



AC-2023-LON-001904, AC-2023-LON-001640

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

AC-2023-LON-001904
AC-2023-LON-001640

THE KING
(on the application of)
(1) MAN
(2) LAN

Claimants

-and-


The Hon. Mr Justice Swift

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Defendant

CONSENT ORDER

UPON the Claimants issuing claims for judicial review, alleging (inter alia) that:

- (1) Paragraphs 14.227 – 14.278 of the Defendant's Statutory Guidance *Modern Slavery: Statutory Guidance for England and Wales (under section 49 of the Modern Slavery Act 2015) and Non-Statutory Guidance for Scotland and Northern Ireland* version 3.5 (and corresponding provisions in versions 3.1 – 3.4) ("**the Public Order Disqualification Policy**") induced breaches of Article 4 of the European Convention on Human Rights, and
- (2) The decisions to apply the Public Order Disqualification Policy to the Claimants (and to accordingly disqualify them) on 5 May 2023 (MAN) and 22 June 2023 (LAN) breached Article 4 of the European Convention on Human Rights.

AND UPON the Defendant:

- (1) Having withdrawn the Public Order Disqualification Policy as challenged by the Claimants (contained in version 3.5 and previous iterations of the *Modern Slavery: Statutory Guidance for England and Wales (under s49 of the Modern Slavery Act 2015) and Non-Statutory Guidance for Scotland and Northern Ireland*)
- (2) Promulgating new Statutory Guidance: *Modern Slavery: Statutory Guidance for England and Wales (under section 49 of the Modern Slavery Act 2015) and Non-Statutory Guidance for Scotland and Northern Ireland* version 3.6
- (3) Withdrawing the disqualification decisions of MAN (5 May 2023) and LAN (22 June 2023).

AND UPON the parties noting that:

- (1) MAN reserves the right to claim damages for false imprisonment and to apply to link his claim for damages to LAN's claim for damages.
- (2) MAN and LAN reserve the right to challenge future Public Order Disqualification decisions and/or policies (which for the avoidance of doubt includes version 3.6 of the Statutory Guidance), including on grounds raised in this judicial review.

AND for the reasons set out in the attached statement of reasons

IT IS ORDERED THAT:

1. The claims for judicial review are withdrawn.
2. The Order of Justice Swift dated 28 July 2023 be discharged.
3. LAN's claim for false imprisonment is transferred to the general list of the King's Bench Division.
 - a. Upon transfer, the claim shall be stayed for a period of 3 months to enable the parties to explore settlement of the damages claim (both parties to notify the Court within 48 hours if settlement is achieved).
 - b. If, upon conclusion of the stay, the Court has not been notified that the claim has been settled, it shall be set down for a Case Management Conference on the first available date after 28 days from the end of the stay.
4. The Defendant shall pay the Claimants' reasonable costs on the standard basis, to be assessed if not agreed.
5. The Defendant shall make a payment on account of 50% of the Claimants' costs within 28 days of being served with the Claimant's bill of costs.
6. There shall be a detailed assessment of the Claimant's publicly funded costs in accordance with the Civil Legal Aid (Costs) Regulations 2013.

Dated this 18 January 2024

Maria Thomas

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STATEMENT OF REASONS

Introduction

1. This is an agreed statements of reasons explaining why the claim for judicial review has been settled on the terms set out above.

The Claimants

2. The Claimants each issued a claim for judicial review challenging the Defendant's Public Order Disqualification ("POD") policy under which, if a person was subject to a POD decision, they were disqualified from NRM protection.
3. MAN is a recognised potential victim of sex trafficking. He was subject to a POD decision on 5 May 2023.
4. LAN is a recognised potential victim of forced criminality. He was subject to a POD decision on 3 March 2023 on the basis of convictions in Poland dating to 2004. That POD decision was withdrawn and remade on 22 June 2023. LAN's claim for judicial review was amended to challenge the later POD decision.
5. MAN and LAN challenged their individual decision and the POD Policy on grounds including (i) that the POD Policy induced breaches of Article 4 of the European Convention on Human Rights (and that Article 4 had been breached in their individual cases), (ii) that the POD Policy did not require decision makers to consider the risk of re-trafficking, contrary to the *Tameside* duty of inquiry; and (iii) that the process for making POD decisions was procedurally unfair.

Interim relief

6. The Claimants applied for general interim relief. Following a hearing on 26 July 2023, Swift J ordered that:

Pending the final hearing of these claims or further order, the Defendant shall not exercise her power under section 63 (1) of the Nationality and Borders Act 2022 in respect of a person in relation to whom a positive reasonable grounds decision has been made without, for the purposes of such decision, taking into account the results of an initial assessment of the person's circumstances. For the purposes of this order, an initial assessment is the assessment described at paragraphs 8.11 to 8.12 of the Modern Slavery: Statutory Guidance for England and Wales (under s49 of the Modern Slavery (sic) 2015) and Non-Statutory Guidance for Scotland and Northern Ireland issued by the Defendant in July 2023, pursuant to section 49 of the Modern Slavery Act.

Compromise of the claim

7. The Defendant has:
 - 7.1. Withdrawn the POD Policy in the form challenged in these proceedings.
 - 7.2. Promulgated a new POD Policy, which is materially different from version 3.5; and
 - 7.3. Withdrawn the POD decisions in the cases of MAN and LAN.
8. In light of the Defendant's actions described at paragraph 7 above, the Claimants agree to withdraw their claims for judicial review. They reserve their right to challenge the new policy and/or any further POD decisions which apply to them, including on grounds of challenge raised in these proceedings, and the Defendant agrees not to argue that the withdrawal of these proceedings will in any way serve to preclude such a future challenge.
9. Save as set out above, the parties reserve their positions.

10. The Defendant has agreed to pay the Claimants' costs of these proceedings.

Dated this 18 January 2024

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BY THE COURT