants did, that the November 2024 submissions and the resulting decisions had come out of the blue. Instead, they were part of complex and careful policy decisions which were taken at the heart of the government. Those deliberations had been informed by consultation with external agencies including the UNHCR. The tribunal would note that international solutions including transferring the BIOT cohort to Romania had also been considered. Ultimately, therefore, the November decisions had not been taken in a vacuum and it was wrong to suggest otherwise. It was necessary to consider that

context throughout. It was also necessary to consider the context when drawing the appropriate inferences from the ministerial submissions, which were primary documents disclosed in compliance with the duty of candour. The applicant's invitation to subject the submissions to a line-by-line analysis should be rejected in the circumstances. At its heart, the applicants' case was a rationality challenge, and the identification of some sort of legal error on the part of the Secretary of State did not found a proper case under domestic public law or under A1P1.

66. It was clear that the Secretary of State had been asked to provide a policy steer in autumn 2024. The clear intention was that the applicants would not have support from the FCDO after six months, and would therefore be at risk of destitution. The Secretary of State decided in November 2024 that the applicants would in May 2025 be treated no differently from any other asylum seeker. That was entirely permissible. Their circumstances were commonplace amongst asylum seekers and were not deserving of some sort of bespoke treatment.
67. It did not matter whether the officials' witness statements or the letters from the GLD were poorly expressed because the policy intention was clear and unimpeachable. The ministerial submissions had been produced at pace and in response to a developing situation. When those submissions were analysed fairly and appropriately, it was clear that the Secretary of State had been apprised of the relevant circumstances and had decided that there would be a bespoke package for six months, funded by the FCDO, after which any of the cohort who had sought asylum would be placed in the same position as any other asylum seeker. It was clear that the decisions had been taken by the Secretary of State and the Minister in person, and it was unrealistic to expect (as the applicants did), their reasoning process to be set out. The second submission recognised that the FCDO support package and the time limit went hand in hand. Express reference was made to section 3C, and the policy was formulated on the basis that after six months it would only be asylum support which was made available. That submission was approved by the Minister and the letters which were sent to the applicants immediately thereafter were congruent with the policy formulation. No reasonable applicant could have thought on reading that letter that they would be granted asylum on arrival in the UK. The reasonable reader would understand that they would receive a bespoke package of support for six months only, and it was unrealistic to suggest that the imposition of the NRPF condition came as a bolt from the blue.
68. Mr Wale's witness statement showed that events had unfolded as the department had anticipated. The offers of relocation had been accepted and asylum had in due course been claimed. In May 2025,

the officials had acted in line with the policy which had been agreed at the very highest levels and were entitled to do so. To do so was not in breach of the non-fettering principle; there was no need to reconsider the position after six months. The position in these cases was distinguishable from that in R v SSHD ex parte Venables & Anor [1998] AC 407, in which the Secretary of State had impermissibly fettered his discretion by committing himself to the way that he would exercise his discretionary power in the future. Whilst the rule was as stated by Lord Browne-Wilkinson, it had to be applied sensibly and workably. Were it otherwise, it would be impermissible for a minister to instruct an official how to exercise a discretionary power the following day. Carried to its logical conclusion in these cases, the applicants' submission would have required the officials in May 2025 to ignore the clear intention of the ministers in November 2024. The circumstances had not changed, however, and there was no proper reason to take a different tack. The respondent's general policy was that asylum seekers should not have recourse to public funds and that destitution would be addressed. What the applicants essentially sought to challenge was the framework agreed by the ministers but that challenge was unsound.

69. It could not properly be said that the applicants' challenging personal circumstances were not known to the ministers and the officials who dealt with the cases. So much was clear from the PAP response. It was said by the applicants that the respondent was obliged to consider their individual circumstances before imposing the NRPF condition but that was not so. The department was aware that they were asylum seekers, and that there were wide and multifarious fact patterns within that cohort. The individual facts upon which the applicants relied made no difference to the assessment because many asylum seekers were likely to have similar issues: dependent children, mental health problems and a background of ill-treatment. There was no evidence to suggest that there had not been consideration of the best interests of the children. The requirement in the policy to consider the facts of each case did not mean that the officials could not consider the facts collectively and as part of a cohort.
70. Mr Brown did not accept that there was any relevant distinction between cases in which recourse to public funds had previously been available and those in which it had not. Here, he submitted, the applicants received exactly what they had been told they would receive; six months LOTR with public funds. Mr Brown submitted that any change in the applicants' circumstances between November 2024 and May 2025 had been considered. It had obviously been known to the ministers in November 2024 that there would be a disadvantage to any asylum-seeking children in May 2025; that was so obvious that it did not need to be said. It was imperative to recall that the decisions had been taken personally by members of the

Cabinet. Equally, it was inappropriate in this context to submit the submissions or the decisions to a line-by-line analysis.

71. The applicants were wrong to submit, as they did in ground four, that there was no opportunity to make representations on the imposition of the NRPF condition. It had been clear in November that such a condition would be imposed. A warning had then been given and correspondence had been entered into with the applicants' solicitors. There were obviously cases in which it could properly be said that consideration in a PAP response would be too late but that was not so here, since the case was one which was characterised by an ongoing discussion between the applicants and the department. The decision makers had considered the factors which were genuinely material, and the applicants lost sight of both the level of decision making and the context of the cases as a whole. It was appropriate to defer to a considerable extent to the views taken by democratically elected ministers in these circumstances.
72. The cross-examination of Mr O'Hagan had taken matters no further. It was not established that he or any other official had concluded in March 2025 that positive decisions would inevitably be made.
73. As for A1P1, the applicants had no proprietary right to receiving a state benefit. They had only a conditional right to that benefit, which was facilitated during the initial six months by the LOTR which had been granted in the exercise of the respondent's discretion. Even if there was a proprietary right which engaged A1P1, there was no public law error which meant that the interference with the right was impermissible. And any interference was also proportionate in the context of these cases and the fact that the decisions were taken personally by members of the Cabinet.

THE APPLICANTS' REPLY

74. Mr Buttler replied. He noted that significant reliance was placed on the institutional knowledge of the relevant ministers and their department but he submitted that there was no proper evidence of that knowledge. It was accepted that it was not appropriate to construe the ministerial submissions drafted by officials with all the strictness of a statute or a contract but it was still necessary to consider those documents carefully. In doing so, it was apparent that errors had been made in the advice given to the ministers. The tribunal could not shut its eyes to those errors and could not engage in the "wishful thinking" urged by Mr Brown. The reality was that the Secretary of State had never been asked to consider whether it would be necessary and proportionate to impose NRPF conditions on members of the cohort who had claimed asylum within the initial six months' LOTR. The Frequently Asked Questions document which had been provided to the cohort indicated that section 3C would apply if

they claimed asylum within the LOTR period and that any rights would roll over accordingly. The second submission did not suggest the imposition of NRPF conditions for those who claimed asylum within the LOTR period. Mr Wale had fallen into the same error when it came to s3C and the conditions of leave.

75. The Secretary of State now appeared to submit that the decisions were taken in May 2025 but in light of the ministerial decisions which had been taken six months' previously. But there was a wholesale evidential void in respect of any decision making in May 2025. It could not simply be assumed that the officials had the ministers' views in mind and then took all of the applicants' circumstances into account. Mr Brown had asked rhetorically whether the non-fettering principle enunciated in Venables would apply to actions one day in the future but that was not the situation here; six months was an appreciable time, particularly in the lives of CAC's children.
76. Mr Brown had submitted that the circumstances were well known to the ministers and the department but they knew nothing of their circumstances at the time that the NRPF conditions were imposed in May 2025. The respondent's submission suggested that she could validly ignore the best interests of CAC's children or the trauma suffered by BAA. It was to be assumed that the respondent had complied scrupulously with the duty of candour but she had adduced nothing to show that any relevant circumstances had been taken into account in May 2025.
77. Mr Brown had submitted that representations could have been made in 2024 but it would have been premature to do so, as the applicants' leave would not have been extended by s3C at that stage. It was only after the final decisions had been communicated in May 2025 that the applicants could properly act.
78. In sum, there were clear public law errors in the decisions under challenge and the interference with the applicants' property rights were accordingly unlawful.
79. We reserved our judgment at the end of the submissions. We record our gratitude to the legal teams on both sides. The written and oral submissions were concise and precise and the bundles were impeccably presented. The delay in producing this judgment is the responsibility of the tribunal, not the parties, and results from the pressure of other work and the volume of evidence and authority which we were required to consider.

STATUTORY FRAMEWORK

80. Although it will be necessary to make reference to other provisions of primary and secondary legislation, we think it necessary at this stage

to set out only two sections of the Immigration Act 1971. The first is section 3, under which the decision to impose the NRP conditions was taken. The second is section 3C, which extended the applicants' leave whilst their asylum claims were pending. Those sections provide materially as follows:

3 - General provision for regulation and control

- (1) Except as otherwise provided by or under this Act, where a person is not a British citizen
 - (a) he shall not enter the United Kingdom unless given leave to do so in accordance with the provisions of, or made under, this Act;
 - (b) he may be given leave to enter the United Kingdom (or, when already there, leave to remain in the United Kingdom) either for a limited or for an indefinite period;
 - (c) if he is given limited leave to enter or remain in the United Kingdom, it may be given subject to all or any of the following conditions, namely—
 - (i) a condition restricting his work or occupation in the United Kingdom;
 - (ia) a condition restricting his studies in the United Kingdom;
 - (ii) a condition requiring him to maintain and accommodate himself, and any dependants of his, without recourse to public funds;
 - (iii) - (v) [...]
- (2) The Secretary of State shall from time to time (and as soon as may be) lay before Parliament statements of the rules, or of any changes in the rules, laid down by him as to the practice to be followed in the administration of this Act for regulating the entry into and stay in the United Kingdom of persons required by this Act to have leave to enter, including any rules as to the period for which leave is to be given and the conditions to be attached in different circumstances; and section 1(4) above shall not be taken to require uniform provision to be made by the rules as regards admission of persons for a purpose or in a capacity specified in section 1(4) (and in particular, for this as well as other purposes of this Act, account may be taken of citizenship or nationality). If a statement laid before either House of Parliament under this subsection is disapproved by a resolution of that House passed within the period of forty days beginning with the date of laying (and exclusive of any period during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days), then the Secretary of State shall as soon as may be make such changes or further changes in the rules as appear to him to be required in the circumstances, so that the statement of those changes be laid before Parliament at latest by the end of the period of forty days beginning with the date of the resolution (but exclusive as aforesaid).

- (3) In the case of a limited leave to enter or remain in the United Kingdom,—
 - (a) a person's leave may be varied, whether by restricting, enlarging or removing the limit on its duration, or by adding, varying or revoking conditions, but if the limit on its duration is removed, any conditions attached to the leave shall cease to apply; and
 - (b) [...]
- (4) - (11) [...]

3C - Continuation of leave pending variation decision

- (1) This section applies if—
 - (a) a person who has limited leave to enter or remain in the United Kingdom applies to the Secretary of State for variation of the leave,
 - (b) the application for variation is made before the leave expires, and
 - (c) the leave expires without the application for variation having been decided.
- (2) The leave is extended by virtue of this section during any period when—
 - (a) the application for variation is neither decided nor withdrawn,
 - (b) - (d) [...]
- (3) - (7) [...]

ANALYSIS

The Public Law Challenges - Unreasonableness, Fettering Discretion, Leaving Material Matters Out of Account and Procedural Impropriety

81. There is a considerable degree of overlap in respect of these four submissions and we have grouped together our consideration of them under one sub-heading in recognition of that overlap.
82. As will be apparent from our summary of the competing submissions, there was no agreement between the parties as to when the decision was taken to impose the NRPF conditions on the applicants. The Secretary of State has contended that the decisions were taken personally by her or the Home Office Minister in November 2024 or by officials in May 2025 who were acting pursuant to decisions made by ministers six months earlier. The applicants contend that the decisions were taken in May 2025. Whichever of those options represents the correct position, we find that the decisions were vitiated by public law errors which might be summarised in the following way.

83. Firstly, from November 2024 to May 2025 (and to date), the respondent operated under a misapprehension that she needed to cease the applicants' access to public funds in order that they could access accommodation. Whereas, had their entitlement to public funds continued beyond the end of May 2025, they would have been able to pay for the cost of accommodation using Universal Credit.
84. Secondly, if (as counsel for the respondent suggest at [4] of their skeleton argument) the Secretary of State personally decided in November 2024 that "following expiry of the "bespoke" package, the Applicants would receive support from the asylum support system applicable to any destitute asylum seeker in the UK", that decision was in breach of the non-fettering principle as expressed in Venables.
85. Thirdly, if the decision to vary the applicants' conditions was taken in May 2025, whether with reference to earlier ministerial decisions or not, then the decision was unlawful because the respondent failed to take the individual circumstances of the applicants into account.
86. Fourthly, in deciding to cease the applicants' entitlement to public funds in May 2025, the respondent acted in a procedurally unfair manner, in that she failed to give the applicants a meaningful opportunity to make representations before taking the final decision to do so.
87. Our reasons for reaching those conclusions appear below. Before we come to those reasons, however, we should deal briefly with two preliminary matters: timeliness and terminology.

Timeliness

88. Whilst Mr Brown took no point in his oral submissions about the timeliness of the applicants' claims, it is contended at various points in the respondent's skeleton argument that these applications for judicial review, which were lodged in August 2025, represent an attempt to challenge the ministerial decisions which were made in November. We note [7] of the skeleton argument in particular, in which it is said that the applicants "cannot realistically sidestep the fact that their challenge is to the November decision by concentrating on its implementation thereafter." Had it been positively contended that the applications were lodged beyond the three month longstop, we would have rejected that submission. Whatever was decided by the ministers in November the decision to vary the conditions attached to the applicants' leave to remain was only made, as a matter of law, in May 2025.
89. There is a further point concerning the timeliness of the challenges. The correspondence which was sent to the applicants following the ministerial decisions did not specifically state that they would be

subjected to an NRPF condition at the conclusion of the initial six months *even if* they had made an application which served to engage section 3C of the 1971 Act. It said that a member of the cohort who stayed in the UK “after the expiry date of this period of leave without submitting any further applications to remain lawfully” would “no longer be able to work, study or access public funds in the UK” but it said nothing about the availability of public funds for those who had made in-time applications for leave to remain. It is wholly unsurprising, in the circumstances, that the applicants’ solicitors wrote to the respondent in May 2025 to ask what arrangements were to be made for the “transition” to section 3C leave, as there had previously been no clear indication that all members of the cohort who *had* claimed asylum would have NRPF conditions imposed. The ministerial submissions and the ministers’ decisions on those submissions were obviously only disclosed in the course of these proceedings, and the applicants could not have challenged decisions of which they were unaware.

Terminology

90. Throughout the applicants’ skeleton argument (but not in Mr Buttler’s oral submissions), we find regular reference to the respondent having decided to make the applicants destitute. We found that terminology to be unhelpful and frankly incorrect. The respondent did not at any stage decide to make the applicants destitute. She decided to impose a condition that they should not have recourse to public funds from the end of May 2025 and we consider that decision to have been vitiated by a range of public law errors, but it is quite clear from everything we have seen that there was never any intention that these vulnerable individuals should be rendered destitute. The respondent wished to “transition” their support package from one in which they could receive public funds to one under Part Six of the Immigration and Asylum Act 1999 but it is unhelpfully emotive to refer to a decision to “make” them destitute.
91. The same observation applies to the suggestion at [66] of the applicants’ skeleton argument that the significant detriment which the applicants experienced as a result of the NRPF condition was “deliberately inflicted on them by the Respondent’s officials”. As we will in due course explain, we accept that the imposition of the NRPF condition was to the significant detriment of the applicants but there is simply no basis for suggesting that that detriment was inflicted deliberately.

Was the respondent’s decision vitiated by process or substantive irrationality?

92. As we have seen, the Secretary of State decided in November 2024 to grant the applicants LOTR in the exercise of her discretion, thereby

accepting the core recommendation which had been made in the ministerial submission of 5 November 2024. The further submission which was made on 19 November 2024 invited the Secretary of State to agree to attach an explicit expiry date to the grant of recourse to public funds to the claimants, and that recommendation was accepted by the Home Office Minister.

93. Those who claimed asylum during the initial period of LOTR benefited from the statutory extension of their leave under section 3C of the 1971 Act for as long as their applications for asylum remained undecided. That extension is triggered automatically by the making of the application for asylum and takes effect by operation of law: R (RAMFEL) v SSHD [2025] EWCA Civ 1843. The conditions attached to the leave, which in these cases permitted access to public funds, also continued whilst their applications for asylum were pending.
94. Mr Buttler's first submission is that the respondent's decision making process as a whole suffered from defects in process rationality, a concept which was recently explained by Chamberlain J in related litigation concerning the BIOT cohort: R (KP) v Secretary of State for Foreign, Commonwealth and Development Affairs & Anor [2025] EWHC 370 (Admin). At [55]-[56], under the sub-heading "Rationality: two aspects", Chamberlain J said this:

[55] In most contexts, rationality is the standard by which the common law measures the conduct of a public decision-maker where there has been no infringement of a legal right, no misdirection of law and no procedural unfairness. It encompasses both the process of reasoning by which a decision is reached (sometimes referred to as "process rationality") and the outcome ("outcome rationality"): see e.g. *R (Law Society) v Lord Chancellor* [2018] EWHC 2094 (Admin), [2019] 1 WLR 1649, [98] (Leggatt LJ and Carr J).

[56] Process rationality includes the requirement that the decision maker must have regard to all mandatorily relevant considerations and no irrelevant ones, but is not limited to that. In addition, the process of reasoning should contain no logical error or critical gap. This is the type of irrationality Sedley J was describing when he spoke of a decision that "does not add up - in which, in other words, there is an error of reasoning which robs the decision of logic": *R v Parliamentary Commissioner for Administration ex p. Balchin* [1998] 1 PLR 1, [13]. In similar vein, Saini J said that the court should ask, "does the conclusion follow from the evidence or is there an unexplained evidential gap or leap in reasoning which fails to justify the conclusion?": *R (Wells) v Parole Board* [2019] EWHC 2710 (Admin), at [33].

95. The applicants particularly submit that the process of reasoning undertaken in the Home Office from November 2024 onwards contained what Chamberlain J described as logical errors. Various

criticisms were made by Mr Buttler in his written and oral submissions. Mr Brown urged us repeatedly not to subject the ministerial submissions or the other documents to a line-by-line analysis, and submitted that the questions posed to the ministers were tolerably clear when they were read fairly. Whilst we consider Mr Brown was correct to submit that the submissions should not be subjected to an overly forensic analysis, we do consider the second ministerial submission to suffer from a critical defect for the following reasons.

96. We have explained the structure and content of the second submission at [23]-[27] above. In summary, the minister was briefed on “risks and rationale” before being asked to make a decision on two separate questions. The first was whether the applicants should be permitted to work and study as part of the LOTR. The second was whether to “agree to attach an explicit expiry date to the grant of recourse to public funds”.
97. In respect of the first of those questions, the minister was advised about the effect of s3C of the 1971 Act in the event that members of the cohort claimed asylum during their initial LOTR. The minister was advised specifically that any right to work or study would continue during any statutory extension of leave, and officials cautioned the minister against granting any such permission lest it increased their chances of having a subsequent claim on Article 8 ECHR grounds.
98. In respect of the second question, however, no advice was given in relation to the effect of section 3C. Instead, it was suggested to the minister that migrants who had claimed asylum “would likely be classed as destitute” and would therefore fall within the asylum support provisions. The difficulty with the submission is clear. The minister was not advised about the effect of section 3C on the migrant’s ability to access public funds if they had claimed asylum, and she was not advised that there would have to be a positive decision, taken under s3(3)(a) of the 1971 Act, to vary the conditions of any such migrant so as to remove their entitlement to public funds. In agreeing to attach an explicit expiry date to the grant of recourse to public funds, therefore, the minister was not properly advised of the statutory framework.
99. Mr Wale sought in his witness statement to justify and explain the steps that the Home Office had taken in respect of the cohort but his ex post facto justification (as Mr Buttler put it at [71] of his skeleton argument) suffers from similar difficulties. That statement does not mention s3C of the 1971 Act and does not reflect an understanding of the effect of that provision on the leave of those migrants who made in-time asylum claims. At [16], having referred to the arrangement by which the applicants would be supported by the FCDO for six months, he stated as follows:

Our expectation at this time was that the vast majority, if not all of the BIOT migrants granted LOTR, would claim asylum after they had arrived in the UK. The normal situation for people claiming asylum in the UK, who do not have any means to support themselves, is to apply for asylum support. That was not immediately relevant to these individuals because they already had another form of support that was available to them for a specific period of 6 months. However, we did recognise that it was unlikely that the individuals in this cohort would claim asylum and have that claim finally determined within a period of just 6 months. That meant that if an asylum claim from any of these individuals remained outstanding at the point at which their FCDO provided support came to an end (29 May 2025), they would require an ongoing form of support in order to prevent them falling into destitution. Unless and until the individuals had lodged an asylum claim, this was a hypothetical situation but one that we had anticipated.

[emphasis added]

100. As the applicants submitted, the underlined words in that paragraph reflect a fundamental error in the respondent's reasoning. Unless the respondent took a positive decision to vary the conditions attached to the applicants' statutorily extended leave, there was no sense in which they would "require an ongoing form of support in order to prevent them falling into destitution." That error is repeated at [19] of Mr Wale's statement, in which he explained that it was considered necessary to restrict the migrants' access to public funds so as to prevent their destitution. Again, however, there was no risk of destitution whilst the migrants were in receipt of public funds, and we are compelled to agree with Mr Buttler when he submits that the reasoning process is circular.
101. We also agree with a further submission made at [72] of the applicants' skeleton argument, which is that Mr Wale fell into further error at [20] of his statement. There he suggested that the decision to impose the NRPF condition was partly motivated by a desire not to "overburden one specific local authority" with a cohort of 55 asylum seekers. Leaving to one side the fact that there is no contemporaneous evidence of any such decision-making process, and the fact that this rather suggests that the decision was taken in May 2025 and not November 2024, there is a further difficulty in this assertion. As the applicants submit, it is based on speculation, in that there is no suggestion that the views of West Sussex County Council were sought, or that the council ever gave any indication that it was unwilling to continue to house some or all of the group.
102. For these reasons, we accept the submission that the decision-making process as a whole was vitiated by failures of process rationality. Mr Buttler also submitted in his skeleton argument (at [81] in particular) that the circularity in Mr Wale's reasoning process

gave rise to substantive or outcome unreasonableness. We do not consider that to be the correct categorisation of the error; the flaw was in the reasoning process rather than the substantive outcome, and we would not wish to suggest that no reasonable Secretary of State who followed the correct process and directed herself properly as to the law could not have decided to impose NRPF conditions on these migrants.

Did the respondent impermissibly fetter her discretion?

103. In Venables, the House of Lords considered the lawfulness of the Home Secretary's decision, taken under a discretionary power conferred by statute, to fix a tariff of fifteen years' detention in respect of Robert Venables and Jon Thompson, who were ten years old when they murdered a two year old boy. The majority of the House of Lords held that the statutory scheme required the Secretary of State to consider from time to time whether the continued detention of the young offender was justified and that, while he might in his discretion set a provisional and reviewable tariff as to the period of detention to be served by an individual, the policy adopted by the Home Secretary (whereby the tariff would in no circumstances be varied by reason of matters occurring subsequently) was unlawful.

104. At p496H, under the sub-heading "Discretion and policy - the law", Lord Browne-Wilkinson stated the relevant principle in this way:

When Parliament confers a discretionary power exercisable from time to time over a period, such power must be exercised on each occasion in the light of the circumstances at that time. In consequence, the person on whom the power is conferred cannot fetter the future exercise of his discretion by committing himself now as to the way in which he will exercise his power in the future. He cannot exercise the power nunc pro tunc. By the same token, the person on whom the power has been conferred cannot fetter the way he will use that power by ruling out of consideration on the future exercise of that power factors which may then be relevant to such exercise.

105. In these cases, the only relevant power is under section 3(3)(a) of the 1971 Act, which we have set out above. That provision conferred a discretionary power on the Home Secretary to vary the conditions which were attached to the applicants' leave. As we have already explained, the effect of s3C of same Act was that the conditions attached to their original LOTR continued because they had made in-time applications for asylum. The power to vary those conditions under s3(3)(a) was to be exercised in light of the circumstances at the relevant time, which was in May 2025, and it was impermissible as a matter of law for the Minister to decide how that power was to be exercised in the future.

106. Mr Brown's response to that difficulty was that the business of government would become unworkable if Mr Buttler's submission was taken to its logical conclusion. He asked rhetorically whether it would be permissible for a minister to decide how a discretionary power should be exercised the following day.
107. Whilst we see the logic behind that question, we consider the answer to it to be found in the relationship between the non-fettering principle and the rule that a decision maker must act in a procedurally fair manner: De Smith's *Judicial Review*, 9th Edition, refers at pp603-604. Where a decision is taken by a minister who takes account of all relevant circumstances on a Monday, it is highly unlikely that anything will have changed by the Tuesday. When days turn to weeks and weeks turn to months, however, it is more likely that the facts will have changed and that the decision maker will not have taken account of the relevant facts at the time that the decision is finally taken. He will therefore have failed to keep his mind ajar to the circumstances which he is meant to be considering, thereby failing to comply with the requirements of procedural propriety.
108. In these cases, the period (between November 2024 and May 2025) was an appreciable one and the circumstances of the individuals concerned were not known to the ministers in November 2024. Generic reference was made in the submissions to their vulnerabilities (for example "mental health issues, previous self-harm, 16 are children" in the first submission) but the ministers could not possibly have known in November 2024 about the consequences of withdrawing access to public funds for the individual members of the cohort in May 2025. In other words, even if Mr Brown is correct to submit, as he does at [5] of his skeleton argument, that "careful and nuanced consideration was given to the circumstances of the Applicants" in November 2024, the ministers had no crystal ball which enabled them at that stage to consider the applicant's circumstances in May 2025.
109. The proof of the fettering is not only found in the terms of the submissions which invited the ministers to attach an expiry date to the public funds entitlement rather than recognising that a decision would have to be made at the time that the conditions were varied. It is also to be found in the dearth of information as to the decision-making process which was undertaken in May 2025. Mr Brown suggested that the relevant officials had taken account of what the ministers had said in November 2024 and had considered all of the other circumstances before deciding to impose the NRPF conditions but there is no contemporaneous documentation to support that submission. Instead, it appears that the decision makers were moved to act as they did in May 2025 solely by reference to the ministers' decisions in November 2024. That necessitates consideration of the

applicants' submission that relevant matters were left out of account by the respondent.

Were relevant matters left out of account?

110. Mr Brown submitted that no further consideration was required when the officials came to implement the minister's decision in May 2025. Orally and at [20]-[24] of the respondent's skeleton argument, he noted, correctly, that the general and longstanding policy of successive governments is that asylum seekers should not be permitted to have access to public funds, and are instead to receive financial support under ss95 and 98 of the Immigration and Asylum Act 1999. He also noted that it had been the intention of the ministers that the Diego Garcia cohort should be subject to that general policy upon the expiry of their initial LOTR. He then noted that asylum seekers are often traumatised and suffering from mental ill-health, and that children are often dependent on their parents' claims. In those circumstances, he submitted, there really was nothing in these cases which could have moved the May 2025 decision-makers to do anything other than that which had been decided by the ministers in the autumn of the preceding year.
111. We do not accept that submission. The Secretary of State was obliged to take account of all relevant circumstances, including the best interests of the children and the unusual facts of these particular cases. The applicants are traumatised not merely by reference to their experiences in Sri Lanka and India, but also because of what happened on Diego Garcia. We have set out some of the circumstances above, but a more fulsome account can be found in the decision of the Supreme Court of BIOT. They were falsely imprisoned throughout their time on Diego Garcia. Even when they were granted bail, they were closely escorted by G4S officers when they moved around the island. Suicide attempts and self-harm was endemic, and affected each of the applicants before us, either personally or by witnessing the acts of others. The education of the children was seriously disrupted.
112. More importantly, as we have set out above, the applicants found that their ability to access public funds, and Universal Credit in particular, finally brought some stability to their lives: [33]-[36] above. That is most clearly apparent in the case of the third applicant and her family, who moved from hotel accommodation with unsuitable food to a house in which they were able to cook for themselves and the children were able to access after-school clubs. It was necessarily relevant for the respondent to consider, in May 2025, how the removal of public funds would affect the applicants. It was necessary, in particular, to consider whether the applicants would be required to return to asylum support accommodation which was potentially unsuitable and would compromise the progress which

the children had begun to make after their experiences on Diego Garcia. It was unlawful for the officials who imposed the NRPF conditions in May 2025 simply to “implement” a decision taken by the Secretary of State in November 2024 (the respondent’s skeleton argument refers, at [31]) because to do so was to ignore anything which had happened between the two dates.

113. We note the submission made at [30] of the respondent’s skeleton argument: even if the applicants’ entitlement to public funds had continued when their leave to remain was extended by operation of s3C, there was no guarantee that “the same or similar accommodation would be provided by the local authority simply because the applicants were in receipt of Universal Credit”. That submission is correct as a matter of law, and the applicants’ apparent assumption that all would necessarily have remained the same if the respondent had not imposed the NRPF condition is wrong. But it is important not to lose sight of the reality of the applicants’ circumstances. The third applicant and her family were in a house which they were able to live in because they were in receipt of public funds. Whilst there could be no certainty, the local authority was unlikely to uproot them for as long as their entitlement to public funds continued. The imposition of the NRPF condition fundamentally altered the situation of all of the applicants, however, and meant immediately that they would be relocated and that their ability to purchase and cook their own food, for example, was withdrawn.
114. We asked Mr Brown whether there was any difference in principle between what Mr Buttler described as “giving” and “taking away” cases. In the former category, the respondent considers whether to permit a newly arrived asylum seeker to access public funds. In the latter category, she considers whether to impose a NRPF condition on an asylum seeker who was previously permitted to access public funds. Mr Brown submitted that there was no difference, and that both categories of case fell within the longstanding governmental policy that asylum seekers should be supported under Part Six of the 1999 Act.
115. We disagree. In a “giving” case, there really is very little which could properly prompt the Secretary of State to permit recourse to public funds; the policy was formulated with asylum seekers in mind and like cases should be treated alike. In a “taking away” case, however, the individual in question might have come to rely on public funds to address specific needs, and the removal of that funding might have serious consequences. We consider the two situations to be qualitatively different and we consider the “taking away” cases to require more nuanced consideration.
116. We therefore reject the respondent’s submission, at [9.2] and [35] of her skeleton argument, that the applicants were “not in any

materially different position from any other asylum seeker". Their circumstances were highly unusual when they arrived in December 2024 but they were all the more unusual in May 2025, by which stage they had had access to public funds for several months and had benefited in various ways from that allowance. They had been in a considerably better financial position than the vast majority of asylum seekers in the UK (as the respondent puts it at [14] of her skeleton argument) and the decision to place them in the same position as other asylum seekers would necessarily have real human consequences which the respondent was obliged to consider.

117. Mr Buttler noted that the respondent's published policy *Permitting access to public funds*, version 5.0, 16 April 2025, required a decision-maker to take account of an applicant's individual circumstances, including the best interests of any relevant children, when deciding whether to permit access to public funds. That is no more and no less than the law requires in any event; a statutory discretionary power carries with it a duty to exercise the discretion one way or the other and in doing so to take account of all relevant matters having regard to its scope: [R v \(Sandiford\) v Secretary of State for Foreign and Commonwealth Affairs \[2014\] UKSC 44; \[2014\] 1 WLR 2697](#), at [83], per Lord Sumption.
118. At [42] of her skeleton argument, the respondent submitted that the respondent had not failed to take relevant matters into account. Mr Brown cited [R \(Samuel Smith Old Brewery & Anor v North Yorks County Council \[2020\] UKSC 3; 2020 PTSR 221](#) in support of a submission that it was "broadly" for the Secretary of State to determine what was relevant. He went on to submit that there are very few "ordinary" asylum cases and that the "mere fact" of differences did not automatically mean that there were material considerations which required a different outcome.
119. In respect of what we have termed "giving" cases, we would be inclined to accept that submission. There is a strong and long-lasting policy that asylum seekers should be supported under Part Six of the 1999 Act and that policy was formulated with the vulnerabilities of asylum seekers in mind. It is difficult to see what other considerations should be taken into account in such cases. In respect of "taking away" cases, however, and particularly those which involve children, it is also necessary for the Secretary of State to take into account any other matters which are "so obviously material" to a decision that they must be taken into account: [R \(Friends of the Earth\) v Transport Secretary \[2020\] UKSC 52; \[2021\] PTSR 190](#), at [117]-[118], per Lord Hodge and Lord Sales. In considering whether a consideration is so obviously material that it must be taken into account, the test is one of rationality and there is "no obligation on a decision-maker to work through every consideration which might conceivably be regarded as potentially relevant to the decision they

have to take": [119]-[120] refer. The best interests of any relevant children necessarily fall into that category. So too, in our judgment, do the individual circumstances of adult applicants who have been in receipt of public funds for an appreciable period of time.

120. Mr Brown submitted that the background was well known to the ministers and the department because of the rolling programme of decision-making and litigation. On a general level, that is correct, but the respondent cannot be taken to have been aware of the facts of these individual cases merely because of the extensive litigation on BIOT and then in the Administrative Court. Mr Brown also submitted at one point that there was nothing to show that the facts of the individual cases had not been taken into account by the decision maker, whether in November 2024 or in May 2025. That submission places the burden on the wrong party; it is for the respondent to show that relevant considerations were taken into account. She might do that by reference to communications with the applicants, internal departmental minutes, or by witness statement. What she cannot do is to require the applicant to prove that which only she can know.

Did the respondent act fairly in imposing the NRPF conditions?

121. We have already made reference to the relationship between the non-fettering principle and the duty to act fairly. We have concluded that the minister was in breach of the non-fettering principle when she decided in November 2024 how her statutory discretion under s3(3)(a) of the 1971 Act would be exercised in May 2025. We will now turn to consider separately whether the respondent also acted in a procedurally unfair manner when she came to implement the November 2024 decision (and/or to impose the NRPF condition) in May 2025.

122. The precise content of the duty to act fairly is famously context specific, as is clear from Lord Mustill's speech in R v SSHD, ex parte Doody & Ors [1994] 1 AC 531 and from Lord Bridge's insistence in Lloyd v McMahon [1987] AC 625 that the rules of natural justice are not engraved on tablets of stone. In her partly dissenting judgment in Pathan v SSHD [2020] UKSC 41; [2020] 1 WLR 4506, Lady Arden stated that "[p]rocedural fairness is adaptable to the environment in which it is applied."

123. Mr Buttler submitted in these cases, however, that the content of the duty was tolerably clear where the Secretary of State proposed to take away a financial benefit which the applicants had been receiving. In reliance on Bank Mellat v HM Treasury [2013] UKSC 39; [2014] 1 AC 700, he submitted that the applicants should have been given the opportunity to make representations before the statutory power to impose the NRPF condition was exercised. He

relied in particular on the following dictum of Lord Neuberger, at [179]:

In my view, the rule is that, before a statutory power is exercised, any person who foreseeably would be significantly detrimentally affected by the exercise should be given the opportunity to make representations in advance, unless (i) the statutory provisions concerned expressly or impliedly provide otherwise or (ii) the circumstances in which the power is to be exercised would render it impossible, impractical or pointless to afford such an opportunity.

124. The first question posed is therefore whether the applicants were significantly detrimentally affected by the decision to impose the NRP conditions. In our judgment, the answer to that question must be in the affirmative for the reasons to which we have already alluded. We accept the submissions made at [51]-[60] of the applicants' skeleton argument. The decision rendered them ineligible for social housing; caused a significant reduction in their income; had an impact on their mental health; and, in the case of the third applicant and her children, disrupted the nascent stability which the family had found in relation to their home and schooling in West Sussex. The general rule must therefore apply.
125. The first of Lord Neuberger's caveats does not apply here; s3(3)(a) confers a wide statutory discretion and neither it nor any other relevant statutory provision excludes the right to make representations.
126. As for the second caveat, there was nothing in the applicants' circumstances which would have rendered it impossible or impractical to give them an opportunity to make representations. The only real question, therefore, is whether it would have been pointless to afford such an opportunity. The effect of the submission made at [61]-[62] of the respondent's skeleton argument is that it would have been pointless to provide such an opportunity, since the effect of the decision was simply to bring the applicants' position in line with other asylum seekers, and to implement the decision which had been taken by ministers in November. Any such submission is to be approached with caution for the reasons explained by Lord Neuberger at [179] of Bank Mellat: a court will be slow to hold that there is no obligation to afford an opportunity to make representations when such an obligation is not dispensed with by statute. We have also taken account of what was said on "the issue of pointlessness" at [118]-[130] of Pathan v SSHD (per Lord Kerr and Lady Black).
127. We do not consider the respondent's submission to be correct. Whilst we have already accepted that the respondent has a long-standing policy that asylum seekers should be supported under Part Six of the

1999 Act, we consider the position of these applicants to have been different by reference to their backgrounds and the fact that they had been able to access public funds for six months. They had each claimed asylum shortly after their arrival in the United Kingdom, and they had therefore been receiving public funds, as asylum seekers, for months. Their representatives had sought clarification of the respondent's position upon their "transition" to s3C leave and there was evidently a good deal which could have been said about the imposition of NRPF conditions if the respondent had provided an opportunity to make representations rather than responding with a concluded decision. We do not go as far as to say that the respondent was bound to maintain recourse to public funds if representations had been considered. The point is, the applicants were not given an opportunity to make representations.

128. In the particular circumstances of these applicants, therefore, we consider that they were entitled to notice of the respondent's intention to impose the NRPF condition and an opportunity to make representations about it. For the reasons we have already given, we do not accept that the applicants were told clearly or at all that such a condition would be imposed in May 2025 even if they had extended their LOTR by claiming asylum.

129. Nor do we accept Mr Brown's fallback submission, which was that the duty to act fairly was discharged by the exchange of pre-action correspondence. Final decisions about the imposition of the NRPF conditions were made and communicated to the applicants on 12 May 2025 and the letter from the GLD of 13 May 2025 offered no opportunity to make representations. We do not consider the exchange of pre-action correspondence to remedy the procedural unfairness in that process. There is a world of difference between carrying out a genuinely open-minded review and striving, in the face of threatened litigation, to defend a decision already taken. The pre-action response falls into the latter category, and cannot properly be thought to discharge the respondent's obligation to act fairly in these circumstances.

What significance, if any, is to be attached to the fact that the November 2024 decisions were taken personally by ministers?

130. We were reminded by Mr Brown throughout his submissions that the November 2024 decisions were taken by the Secretary of State and the Home Office Minister in person. At [29] of the respondent's skeleton, he submitted that the "rights and wrongs of that decision are not before the tribunal". We were reminded, in those circumstances, of the deference which a court or tribunal should generally afford to a decision "taken at the highest level of Government".

131. In our judgment, however, principles of judicial restraint as part of the constitutional separation of powers have no legitimate part to play in our analysis because the respondent's decisions suffer from the freestanding public law errors we have set out above. A court or tribunal is not able to exercise such restraint when the underlying decision is vitiated by such errors.

Had the respondent already decided to grant asylum to the first and second applicants when she imposed the NRPF conditions?

132. We have reached our conclusions without reference to the first and second applicant's reliance on the suggestion that the respondent had decided by the end of March 2025 to grant them asylum. This submission featured prominently in the applicants' printed case but it rather withered on the vine at the hearing. The applicants argued, in summary, that it was unlawful for the respondent to vary their conditions in May 2025 because she knew at that time that she intended to grant asylum and that the applicants would be entitled to claim public funds upon receipt of that status. We do not consider this particular argument to be at all meritorious for the following reasons, which are essentially those given in the respondent's skeleton argument.

133. As a matter of law, the respondent was not bound by the BIOT Commissioner's decision that the applicants could not be returned to Sri Lanka or India. We need not explain why, since that question was considered by the Divisional Court (Whipple LJ and Chamberlain J) in another related BIOT case: BAA & Ors v Commissioner of BIOT & Ors [2023] EWHC 767 (KB). We note that those decisions were reached after a rigorous process which involved, amongst other people, Hugo Storey, a retired judge of this tribunal and the author of *The Refugee Definition in International Law*. The decisions therefore commanded considerable respect but they were decisions made by the Commissioner of BIOT, who is a senior civil servant appointed by the King on the advice of the FCDO. There is accordingly no basis upon which to contend that they were binding on the Home Secretary.

134. In the event that the applicants claimed asylum, therefore, it remained for the Secretary of State to investigate those claims on the material available to her and to make a decision on their entitlement to international protection. We accept the submission made at footnote 3 of the respondent's skeleton argument that the respondent did not accept in proceedings before the Administrative Court that the first and second applicants could not be returned to Sri Lanka or India; the fact that she required them (and the other members of the cohort) to make protection claims points firmly against the suggestion that she had accepted that the applicants could not be removed even before they had arrived in the UK.

135. The first and second applicants maintained in their written cases, however, that Mr O'Hagan and his department had decided, by the end of March 2025, that these were cases to which paragraph 339NA(i) applied. Paragraph 339NA of the Immigration Rules provides as follows:

339NA. Before a decision is taken on the application for asylum, the applicant shall be given the opportunity of a personal interview on their application for asylum with a representative of the Secretary of State who is legally competent to conduct such an interview.

The personal interview may be omitted where:

(i) the Secretary of State is able to take a positive decision (a grant of refugee status or humanitarian protection) on the basis of evidence available;

(ii) the Secretary of State has already had a meeting with the applicant for the purpose of assisting them with completing their application and submitting the essential information regarding the application;

(iii) the applicant, in submitting their application and presenting the facts, has only raised issues that are not relevant or of minimal relevance to the examination of whether they are a refugee, as defined in Article 1 of the Refugee Convention and/or has only raised issues that are not relevant or of minimal relevance to the examination of whether they are eligible for humanitarian protection;

(iv) the applicant has made inconsistent, contradictory, improbable or insufficient representations which make their claim clearly unconvincing in relation to having been the object of persecution or serious harm;

(v) the applicant has submitted a subsequent application which does not raise any relevant new elements with respect to their particular circumstances or to the situation in their country of origin;

(vi) the applicant is making an application merely in order to delay or frustrate the enforcement of an earlier or imminent decision which would result in their removal;

(vii) it is not reasonably practicable, in particular where the Secretary of State is of the opinion that the applicant is unfit or unable to be interviewed owing to enduring circumstances beyond their control; or

(viii) the applicant is an EU national whose claim the Secretary of State has nevertheless decided to consider substantively in accordance with section 80A(4) of the Nationality, Immigration and Asylum Act 2002.

The omission of a personal interview shall not prevent the Secretary of State from taking a decision on the application.

Where the personal interview is omitted, the applicant and dependants shall be given a reasonable opportunity to submit further information.

136. We have reproduced Mr O'Hagan's letter to the second applicant in full, at [39] above. What is immediately apparent about that letter is that Mr O'Hagan refers in the first paragraph to the applicant's request to omit the personal interview under paragraph 339NA but that the remainder of the letter makes no reference to that paragraph, or to the various ways in which it might permit a decision maker to omit the personal interview.
137. Mr O'Hagan maintained in his witness statement that the decision to omit the personal interview had not been taken under paragraph 339NA(i) and that the provisions regarding dispensing with an interview are applied flexibly. He was cross-examined by Mr Buttler, who put to him that he and his team must have concluded that these were cases to which sub-paragraph (i) applied. Mr O'Hagan did not accept that; he said that he had considered paragraph 339NA "as a whole", and that there had been no decision in March 2025 that the Secretary of State was able to take a "positive decision" as required by sub-paragraph (i). He accepted that the decision had ultimately been to grant asylum in both cases but he stated that what he had been concerned to ascertain in March 2025, so as to comply with the court order, was whether "we had enough on paper".
138. We accept Mr O'Hagan's evidence on this point. We do not accept that he and his team had already decided in March 2025 that there was to be a positive decision on the asylum applications. The respondent has a discretion to depart from the Immigration Rules when appropriate to do so, and we accept Mr Brown's submission that Mr O'Hagan exercised that discretion when he decided that there did not need to be a personal interview. As he said in his oral evidence, he was content that the decisions should be made in due course on the basis of what was already available. We do not accept that he was being untruthful in that regard.

Conclusions - public law grounds

139. For the foregoing reasons, we conclude that the respondent's decisions to impose the NRP conditions were vitiated by public law errors. The decisions suffered from defects of process rationality, offended against the non-fettering principle, failed to take material matters into account, and were procedurally unfair.

The ECHR Grounds

140. Article 1 of the First Protocol to the ECHR ("A1P1") provides:

Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.

141. The first issue is whether the imposition of the NRP conditions represented any interference with the applicants' peaceful enjoyment of their *possessions* as that term has been defined in authority. In answering that question, we note that "possessions in A1P1 is an autonomous concept, and that it is not confined to corporeal property": Breyer Group PLC & Ors v Department of Energy and Climate Change [2015] EWCA Civ 408; [2015] 1 WLR 4559, at [42], per Lord Dyson MR, citing Murungaru v SSHD [2009] INLR 180.
142. Until 2005, resolution of that question would have been a straightforward matter because it was the consistent jurisprudence of the court in Strasbourg that a claim under A1P1 (or Article 14 ECHR) could not succeed if the claimant had no right or legitimate expectation to the possession in respect of which the claim was made: R (RJM) v Work and Pensions Secretary [2008] UKHL 63, [2009] 1 AC 311, at [23], per Lord Neuberger. In April 2006, however, the ECtHR changed its stance and concluded that non-contributory social benefits funded by general taxation fell within the scope of A1P1: Stec v United Kingdom (2006) 43 EHRR 47 (Grand Chamber).
143. Strasbourg's change of tack was followed in domestic jurisprudence in the House of Lords's decision in RJM. The claimant in that case was in receipt of a disability premium on his income support by reason of his incapacity for work through mental health problems. He became homeless and the Secretary of State stopped the payment of the disability premium on the ground that he was without accommodation, in accordance with the Income Support Regulations 1987. The claimant contended that the withdrawal of the premium was within the ambit of A1P1 and was discriminatory under Article 14 ECHR.
144. The claimant failed at first instance. In the Court of Appeal, the Secretary of State accepted in light of Stec v United Kingdom that the premium fell within the ambit of A1P1 but concluded that homelessness was not a personal characteristic capable of bringing his treatment within Article 14. The claimant appealed, and the House of Lords considered the law following Stec v United Kingdom.
145. The principal judgment was that of Lord Neuberger, with whom Lord Hope and Lord Rodger agreed. Lord Walker and Lord Mance gave short judgments in which they agreed with Lord Neuberger.

146. It was contended by the Secretary of State that the claim under A1P1 or under Article 14 relying on A1P1 could not succeed if the claimant had no right or legitimate expectation to the possession in respect of which his claim is made. Lord Neuberger stated that he would probably have accepted that submission were it not for the decision in Stec v United Kingdom: [24]-[27]. At [28]-[30], Lord Neuberger considered the decision of the Grand Chamber, and at [31]-[33], he rejected the Secretary of State's submission that the domestic courts should remain faithful to Strasbourg's earlier jurisprudence. At [34], he expressed his final conclusions on the ambit of A1P1 in such a case in this way:

In these circumstances, particularly bearing in mind this House's obligation under section 2(1)(a) of the Human Rights Act 1998 to "take into account any ... judgment .. of the European Court of Human Rights", as explained by Lord Bingham of Cornhill in para 37 of *R(Animal Defenders International) v Secretary of State for Culture, Media and Sport* [2008] UKHL 15, [2008] 2 WLR 781, I conclude that, as disability premium is part of the UK's social welfare system, RJM does have a sufficient "possession" to bring his claim within A1P1. I should perhaps add that, even on the somewhat more flexible approach proposed by Lord Scott of Foscote in paras 44 and 45 of that case, I would have reached the same conclusion.

147. We were also referred to Mathieson v Work and Pensions Secretary [2015] UKSC 47; [2015] 1 WLR 3250, which was a case about the reduction of Disability Living Allowance to a seriously ill child who had been in hospital for longer than the period permitted by the relevant social security legislation. It was conceded by the Secretary of State in that case that provision of DLA fell within the scope of A1P1: [18].

148. In light of the decisions in Stec and RJM, together with the further ECtHR cases to which the applicants refer at [84] of their skeleton argument, we accept that the position is accurately summarised in the following proposition made in the same paragraph of that document: "where an existing benefit is reduced or discontinued, this normally constitutes an interference with possessions, for the purposes of A1P1, which must be in accordance with the law and requires justification". What was said at [40] of Moskal v Poland (2010) 50 EHRR 22 – that a conditional claim which lapses as the result of the non-fulfilment of the condition cannot be considered to amount to a possession – does not apply in the present circumstances because the applicant's entitlement did not "lapse"; it was ceased by the positive action of the respondent.

149. It was submitted by the respondent that the applicants did not have property rights to Universal Credit because that right was dependent upon eligibility to public funds. That submission is notably not supported by authority in the respondent's skeleton argument and

we do not consider that it can be correct in light of the authorities to which we have referred. Neither of the claimants in RJM and Mathieson had any right for their benefits to continue, or any legitimate expectation that they would do so. Their entitlement to those benefits came to an end as a result of the relevant regulations concerning homelessness (RJM) and NHS in-patient treatment (Mathieson) but that did not extinguish their claim that the benefits which they had previously received were possessions within the meaning of A1P1. That does not mean, of course, that the claims must then succeed. Instead, as Mr Buttler submitted, it means that it is then for the respondent to show that the cessation of the benefit in question was in accordance with the law and justified.

150. In this respect, as in resolving the public law issues as above, we consider that there is a fundamental difference between “giving” and “taking away” cases. In the former, no A1P1 right has arisen, and it is likely to be a complete answer to submit, as Mr Brown did, that the general position is that asylum seekers do not receive public funds. No contrary right has come into existence at that point, and an applicant who merely asserts that he should receive public funds could not, as far as we can see, assert any proper claim under A1P1. When the benefit has been paid for some time, however, a proprietary right comes into existence for A1P1 purposes and it falls to the respondent to justify its cessation.

151. The respondent asks us to attach significance to the fact that the benefits were to be provided on “expressly time-limited terms” but we do not consider that submission to be correct. As we have already seen, the minister was not asked to consider whether NRPF conditions should be applied to members of the cohort who claimed asylum before the expiry of their LOTR, thereby extending their leave under s3C of the 1971 Act. And the migrants were not initially told what would happen to their entitlement to public funds in the event that their LOTR was extended in that way.

152. At [51]-[52] of her skeleton argument, the respondent sought to derive assistance from dicta in R (SC) v SSWP [2021] UKSC 26; [2021] HRLR 14, which was a challenge to what has now become known as the two child benefit cap. The relevant limitation on the maximum amount payable to an individual family was introduced by statute which was brought into force in April 2017. Paragraphs [208] and [162] of Lord Reed’s judgment are set out at p20 of the respondent’s skeleton but it is only the second of those paragraphs which we will reproduce:

The assessment of proportionality, therefore, ultimately resolves itself into the question as to whether Parliament made the right judgment. That was at the time, and remains, a question of intense political controversy. It cannot be answered by any process of legal reasoning. There are no legal standards by which

a court can decide where the balance should be struck between the interests of children and their parents in receiving support from the state, on the one hand, and the interests of the community as a whole in placing responsibility for the care of children upon their parents, on the other. The answer to such a question can only be determined, in a Parliamentary democracy, through a political process which can take account of the values and views of all sections of society. Democratically elected institutions are in a far better position than the courts to reflect a collective sense of what is fair and affordable, or of where the balance of fairness lies.

153. Lord Reed continued in the following paragraph to note that the “democratic credentials of the measure could not be stronger” because it was “introduced in Parliament following a General Election, in order to implement a manifesto commitment” and had been approved in Parliament after a vigorous debate. It was on that basis, consistently with the separation of powers, that Lord Reed (with whom the other Justices agreed) decided that the appeal fell to be dismissed.
154. Here, however, the applicants mount no challenge to the general scheme in Part Six of the 1999 Act. Their complaint is that the respondent acted unlawfully and in contravention of their Convention rights by ceasing their entitlement to public funds, despite the statutory extension to their LOTR, and moving them into the 1999 Act scheme. For the reasons we have given, we do not accept the respondent’s submission that that question was “squarely confronted” by the minister in November 2024. Even if it was, that decision was vitiated by the public law errors to which we have referred. The circumstances are readily distinguishable from those under consideration in R (SC) v SSWP. In our judgment, therefore, neither the general policy which is found within the 1999 Act nor the decisions made by the ministers suffice to justify the imposition of the NRPF condition.
155. Mr Wale’s witness statement takes matters no further, largely because it rests on the same premises as the submissions which we have rejected above. We also accept Mr Buttler’s submission that Mr Wale’s witness statement is unsupported by any contemporaneous record of decision making in May 2025. The view of the officials at the time appears to have been that the decision to impose the NRPF condition had been taken by the minister in November 2024 and that nothing more was required, but that was to misunderstand the questions posed to the minister and to overlook the non-fettering principle. As Mr Buttler submitted, therefore, the decision was not in accordance with the law because it was vitiated by public law errors. That suffices to establish a breach of A1P1 without considering the question of proportionality.

156. In case we are wrong in that conclusion, we will consider the question of proportionality in accordance with the guidance given by Lord Reed at [74] of Bank Mellat:

...it is necessary to determine (1) whether the objective of the measure is sufficiently important to justify the limitation of a protected right, (2) whether the measure is rationally connected to the objective, (3) whether a less intrusive measure could have been used without unacceptably compromising the achievement of the objective, and (4) whether, balancing the severity of the measure's effects on the rights of the persons to whom it applies against the importance of the objective, to the extent that the measure will contribute to its achievement, the former outweighs the latter.

157. In carrying out that exercise, we find ourselves largely in agreement with the submissions made by the applicants. The objective of the NRPf condition, according to Mr Wale, was to guard against the risk of destitution. As we have already explained, however, there was no such risk for as long as the applicants continued to receive public funds, so the objective was not rationally connected to the objective. There is no evidence that any less intrusive measures were even considered by the respondent, whether in November 2024 or May 2025. And there was, as we have also explained at some length, no attempt on the part of the respondent to balance the severity of the effect on the individual applicants against the importance of the objective.

158. We therefore accept the applicants' submissions that the imposition of the NRPf condition was disproportionate, and consequently in breach of their rights under A1P1.

159. Article 14 ECHR provides as follows:

The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

160. The relationship between Article 14 and the substantive provisions of the Convention was explained by Strasbourg at [63] of Carson & Ors v United Kingdom (2010) 51 EHRR 13:

The Court recalls that Article 14 complements the other substantive provisions of the Convention and the Protocols. It has no independent existence since it has effect solely in relation to "the enjoyment of the rights and freedoms" safeguarded by those provisions. The application of Article 14 does not necessarily

presuppose the violation of one of the substantive rights guaranteed by the Convention. The prohibition of discrimination in Article 14 thus extends beyond the enjoyment of the rights and freedoms which the Convention and Protocols require each State to guarantee. It applies also to those additional rights, falling within the general scope of any Article of the Convention, for which the State has voluntarily decided to provide. It is necessary but it is also sufficient for the facts of the case to fall “within the ambit” of one or more of the Convention Articles (see *Stec and Others v. the United Kingdom* (dec.) [GC], nos. 65731/01 and 65900/01, § 39, ECHR 2005 X; *Andrejeva*, cited above, § 74).

161. The applicants submit that the respondent failed to treat them differently from other migrants from Diego Garcia despite material differences. The applicants submit that their treatment fell within the principle established in *Thlimmenos v Greece* (2001) 31 EHRR 15, which held at [44] that the right not to be discriminated against in the enjoyment of ECHR rights is violated “when States without an objective and reasonable justification fail to treat differently persons whose situations are significantly different.”
162. In *R (ALR & Ors) v Chancellor of the Exchequer* [2025] EWHC 1467 (Admin); [2016] 1 WLR 10, the Divisional Court explained that what must be justified in a *Thlimmenos* case is “the **lack** of differential treatment”: [129], citing *R (DA) v SSWP* [2019] UKSC 21; [2019] 1 WLR 3289.
163. In such a case, the tribunal’s analysis must proceed according to the four stages set out by Bourne J at [44] of *R (Vanriel) v SSHD* [2021] EWHC 3415 (Admin); [2022] QB 737:
- i. Does the subject matter of the complaint “fall within the ambit” of one of the substantive Convention rights?
 - ii. Does the ground on which the Claimants claim to have suffered the discrimination constitute a “status”?
 - iii. Have they been treated in the same way as other people whose situation is relevantly different from theirs because they do not share that status?
 - iv. Did the Claimants’ treatment have an objective and reasonable justification?
164. For the reasons we have already given, we accept that the facts of these cases fall within the ambit of A1P1. We intentionally express no view on the applicant’s written submission that the cases also fall within the ambit of Article 8 ECHR, which was not developed in oral argument. The next question is whether the ground on which the applicants claim to have suffered discrimination constitutes a “status”.

165. The applicants do not contend that there has been any discrimination on one of the expressly prohibited grounds of sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property or birth. They contend that there was discrimination on the basis of some “other status”.

166. We are reminded by the applicants that “other status” should be given a generous meaning, in accordance with R (Clift) v SSHD [2007] 1 AC 484, at [48], and R (RJM) v SSWP, at [42]. In the latter case, Lord Neuberger proceeded (despite his doubts as to the necessity of the exercise) to consider whether homelessness could fairly be described as a “personal characteristic”, as that expression was meant in two decisions of the Strasbourg court. In the second of those decisions, Kafkaris v Cyprus (2009) 49 EHRR 35, the Grand Chamber noted that

[160] Furthermore, the Court notes that Article 14 does not forbid every difference in treatment in the exercise of the rights and freedoms recognised by the Convention. It safeguards persons who are in analogous or relevantly similar positions against discriminatory differences in treatment that have as their basis or reason a personal characteristic (“status”) by which persons or a group of persons are distinguishable from each other (see *Kjeldsen, Busk Madsen and Pedersen v. Denmark*, judgment of 7 December 1976, Series A no. 23, § 56 and *Thlimmenos v. Greece*, cited above, §§ 40-49).

167. Lord Neuberger’s subsequent analysis of the scope of the other statuses which might fall within Article 14 is instructive. At [43], he mentioned “military rank, as against civilian”, “residence or domicile” and “previous employment with the KGB”, all of which had been held to fall within Article 14 by the ECHR. At [44], he concluded that persons living in one type of home were treated differently from those living in another type, that would “clearly” potentially fall within Article 14. At [45], he expressed the view that the concept of a personal characteristic “generally requires one to concentrate on what somebody is, rather than what he is doing or what is being done to him”. Lord Neuberger held that homelessness was an “other status” for the purpose of Article 14.

168. In these cases, Mr Buttler submits that the first and second applicants’ “other status was that they were “asylum seekers who arrived from Diego Garcia in respect of whom the respondent knew (or ought to have known) that they would be granted refugee status”. We have already rejected that argument, and we do not accept that the respondent knew or ought to have known that they would be granted refugee status. They plainly had an arguable claim but the respondent was not bound by the Commissioner’s decision and was entitled to consider those claims on their respective merits. We do

not accept that the decision to dispense with a personal interview in their cases differentiates them from the other asylum seekers from Diego Garcia, and we find that the first two applicants' cases founder at the second stage of Bourne J's four-stage test.

169. It is submitted in respect of the third applicant that her "other status" is that she is an asylum seeker from Diego Garcia who had been unlawfully detained by the BIOT authorities. But every member of the cohort shared that status, so that submission cannot prosper. Alternatively, Mr Buttler submits that the third applicant's "other status" was that she was an asylum seeker from Diego Garcia with young children. We accept that being the parent of minor children must amount to an "other status" for the purpose of Article 14. Whilst we are not referred to any cases specifically on point in that regard, we bear in mind Lord Neuberger's analysis in R (RJM) v SWP and we are satisfied that parenthood of a minor must satisfy the test.

170. As for Bourne J's third question, it is not disputed by the respondent that the third applicant and her family were treated in the same way as the other members of the Diego Garcia cohort.

171. It only remains for us to consider, therefore, whether there was an objective and reasonable justification for treating the third applicant and her family in the same way as other non-parent members of the cohort. Given the conclusion which we have already reached, that the respondent failed to take any account of the individual circumstances of the family and the best interests of the children, we cannot accept that there was any objective and reasonable justification for treating the third applicant and her family as every other member of the Diego Garcia cohort. The respondent shut her eyes to that difference, and to the particular consequences for the children of imposing the NRPf condition, thereby taking away that to which the children had become accustomed. For those reasons, and for those we have given at [157] above, we find that the claim for Thlimmenos discrimination in respect of the third applicant and her family is made out.

172. We therefore find for the applicants in respect of the public law challenges in grounds one and four. We also find for the applicants in respect of the A1P1 arguments in ground two. We find against the first and second applicants but for the third applicant in respect of the Article 14 claim in ground three.

173. We invite written submissions from counsel on the form of the order and, in light of R (T) v SSHD [2021] UKUT 320 (IAC), on the venue in which any claim to damages should be assessed.

~~~~~ OOOO ~~~~~

## **Postscript**

174. We had intended to hand this judgment down on 19 February but we were informed that negotiations were ongoing between the parties as to the terms of the order and we acceded to a joint request to delay handing down for that reason. The handing down was accordingly listed on 3 March. Mr Boswell and Ms Simonsen appeared for the applicants at that hearing. Mr Harwood appeared for the respondent.
175. The parties were not in complete agreement as to the terms of the order. They initially sought terms which permitted sequential filing of submissions concerning permission to appeal, and the respondent sought an additional term staying any payment on account of costs whilst any application for permission to appeal was made and considered.
176. Rules 44(4A)-(4B) of the Tribunal Procedure (Upper Tribunal) Rules 2008 require us to consider the question of permission to appeal upon finally disposing of the judicial review proceedings at a hearing, however, and we were consequently unable to accede to the submissions recorded immediately above. Upon that being communicated to the parties, we were informed that the Secretary of State sought permission to appeal, and grounds in support of that application were duly provided. Mr Harwood did not seek to amplify those submissions at the handing down hearing.
177. We are not persuaded that the grounds of appeal disclose an arguable case with a realistic prospect of success in the Court of Appeal. The grounds do not demonstrate that the tribunal arguably erred in principle, or in its application of the law to the facts, whether in relation to the public law or the ECHR aspects of the case. We therefore refuse permission to appeal. In the circumstances, we are not persuaded that there is any proper reason to stay those parts of the order which relate to a payment on account of costs; the proper course is for the respondent to seek any stay from the Court of Appeal in the event that she pursues an application for permission to appeal.
178. As for the venue in which the quantum of damages is to be considered, it was agreed by the parties that the question should be considered at a short hearing in the Upper Tribunal, following the exchange of written submissions. We should record that we were minded, in light of the guidance in R (T) v SSHD, to transfer that question to the County Court. In view of the parties' stances, and in light of the agreement that there need only be a short additional hearing after written submissions, however, we are prepared to retain that question in the Upper Tribunal.

## **ANNEX A - MINISTERIAL SUBMISSION of 5 November 2024**

### **SUBMISSION: PERMITTING THE BIOT MIGRANTS TO ENTER THE UK**

#### **Issue:**

Following a briefing from officials on 31 October 2024 setting out the current situation on BIOT and updating on the wider context, you (Home Secretary) indicated that you were now minded to relocate the BIOT migrants (those on Diego Garcia and those who were transferred to Rwanda), other than those with specific criminality or under ongoing criminal investigation, direct to the UK, subject to certain conditions. This advice sets out the detail of how such a transfer would take place.

#### **Timing:**

**Immediate** – as discussed with you on 31 October 2024, we need to put in plans to transfer the migrants to the UK as soon as possible; your steer will help to finalise the operational strategy.

#### **Recommendations**

That you, **Home Secretary**,

**Agree** - to exclude the two migrants who have criminal convictions and the one migrant who is subject to a criminal investigation

**Agree** – to use your discretion to grant Leave Outside of the Rules (LOTR) to 61 migrants currently on BIOT as part of a wider HMG package, subject to the relevant application being made by each migrant and the submission of biometrics.

**Agree** – to use your discretion to grant LOTR for 6 months with recourse to public funds.

**Agree** – to waive the application fee at the point of application with FCDO reimbursing the costs

**Agree** – that costs attached to the relocation of the migrants, and whilst in the UK on LOTR, should be borne by the FCDO.

**Note** – the proposal to agree an operational strategy with FCDO, confirming Home Office's role and noting that this is for FCDO to lead and co-ordinate, and involve other government departments.

#### **Annexes**

##### **Annex A – Equalities Impact Assessment**

#### **Background**

**1. Following a meeting on Thursday 31 October you, Home Secretary, indicated that you are minded to grant permission to enter the UK to 61 of the 64 migrants who are currently in the BIOT.** Two (39A and 53A) of the three remaining migrants have criminal convictions and are currently serving custodial sentences on BIOT for assault occasioning ABH1 and sexual assault respectively<sup>2</sup>, though separate plans are being prepared for them; one (14A) is currently under investigation for sexual-related crimes. We expect the FCDO to continue to work on solutions for these three cases with a requirement for you to review the case of 14A when the investigations are concluded.

We propose that these three migrants are not included within this process. **Do you agree?**

**2. The FCDO and BIOTA are responsible for, and will be managing the movement of, the migrants and providing any necessary support surrounding that.** The key Home Office role is to ensure that the BIOT cohort have the appropriate permission to enter the

UK. Discussions with the FCDO are ongoing to clarify the roles and responsibilities (financially and operationally) to ensure there is a clear plan in place and this includes with other relevant government departments (including MHCLG and DWP) and Local Authorities (LAs).

### Consideration

**3. You (Home Secretary) have reserved discretion under the Immigration Act 1971 to grant leave to enter outside the (immigration) rules ('LOTR').** Guidance on how discretion is exercised, (largely by decision-makers on your behalf), and what exceptional circumstances or compelling compassionate grounds are taken into account, is set out in the LOTR policy. For those who are outside of the UK this normally requires them to apply for entry clearance, including the submission of biometrics and identity documents, consideration will then be given to any request for LOTR.

**4. With regards to the migrants on BIOT to whom you are 'minded to' relocate to the UK, you (Home Secretary) will be taking a concessionary approach to this cohort as a group.** Whilst the migrants were informed on 4 November that consideration was being given to relocate them to the UK, they have been given very little information other than entry to the UK will be for a short period of time to allow them to consider their next steps. **Therefore, a clear position will need to be communicated to the migrants in the coming days with further detail including that you are minded to grant them LOTR due to the exceptional circumstances of their cases. This will also articulate the process for obtaining that permission and the details of the leave (rights to work, benefits and duration).**

### Application to Enter

**5. Option 1 (recommended).** If they wish to travel to the UK, it would be subject to them, or a third party on their behalf, completing an application form, submitting biometrics, and there being no adverse information following the relevant security checks. This would align with the wider approach to LOTR, the requirement for visa nationals to apply for, and be granted a visa, prior to travelling to the UK and the enrolment and checking of biometrics as part of that process. In practical terms this will involve signposting the people to complete a Gratis visit application form. The costs will be billed back to the FCDO. At the FCDO cost, arrangements for biometrics to be enrolled in BIOT by our Visa Application Centre Commercial Partner using mobile enrolment kits would be made. Specifically for those migrants currently in Rwanda, some of whom have already completed application forms and submitted biometrics, we will provide the option of using their current application forms in order to facilitate the grant of LOTR **or** submitting fresh applications and biometrics. After biometric results have been returned, and subject to there being no adverse information that would normally result in a refusal, they would be permitted to travel to the UK. **If biometrics reveal any adverse information we will provide you with further advice.** We would then aim to issue vignettes to each migrant, which they would present on arrival in the UK, however the logistics and timelines may mean that this is not possible for those in BIOT; in this instance Border Force Officers would, subject to their normal identity and security checks, endorse the grant of LOTR on arrival. **We will provide an update once biometric checks have been concluded. Do you agree to this process?**

**6. Option 2 (not recommended).** Alternatively, you could decide to waive the requirement to submit a visa application form, and grant a visa 'waiver' allowing them to travel to the UK. If you were minded doing so, for both operational and legal reasons, biometrics could not be captured and checked until they had **arrived** in the UK. The powers to enrol biometrics overseas stem from a person submitting a visa application, with the technical ability to enrol and wash biometrics requiring an application for those biometrics to be linked to. To waive the requirement to submit a visa application would be a significant deviation from normal processes, in other circumstances, including planning for HMG

international evacuations such as Lebanon, we require a visa application facilitating the collect biometrics prior to arrival in the UK. Granting a visa waiver for a cohort, where there is an ability for a person to complete a visa application form and submit biometrics, could set a wider precedent. We have strongly defended the position that where a person wishes a LOTR consideration, or grant of LOTR, that they submit a visa application and biometrics in order to obtain that consideration. On arrival in the UK all migrants would be detained whilst biometrics are enrolled; the numbers involved and wider challenges that this presents Border Force Officers means that this process could take several hours putting significant pressure on Border Force and the wider Immigration control. In addition, the results of biometric checks can take up to 48 hours; a decision would then be required on granting Immigration Bail (to accommodation provided) or detention. This approach also presents a risk of allowing a person to travel to the UK who presents a risk to border security, with the potential practical effect that an individual who was the subject of adverse information only gleaned through biometric comparison was not subsequently removable from the UK. **On that basis we do not recommend this option; do you agree?**

### **Length of permission**

**7. As with LOTR generally you (Home Secretary) have discretion as to the duration and conditions of any permission granted.** The options for length of permission can be anything from a matter of days, to being indefinite (also referred to as settlement). On a practical level should a vignette not be able to be printed and returned to the individual, (as mentioned in paragraph 5) Border Force would be unable to grant 12 months permission to enter, their powers limit them to a maximum of 6 months. **On that basis we recommend a period of 6 months LOTR, which is limited to a single entry to the UK, thereby providing the migrants with sufficient opportunity to take advice on and understand the options available to them once in the UK. Do you agree?**

**8. Alternatively, if you do not wish to grant permission for 6 months, noting the above points, we would be grateful if you could set out the period you would be minded granting each migrant for?**

9. To facilitate access to wider resources that the migrants may require access to, such as housing, we would recommend granting LOTR with recourse to public funds/access to benefits. This will facilitate the FCDO to covering the cost of the migrants' wider support in the UK, including accommodation, by providing the funds to the relevant departments.  
**Do you agree?**

### **Support in the UK**

**10. Given the vulnerabilities of many of the BIOT cohort (mental health issues, previous self-harm, 16 are children) and the fact HMG is actively bringing these migrants to the UK, we do not consider it reasonable to allow them to be (potentially) destitute on arrival.**

**11. We have very little information from the BIOT Administration as to what, if any, means the migrants have to support themselves.** However, planning for the migrants to come to the UK is not for the HO to coordinate; you provided a clear steer that the funding of the relocation and wider support in the UK should sit with FCDO, as the lead department. We will continue to support FCDO to engage with the relevant other departments, such as HMT, MHCLG, DfE and DHSC to ensure that the relevant wrap around was agreed, funded and in place ahead of their arrival, but the Home Office will not assume any financial or practical responsibility for accommodating or supporting those relocated.

### **Interaction with the Asylum Process**

**12. We anticipate that the majority (if not all) of the BIOT cohort will claim asylum once in the UK. This may be on arrival direct to a Border Force Officer, or within the**

**duration of their permission to enter.** Border Force are putting measures in place that, should this happen, they have resources in place to conduct the initial asylum screening of these individuals upon arrival. We have scope within our policy and operational practice to expedite the consideration determination of an asylum claim. That said, claimants can actively slow down the progress of their claim (and are more likely to do so if they anticipate a refusal) so there are limits to the control over timings we have. Once an asylum decision has been made, assuming that at least some would be refused, the migrants would have a right of appeal. This process can take several years (particularly if there are multiple appeals). Reaching a position where individuals from the BIOT cohort might be removable from the UK is therefore likely to take considerable time, and in the case of families, given the restrictions on enforcing removal of children, removal is unlikely.

**13. We cannot (and indeed would not) encourage the migrants to claim asylum on arrival.** However, should they claim asylum, we anticipate that the majority would meet the eligibility threshold to access asylum support, so they would benefit from the established support system we provide for any vulnerable asylum seekers in the UK, and at that point would not need anything bespoke and should not be treated differently; we assume they would go into the asylum estate as any other destitute claimant and their accommodation and subsistence costs would be absorbed within the asylum support budget. It also allows for decisions to be made on their asylum claims and where these are unsuccessful, for them to be considered for return to their country of nationality.

#### **Next Steps**

**14.If you agree with the recommended course of action in this submission, we will work with at pace with FCDO and BIOTA to facilitate visa applications, submission of biometrics, onward travel to the UK along with working with other departments to ensure that suitable reception measures are in place for their arrival. We will provide you with an update as this work progresses.**

[15]-[17] REDACTION (LPP)

#### **Financial Implications**

18. There will be limited impact on the Home Office drawing on existing resources and roles to provide visas for the very small number of individuals. Wider costs, including the collection of biometrics in Deigo Garcia, transferring the individuals to the UK, and then providing accommodation and wraparound support, is to be borne by the FCDO. Should Asylum applications be submitted the associated costs will be covered by existing resources and roles.

#### **Equalities Considerations**

19. A provisional Equalities Impact Assessment (EIA) is at Annex A.

#### **Media handling**

20. There has been national media coverage of the migrants' situation on BIOT, notably from the BBC and the Guardian, with particular interest in safeguarding concerns around women and children. Coverage and interest grew following the Government's announcement of a sovereignty deal with Mauritius. There has been media interest at Lobby on 4th November and we anticipate a range of questions exploring the potential ramifications on the asylum system, border security, and the integrity of the immigration system, as well as about the individuals who are brought to the UK.

21. The Home Office has worked closely with the FCDO and No.10 to prepare a government spokesperson response, Q&A and background information.

22. All queries will be handled reactively and signed off in the usual way.

**Parliamentary interests**

23. There has been Parliamentary interest in the wider matter of the BIOT migrants. Most recently this has focused on the sovereignty deal with Mauritius following the [Foreign Secretary's statement](#) on the Chagos Islands on 7 October 2024. The agreement with St Helena and bridging the gap of any future migrant arrivals was the subject of an [Urgent Question](#) in the House of Lords on 22 October.

24. We expect there will be further parliamentary interest in this matter now the fact that the Home Secretary is minded to allow the migrants to come direct to the UK is public. The new Shadow Foreign and Home Secretaries are former Home Office Ministers who would have previously dealt with this issue. We have already received parliamentary questions from Priti Patel MP, and from Nick Timothy MP, relating to previous medical evacuations and to the form of status individuals will be offered in the UK.

25. We are working closely with the Foreign Office to prepare for an Urgent Question response if required.

[Annex omitted]

## **Annex B - MINISTERIAL SUBMISSION of 19 November 2024**

**SUBMISSION: Conditions attached to Leave Outside the Rules granted to BIOT migrants brought to the UK.**

**Issue:** A decision is needed on the detail of the conditions attached to the LOTR granted to migrants from BIOT on arrival to the UK.

**Timing: Immediate** – Subject to biometrics being enrolled and there being no adverse information, Visa Status and Information (VSI) will be in a position to begin issuing visas on Friday 22 November and need direction on what conditions to attach.

### **Recommendations**

That you, **Home Secretary:**

- a. Note** the risks and rationale outlined in paragraphs 5 – 15 below.
- b. Agree** not to grant the right to work or study in the UK as conditions of the LOTR offered to this cohort.
- c. Agree** to attach an explicit expiry date to the grant of recourse to public funds for the cohort

### **Annexes**

- **Annex A – Updated Equalities Impact Assessment**

### **Background**

1. **Following Sabrina Pickering’s ITN (Updates on the arrangements for transferring the BIOT migrants to the UK, 15 November), we can confirm that all 61 migrants have now accepted the offer and made applications within the timeframe specified. Subject to there being no adverse information revealed, we are in the process of operationalising their transfer to the UK. We aim to transport the physical vignettes on a flight to Diego Garcia on Monday 25 November, in time for a planned FCDO flight to the UK on 29 November.**

### **Consideration**

2. **The expectation of the UK Government is that, in general, migrants coming to the UK should be able to maintain and accommodate themselves without recourse to public funds.**

3. **However, given the unique circumstances of this cohort, and in light of the FCDO agreeing to cover the costs incurred in transporting, accommodating and supporting the migrants in the UK for the six-month period of their LOTR, you (Home Secretary) have indicated your agreement not to put any restrictions on recourse to public funds. Public funds are not limited to claims of public benefits and the positive grant of access to social security, but rather acknowledgement of the fact that they will need support from the government.**

4. **There are two outstanding decisions on conditions attached to the LOTR that is to be granted to the cohort, namely whether you wish to grant to this cohort (1) permission to study; and (2) permission to work.**

### **Right to work and study**

5. **The Home Office was clear with the migrants in “offer letters” (delivered on 8 November) that the rationale for offering them LOTR for a period of six months was to allow them a period of time in the UK to consider their next steps. Beyond confirming**

that there would be no restrictions on recourse to public funds no further conditions we communicated.

**6. FCDO have agreed to finance accommodation, wraparound support, and – where appropriate – subsistence for the cohort for the period of six months LOTR.** This ensures the cohort's needs are met and they are not destitute while considering their options in the UK. This accommodation and support should be strongly distinguished from resettlement or asylum support to the UK.

**7. We do not consider that working or studying, beyond the statutory requirement for children under 16, in the UK should form part of this six month consideration period.** Whilst it was not explicitly mentioned in the offer letters, an indirect reference was made to their rights to work or study ceasing when their status expires.

**8. Providing the migrants the ability to work and study in the UK risks incentivising the cohort to establish links to the UK.** It could be interpreted by the migrants as offering an avenue to live, work, and study in the UK more permanently, which does not align to the rationale for granting them LOTR for six months. It is worth noting that those migrants who have received positive protection decisions on BIOT will still expect some form of durable solution and may therefore continue to assert that establish links in the UK via work and study is exactly the sort of condition to which they are entitled. HO position at present however is that the immediate transfer to the UK is the first step in considering options, rather than the durable solution for those who might have a valid protection claim which they will be able to make in the UK.

**9. You have previously agreed to provide this cohort with recourse to public funds but refusal to grant permission to work will impact of preventing the cohort from access to Universal Credit and other benefits through DWP.** As the adults are working age, the public fund they would apply for is Universal Credit, which is designed to support people into work or increase their earnings if they are already working. Unless individuals have young children or a health issue that prevents them from working immediately, the Secretary of State for Work and Pensions is required to set conditions for individuals to take active steps to secure employment. If individuals have no right to work, they will be unable to meet such requirements, making Universal Credit unviable as a way to support this cohort. Other DWP-led public funds benefits either tend to be for those of pension age or require a long term presence in the UK. Some of the cohort may be eligible for other benefits, such as child benefit, which is led through HMRC.

**10. As a result, FCDO are exploring avenues other than public fund benefits to issue the support they have committed to providing,** including use of pre-paid cards for subsistence payments, directly procuring initial short term (non-asylum and settlement) hotels accommodating and working with Local Authorities on a mechanism to fund for longer term housing up to the end of the 6-month LOTR period.

11. Consideration must also be given to the likely scenario of the cohort claiming asylum or submitting other permission to remain applications during their 6 months in the UK. Section 3C of the Immigration Act 1971 allows an applicant to extend their existing leave until another application is decided or withdrawn.

**12. In practice, this means that, upon application for asylum or other permission to remain during the validity of their LOTR, the individuals of this cohort will benefit from the continuation of any conditions attached to the initial LOTR until that application and any further appeals are concluded.** However, under the terms of the agreement between the Home and Foreign Secretaries, the FCDO will not be responsible for the public funds to which the migrants will have recourse after 6 month LOTR period.

**13.** By granting the right to study in the UK even on a temporary basis (e.g. up to 6 months, as per Visit Visa conditions), individuals in this cohort would benefit from continuing access to study in the UK until their asylum claim was decided and any resulting appeal rights were exhausted (if their asylum claim was unsuccessful).for an indefinite period of time while any other applications are considered. This may increase the chances of having a claim to remain on human rights Article 8 (family and private life grounds).

**Do you agree to attach conditions that prohibit work and study, with the exception of the statutory requirement for children, in the UK for this cohort?**

Imposing a time restriction to recourse to public funds

**14. We are considering the option of explicitly indicating to the migrants that there is a time limit of six months on the duration of recourse to public funds, in order to align with the LOTR validity and FCDO's funding commitment.** In practical terms this would mean that at the end of the LOTR the migrants, if they had claimed asylum, would likely be classed as destitute and therefore fall into the wider Asylum support which provides them with accommodation and support.

**15. Irrespective of any claim to asylum, no further FCDO support or accommodation would be provided beyond the six month point.** If no claim for asylum had been made, the cohort would then need to find alternative means of supporting themselves (if they had applied to remain through another route), return to their country of origin, or they would be subject to enforcement action.

**Do you agree to attach an explicit time limit on recourse to public funds for the cohort?**

#### **Next steps**

**16. Subject to there being no adverse information revealed as part of the visa application and biometric enrolment, vignettes will be issued.** For those in BIOT they will remain in the care of BIOTA until the charter flight. For those in Rwanda we are working with FCDO to ensure that visas are suitably looked after until travel to the UK is arranged. Separate arrangements may need to be made for the family currently in Bahrain due to a medical emergency, but this is subject to the ongoing development of the case.

**17. FCDO are working at pace to identify suitable accommodation and a means of support.** The initial phase of this support will need to be in place before the migrants are transferred to the UK a charter flight. FCDO will also provide documentation to the migrants that outlines the provisions that will be in place for their transport to, accommodation and support in the UK; and will also be communicated to the claimants' lawyers in the ongoing JR case.

**18.** Legal representatives for the migrants have indicated that the migrants intend to claim asylum on arrival in the UK. Should they claim asylum on arrival, their LOTR would be suspended and they would be admitted to the UK on immigration bail. [REDACTED LPP]

#### **Legal considerations**

[19] – [21] [REDACTED LPP]

#### **Financial Implications**

**22.** There will be limited impact on the Home Office drawing on existing resources and roles to provide visas for the very small number of individuals. Wider costs, including the collection of biometrics in Deigo Garcia, transferring the individuals to the UK, and then providing accommodation and wraparound support, is to be borne by the FCDO. Should Asylum

applications be submitted the associated costs will be covered by existing resources and roles.

**Equalities Considerations**

23. An updated Equalities Impact Assessment (EIA) is at Annex A.

**Digital Delivery Dependency**

24. Should there be a need to vary conditions for this cohort, a manual workaround will need to be found, as the current technology will not permit this.

**Environmental Duty**

25. We have had regard to the Environment Principles Policy Statement and do not consider that this submission raises material environmental implications. We will continue to consider the Environmental Duty as part of our planning and will ensure we continue to comply with the Environmental Principles Policy statement as we work up any proposals.

**Media handling**

26. There has been national media coverage of the migrants' situation on BIOT, notably from the BBC and the Guardian, with particular interest in safeguarding concerns around women and children. Coverage and interest grew following the Government's announcement of the sovereignty agreement with Mauritius and deal with Romania, with questions over whether the migrants could end up in the UK.

27. We would expect there to be scrutiny of any of the options selected, with a key line of questioning being on why we're allowing the individuals into the UK. If approached at any point in the process, we would look to defend our position by pointing to the deal with Mauritius and St Helena. We would make clear that BIOT is not a route to the UK.

28. BIOT is ordinarily led by FCDO comms, with Home Office support on any crosscutting matters. The matter of LOTR involves significant cross-cutting, therefore the Home Office will work closely with the FCDO and No.10 to prepare a government spokesperson response, Q&A and background information. All lines and handling will be cleared in the usual way.

**Parliamentary interest**

29. There has been limited Parliamentary interest in BIOT migrant matters to date. However, there have been a number of Parliamentary Questions submitted since 17 July asking about the Supreme Court hearing, the UNHCR report, what arrangements are being made to bring the migrants to the UK, the costs of keeping the migrants on BIOT, and sovereignty negotiations, and criminal records of the migrants. FCDO have taken the lead on all of these PQs and details are on Hansard. It is anticipated there will be parliamentary interest when these migrants are relocated to the UK.

[Annex omitted]

~~~~~0~~~~~