Neutral Citation Number: [2021] EWCA Civ 1836

Case No: C1/2021/0071

IN THE COURT OF APPEAL (CIVIL DIVISION)

ON APPEAL FROM THE QUEEN'S BENCH DIVISION

ADMINISTRATIVE COURT

MICHAEL KENT QC

(Sitting as a Deputy Judge of the High Court)

[2020] EWHC 3065 (Admin)

Royal Courts of Justice Strand, London, WC2A 2LL

Date: 03/12/2021 Before :

LORD JUSTICE NEWEY

LORD JUSTICE DINGEMANS

and

LADY JUSTICE WHIPPLE

- -

Between :

The Queen Appellant

On the application of H (a minor by his litigation friend

Helen Peden)

- and - Swindon Borough Council Respondent

- -

Mr Christopher Buttler QC (instructed by Scott Moncrieff & Associates) for the Appellant

Mr Tom Tabori (instructed by Swindon Borough Council Legal Services) for the

Respondent

Hearing date : 16 November 2021

- -

Approved Judgment

Lord Justice Dingemans :

Introduction

1.

This is the hearing of an appeal by the claimant, H, against part of the order dated 19 November 2020 of Michael Kent QC sitting as a Deputy High Court Judge ("the judge"). The judge had found that Swindon Borough Council ("the council") had breached its duty owed to H pursuant to section 47 of the Children Act 1989 ("the 1989 Act"), but had dismissed a claim that the council infringed H's rights under article 4 on the European Convention of Human Rights and Fundamental Freedoms ("ECHR") ("no one shall be held in slavery or servitude") to which domestic effect has been given by the Human Rights Act 1998. H appeals against the dismissal of his claim for breach of rights under article 4 of the ECHR. H had also sought damages for the infringement of article 4 of the ECHR before the judge, but the claim for damages is not pursued on appeal.

2.
The claimant has the benefit of lifelong anonymity as a victim of human trafficking, contrary to section 2 of the Modern Slavery Act 2015, pursuant to the conjoint provisions of paragraph 4 of schedule 5 of the Modern Slavery Act 2015 and section 2(1)(db) of the Sexual Offences (Amendment) Act 1992. He has been referred to throughout these proceedings as H. H is treated as having a date of birth of 1 January 2003 following an age assessment carried out on 18 October 2019. This means that H is now 18 years and 10 months old.

The relevant factual background

3.
H was an unaccompanied asylum seeking minor who entered the United Kingdom illegally. The judge found that this was most likely to have occurred in February 2018, when he was aged 15 years. He was located by the police in Swindon after he ran from the back of a lorry with seven other asylum seekers.

4.
On 28 February 2018, H was placed into the council's care. He commenced a placement in foster care on 1 March 2018. A series of placements broke down because of H's challenging behaviour. Apart from a time in prison as outlined below, until 1 January 2021 and his 18th birthday, the council accommodated and looked after H pursuant to section 20 of the 1989 Act. Since 1 January 2021, the council has accommodated and looked after him as a "former relevant child" under the 1989 Act.

5.
On 4 April 2018, H was arrested for threatening to kill his foster carers and their son. H was placed in temporary hotel accommodation and on 6 April 2018 the council conducted what was called a strategy meeting which concluded that, because of the threats to foster carers, "the risk of serious harm threshold" for a section 47 of the 1989 Act child protection assessment was met. The assessment was not carried out.

6.
On 3 May 2018 H pleaded guilty to affray and was sentenced to a six months referral order. The council moved H to a placement in Manchester but it broke down. No section 47 of the 1989 Act assessment was carried out. On 28 June 2018 H was assessed to be an adult, meaning that section 47 of the 1989 Act was not applicable.

7.
On 12 October 2018 H pleaded guilty to assaulting a carer and causing criminal damage. On 8 November 2018 H was sentenced to a period of imprisonment in an

adult prison, on the basis of the age assessment then applicable. H was released from prison on 15 February 2019.

8.
On 3 April 2019, Gloucester Adult Mental Health Services, where H had been accommodated, closed their involvement with H on the basis that he had decided not to engage with them. There were indications that H was the victim of modern slavery.

9.
On 4 June 2019, the council's Children's Services made a referral under the National Referral Mechanism ("NRM") for identifying victims of modern slavery to the Single Competent Authority ("SCA"). The SCA operates on behalf of the Secretary of State for the Home Department.

10.
On 5 June 2019 Gloucestershire County Council, which was the children's service authority for Gloucester where H had resided for a time, convened a meeting which was attended by the council and others. It was decided not to carry out a section 47 of the 1989 Act assessment due to a lack of evidence about trafficking.

11.
On 11 June 2019, the Home Office issued a "positive reasonable grounds" decision, finding there to be reasonable grounds that H was a victim of trafficking.

12.
On 4 July 2019 the council conducted a pathway plan assessment, on the basis that H was an adult. However on 18 October 2019 the council reassessed H's age and concluded that he was still a child under 18 years.

13.
On 20 December 2019 this claim for judicial review was issued seeking to challenge the council's failure to conduct an assessment of the risks faced by H. On the same date Lane J. made an order directing the council on receipt of service of the order, to conduct an assessment of H under section 47 of the 1989 Act. On 3 January 2020 the council applied to vary Lane J.'s order to provide that a statutory assessment be carried out, rather than a section 47 assessment. That issue was directed to be determined but in fact it had not been determined before the hearing took place before the judge.

14.
On 22 January 2020, the SCA made a "conclusive grounds" decision that H was a victim of modern slavery. The exploitation was on the grounds of "Manual labour in Kirkuk, Iraq" and "forced criminality in the UK".

15.
On 4 February 2020, the council completed a statutory assessment of H's needs. This set out the background to H's arrival in the UK, the death of his parents when he was young, his limited education in Kirkuk, Iraq, his demand for a college education but his refusal to engage in alternatives or with his English lessons. The social worker found that H was "very vulnerable towards further criminal exploitation and trafficking". The assessment recorded that without further identification of H's social network, which would constitute an intrusion into his private life, "it remains difficult to appropriately assess the current risk of exploitation from his social environment". It was noted that H had tentatively engaged with probation, reported to the police, and had been provided with assistance

from key2 who provided accommodation in the form of supported housing. The social worker considered on balance that it was in H's best interests to remain with key2 in supported housing.

16.
Permission to apply for judicial review was refused on the papers, and H renewed the application at an oral hearing. On 11 September 2020 H was granted permission to

amend the judicial review claim form to include a new claim for infringement of article 4 of the ECHR and granted permission to apply for judicial review. It was also directed that the claim should be heard by no later than 23 October 2020. The direction that the new claim for infringement of article 4 of the ECHR should be heard by 23 October 2020 created procedural difficulties, as appears below.

17.
The hearing before the judge took place on 22 October 2020 and the judge handed down a written judgment on 19 November 2020.

The judgment below

18.
The judge set out the development of the claim and recorded that H had been granted permission to amend his claim to include complaints about matters post-dating the issue of proceedings, which was a form of "rolling judicial review".

19.
The judge considered whether the council had complied with an interim order made in the case, before turning to deal with the two remaining issues; first whether the council had failed to discharge its obligations under section 47 of the 1989 Act; and secondly whether the council had breached H's rights under article 4 of the ECHR.

20.
The issue under section 47 of the 1989 Act was addressed in paragraphs 11 to 50 of the judgment. So far as is relevant to this appeal the judge recorded evidence given by Holger Asmeier, a social worker for the council, who was allocated responsibility for H on 4 February 2019. Mr Asmeier had set out in a witness statement his involvement with H, including his referral to the NRM for those vulnerable to trafficking or exploitation. Mr Asmeier had attended a strategy meeting on 5 June 2019 in Gloucester which had been called to address risks to H raised by Police Community Support Officers. The outcome of that meeting was that there should not be a section 47 assessment "due to lack of evidence of trafficking". Mr Asmeier confirmed that the council had not undertaken a further strategy meeting because he did not consider that it was needed, and he continued to believe that the appropriate means of assessment was a statutory assessment.

21.
The judge held in paragraph 48 of his judgment that Mr Asmeier's explanation for not initiating a section 47 inquiry did not amount to a good reason for departing from relevant guidance. This guidance included the "Working Together Guidance" of July 2018 issued under section 7 of the Local Authority Social Services Act 1970, other guidance from the Department for Education and the Home Office on "Trafficked Children who are in Care" and Department for Education guidance published in November 2017 entitled "Care of unaccompanied migrant children and child victims of modern slavery". This included guidance that "the opportunity to intervene to prevent any further exploitation might be very narrow, so the entry local authority should convene a strategy discussion as soon as

possible and take any necessary immediate action to safeguard and promote the child's welfare. This strategy discussion should involve the police, immigration officials and any other relevant agencies and plan rapid further action if concerns are substantiated". The judge also referred to guidance made under section 49 of the Modern Slavery Act 2015 ("the Modern Slavery Act statutory guidance") which post-dated the relevant events but which emphasised the need to obtain documents giving rise to the referral under the

NRM.

22.
The judge found that it was inevitable that the SCA went further than simply noting the details provided by Mr Asmeier. The judge held that it was a mistake to assume that no purpose would be served by contacting the police or the SCA and recorded that the council had been unable to demonstrate that the SCA findings were confined to historic matters. The judge upheld the first ground of challenge.

23.
The judge addressed the claim for an infringement of article 4 of the ECHR in paragraphs 51 to 64 of his judgment. The judge recorded that there was an agreed summary of the effect of the Strasbourg case law. The judge referred to the judgment of the Court of Appeal in R (TDT) v Secretary of State for the Home Department [2018] EWCA Civ 1395; [2018] 1 WLR 4922 in paragraph 58 of the judgment, before recording "in this case the claimant remains in the care of the defendant accommodated by them and attended to by a phalanx of social workers, teachers, support workers, health professionals and so on". The judge recorded that the error in this case was not carrying out an assessment of the risk to which H was subject, which was different to the other cases considered under article 4 of the ECHR.

24.
The judge said that he did not regard his finding that the requirements of domestic law had not been met proved a failure to comply with the operational and procedural duties imposed on the council under article 4 of the ECHR. The judge accepted that the SCA's conclusive grounds finding probably meant that article 4 of the ECHR duties were engaged. In paragraph 64 of the judgment the judge held "I do not find on the evidence before me that the defendant has itself failed to take reasonable steps in the particular circumstance of this case to discharge its operational or procedural obligations" under article 4 of the ECHR. The judge went on to say "the defendant would be entitled to regard the police and the SCA under the National Referral mechanism as the agencies principally concerned with both the operational and procedural duties owed to the claimant as an actual or potential victim of trafficking". The judge dismissed the second ground of challenge.

25.
There was a postscript to the judgment in which the judge addressed some post-hearing evidence and submissions on which the council intended to rely. This was a reference to information which the council had obtained from the SCA, apparently in response to a request made by the council on the day of the hearing before the judge. The judge addressed the basis on which such evidence might be admitted but exercised his discretion to refuse to admit it because it could and should have been obtained before the hearing.

The issues on the appeal

26.

H relies on two main grounds of appeal, both relating to the judge's dismissal of the claim for infringement of article 4 of the ECHR. The first ground is that the judge erred in concluding that the council was entitled to regard the police and the SCA as the agencies principally concerned with the protection duty in article 4 of the ECHR. This is a reference to the judge's statement in paragraph 64 of his judgment that "the [council] would be entitled to regard the police and the SCA under the National Referral mechanism as the agencies principally concerned with both the operational and procedural duties owed to [H] as an actual or potential victim of trafficking". Mr Buttler QC accepts that the judge did not make a declaration to reflect that sentence of the judgment, and so there is no order against which to appeal in relation to this point, but

he submits that the judge made an error of law in failing to identify the council's responsibilities and that this court should set out the correct position.

27.
The second ground of appeal is that it is submitted that the judge erred in concluding that the council had discharged its duties under article 4 of the ECHR in February 2020 in circumstances where the judge had identified steps that the council should reasonably have taken, but had not taken, to protect H from the risk of further trafficking. Mr Buttler relied on the decisions of the European Court of Human Rights ("ECtHR") on article 2 of the ECHR and the right to life in Osman v United Kingdom (2000) 29 EHRR 245 and Kilic v Turkey (2001) 33 EHRR 58, as well as the decision in Rantsev v Cyprus and Russia (2010) 51 EHRR 1 on article 4 of the ECHR. The effect of these judgments had been summarised by the Court of Appeal in R (TDT). Mr Buttler submitted that the effect of those authorities was that once the judge had accepted that the council had failed to make relevant inquiries in this case, as he had when finding a breach of section 47 of the 1989 Act, then a breach of article 4 of the ECHR was established.

28.
The council resists the appeal. As to the first ground of appeal Mr Tabori submits that properly analysed the judge was simply reflecting a submission made on behalf of the council, and recorded in paragraph 59 of the judgment, to the effect that "as far as the operational and procedural duties are concerned it is principally the police who have the function of detecting, preventing and prosecuting instances of criminality (whether forced or otherwise) and the defendant's obligations in relation to its multi-agency functions do not go far".

29.
As to the second ground of appeal the council submitted that a breach of section 47 of the 1989 Act could not be equated with a breach of article 4 of the ECHR in this case. H had been accommodated, attended by social workers, teachers, support workers and health professionals. This case was very different from the cases of Kilic, Rantsev and R(TDT).

30.
Mr Tabori also asked for permission to refer to the further evidence of the determination made by the SCA in this case, which he submitted supported the council's case. Mr Buttler resisted this application and pointed to the fact that the judge had refused to admit the evidence obtained after the hearing had concluded and noted that the council had not sought to cross-appeal against the refusal to admit this evidence.

31.
I am very grateful to Mr Buttler QC and Mr Tabori, and their respective legal teams, for the excellent written and oral submissions on this appeal. It is now apparent that this court will need to address: (1)

whether the council should have permission to rely on the fresh evidence of the determination made by the SCA; (2) whether the judge below was wrong to state in paragraph 64 of the judgment that the council would be entitled to regard the police and the SCA under the NRM as the agencies principally concerned with both the operational and procedural duties owed to H; and (3) whether the judge was wrong to find that there had not been an infringement of article 4 of the

ECHR.

Article 4 of the ECHR

32.
Article 4 of the ECHR provides:

“1. No one shall be held in slavery or servitude.

2.
No one shall be required to perform forced or compulsory labour.

3.
For the purpose of this article the term forced or compulsory labour shall not include: (a) any work required to be done in the ordinary course of detention imposed according to the provisions of article 5 of this Convention or during conditional release from such detention; (b) any service of a military character or, in the case of conscientious objectors in countries where they are recognised, service exacted instead of compulsory military service; (c) any service exacted in case of an emergency or calamity threatening the life or well-being of the community; (d) any work or service which forms part of normal civic

obligations.”

33.
There are also relevant international treaties being the Protocol to Prevent, Suppress and Punish Traffickers in Persons, especially women and children 2000 (“the Palermo Protocol”) and the Council of Europe Convention on Action against Trafficking in Human Beings 2005 (“the Anti-Trafficking Convention”). The Supreme Court in R(SC) v Work and Pension Secretary [2021] UKSC 26; [2021] 3 WLR 428 at paragraph 81 recorded that international courts, such as the ECtHR, in defining the meaning of terms and notions in the text of the ECHR, can and must take into account elements of international law other than the Convention.

34.
The ECtHR had considered the duties implicit in article 4 of the ECHR in Rantsev. The case concerned a Russian woman, Ms Rantseva, who had been taken to Cyprus as a cabaret artiste where there was evidence that cabaret artistes were being trafficked and sexually exploited. Ms Rantseva was taken to a police station in Cyprus by the manager of the cabaret, but she was released into his custody. She was found dead the next day. Cyprus was held, among other matters, to have violated article 4 of the ECHR because it had failed to afford Ms Rantseva practical and effective protection against trafficking and exploitation. In paragraph 286 of Rantsev the ECtHR identified that for the protection duty to arise “it must be demonstrated that the state authorities were aware, or ought to have been aware, of circumstances giving rise to a credible suspicion that an identified individual had been, or was at real and immediate risk of being trafficked or exploited …”. Where there is such a duty “there will be a violation of article 4 of the Convention where the authorities fail to take appropriate measures within the scope of their powers to remove the individual from that situation or risk”. In

paragraph 287 the ECtHR stated that because of “the difficulties in policing modern societies and the operational choices which must be made in terms of priorities and resources, the obligation to take operational measures must, however, be interpreted in a way which does not impose an impossible or disproportionate burden on the authorities”.

35.
The finding of positive duties implicit in article 4 of the ECHR by the ECtHR mirrored the approach taken to article 2 of the ECHR in Osman v The UK and in Kilic v Turkey. In Kilic the Government of Turkey was held to have violated article 2 of the ECHR by failing to protect the life of a journalist who had reported death threats against him to the Turkish authorities. In paragraph 76 of the judgment the ECtHR recorded that there was no evidence that the Government had taken any steps in relation to the journalist’s request for protection either by applying reasonable measures of protection or by investigating the extent of risk to employees of the newspaper for which the journalist worked.

36.
In R(TDT) the Court of Appeal considered a claim for infringement of article 4 of the ECHR and explained in paragraph 14 of the judgment that the obligations in relation to trafficking arising under article 4 of the ECHR are binding on public authorities pursuant to the Human Rights Act. In R(TDT) the claimant had entered the UK on a lorry. He had been detained and was assessed to be an adult. An adviser at the Refugee Council assessed him to be a child. A pre-action protocol letter was written requiring the claimant to be released, into safe and secure accommodation provided by the local authority to avoid him being re-trafficked. The claimant was released without any measures being put in place and he disappeared. A claim for breach of article 4 of the ECHR was dismissed at first instance but an appeal was allowed. It was held that there was a credible suspicion that the claimant had been trafficked and the Secretary of State infringed rights under article 4 of the ECHR by releasing him without any protective measures being put in place. In R(TDT) it was held that the duty owed by the public authority had been breached, even though it was not known whether the relevant individual had been re-trafficked, as appears from paragraph 86 of the judgment. Mr Buttler submitted that this showed that the protection duty could be breached, even without proof of loss or causation of loss.

37.
As a result of the decision of the ECtHR in Rantsev and the judgment of the Court of Appeal in R(TDT) it was common ground before this court that article 4 of the ECHR imposes three specific positive obligations on the state in relation to victims of human trafficking: (1) a “systems duty”, which is a general duty to implement measures to combat trafficking; (2) an “investigation duty”, to investigate situations of potential trafficking; and (3) a “protection duty”, sometimes called an “operational duty”, to take steps to protect individual victims of trafficking.

38.
The protection duty is engaged when “the state authorities were aware, or ought to have been aware, of circumstances giving rise to a credible suspicion that an identified individual had been, or was at real and immediate risk of being trafficked or exploited …”. As was explained in R(TDT) the criterion of "real and immediate risk" is wellestablished in the jurisprudence of article 2 of the ECtHR and has been applied in cases in this jurisdiction. Lord Dyson equated it to a "present and continuing" risk in Rabone v Pennine Care NHS Trust [2012] UKSC 2; [2012] AC 72 at paragraph 39, showing that a continuing risk to life can be an immediate risk to life. At paragraph 20 of In Re Officer L [2007] UKHL 36; [2007] 1 WLR 2135 Lord Carswell said that "the criterion is and should be one that is not readily satisfied: in other words, the threshold is high" but also recorded that the duty was fact

sensitive and that the authority should do all that is reasonably expected of them to avoid the relevant risk.

No permission to rely on the materials from the SCA – issue one

39.
This Court looked at the materials on which the council sought to rely from the SCA “de bene esse” in the course of the hearing. I would refuse to admit the materials from the SCA. This is because first they were not adduced at the hearing before the judge and it is apparent that they could have been if the council had attempted to obtain them for that hearing. As it was it appears that the council first attempted to obtain them on the day of the hearing before the judge. Secondly the judge refused to admit those materials after the hearing and gave a short ruling explaining why he had refused permission. The council did not seek to appeal that ruling, and the ruling stands unless it is appealed. There is no good reason that has been suggested on behalf of the council to treat the request to accept these materials on the appeal as a late attempt to seek permission to cross-appeal.

40.
I should record that it is apparent that when claims are made that a public authority has infringed protection duties under either article 2 or article 4 of the ECHR, issues of case management will arise. The Court will need to address, among other matters, what is in issue, what evidence will be adduced on either side, and whether oral evidence will be required. Some of the difficulties caused by attempting to determine whether a public authority had discharged protection duties were referred to in LXD and others v The Chief Constable of Merseyside Police [2019] EWHC 1685 (Admin) at paragraphs 27 to 33. As it was in this case there was a very shortened timetable to trial once the amendment bringing in the claim under article 4 of the ECHR had been made. It is apparent that more thought should have been given by both sides to issues of case management when permission to amend was granted.

The statement in paragraph 64 of the judgment about agencies owing duties to H – issue two

41.
The judge did say that the council “would be entitled to regard the police and the SCA under the NRM as the agencies principally concerned with both the operational and procedural duties” owed to H in paragraph 64 of the judgment. It is apparent that the judge was attempting to reflect the submission made by Mr Tabori to the effect that it was principally the police who have the function of detecting, preventing and prosecuting instances of criminality. That submission made by Mr Tabori is accepted to be correct.

42.
Mr Buttler, however, is also correct to identify that the council was the state agency primarily responsible under the 1989 Act for the welfare of H, a position which is made clear in the relevant guidance and in particular the statutory guidance under the Modern Slavery Act which identified the duties on local authorities to safeguard child victims. Local authorities are the primary service provider for safeguarding and responding to the needs of child victims of trafficking.

43.
It was common ground at the hearing that this clarification of what was said by the judge does not, of itself, afford a ground for allowing the appeal. I therefore turn to the real issue on the appeal, namely whether the judge was wrong to find that there was no breach of article 4 of the ECHR.

Council did not breach article 4 of the ECHR – issue three

44.
As set out above it was common ground that the relevant duty on the council for the purposes of this appeal was the “protection” or “operational” duty as analysed in R(TDT). It was also common ground that the council’s duties under article 4 of the ECHR were engaged. This was because the relevant risk had been established by the conclusive grounds decision made by the SCA in this case, and that conclusive grounds decision was accepted by both sides. The judge accepted that the duty was engaged in this case. The duty owed by the council was to “take appropriate measures within the scope of their powers to remove the individual from that situation or risk”, see paragraph 286 of Rantsev.

45.
Mr Buttler is correct to submit that a failure to make relevant inquiries may, in certain circumstances, involve an infringement of rights protected by article 4 of the ECHR, compare Kilic. Kilic, however, was a very different case where serious reports about threats were ignored by the relevant authority. It is also correct that it may not be necessary to show that loss has flowed from the breach of article 4 of the ECHR in order to make a finding of breach of article 4 of the ECHR. This appears from Rantsev where the details of what had happened after Ms Rantseva had been released by the police were not known, and from R(TDT) where it was not known whether the claimant had been re-trafficked or had simply absconded. This appeal, however, concerns a case where the council have failed to make some relevant inquiries but where H has been accommodated, supported and, as a matter of fact, protected.

46.
It is trite law that decisions of the ECtHR are decisions on the particular cases before them although, as the ECtHR recorded in paragraph 197 of Rantsev, the judgments of the ECtHR serve to elucidate, safeguard and develop the rules instituted by the ECHR. In my judgment Mr Buttler has taken together a number of dicta from different cases such as Kilic and Rantsev, to make the submission that a breach of section 47 of the 1989 Act amounted to a breach of article 4 of the ECHR in this case. In Kennedy v Charity Commission [2014] UKSC 20; [2015] AC 455 at paragraph 46 Lord Mance pointed out some of the problems caused by taking time “…in domestic courts seeking to interpret and reconcile different judgments (often only given by individual sections of the European Court of Human Rights) in a way which that court itself, not being bound by any doctrine of precedent, would not itself undertake”.

47.
It is right to record that the judge did not set out in detail his reasons for finding that the council had not breached article 4 of the ECHR. The judge did find that the council had acted in breach of statutory duty under section 47 of the 1989 Act by failing to make relevant inquiries of the police and the SCA about the risks to which H was subject. That important finding was, however, made with a finding that H was being accommodated, and attended by social workers, teachers, support workers and health professionals. It is apparent from the detailed notes of the statutory assessment completed on 4 February 2020 that H’s needs and vulnerabilities were being met and considered by the council. H was being reasonably protected from the risks to which he was subject, while attempts were being made to recognise his own right to make decisions as an individual.

48.
In my judgment it is apparent from the evidence before the judge and the findings made by the judge that, although the council could have made additional inquiries of the police, they have as a matter of

fact accommodated, supported and protected H from the risks of re-trafficking. In these circumstances the judge’s finding that there had been no infringement of H’s rights under article 4 of the ECHR was right.

Conclusion

49.
For the detailed reasons set out above: (1) I would refuse to admit the evidence from the SCA; (2) I have addressed the final sentence in paragraph 64 of the judgment below, but this is not a ground for allowing the appeal; and (3) the judge was entitled to find that there was no infringement of article 4 of the ECHR. I would therefore dismiss this appeal.

Lady Justice Whipple

50.
I agree. Lord Justice Newey

51.
I also agree.