IN THE UPPER TRIBUNAL

R (on the application of SB and ABD) v Secretary of State for the Home Department IJR [2015] UKUT 00136(IAC)

Heard at Field House

IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW

Before

UPPER TRIBUNAL JUDGE O'CONNOR

Between

THE QUEEN

on the application of

SB

ABD (A MINOR)

Applicants

-and-

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation :

For the Applicant: Ms R. Chapman, instructed by Duncan Lewis Solicitors

For the Respondent: Ms I. McArdle, instructed by the Treasury Solicitor

JUDGMENT

handed down on 26 February 2015

Judge O'Connor:

Introduction

1.
The first Applicant, born 6 February 1994, is the mother of the second Applicant, born 30 May 2011. I refer to the first Applicant as 'the Applicant' herein. The Applicant entered the United Kingdom in August 2001 as a visitor. On 14 June 2010 she was granted Discretionary Leave to Remain until 13 June 2013 - as was her father. On 11 June 2013 both of the Applicants sought leave to remain on human rights grounds and by way of a decision of 8 October 2013 the Respondent granted such leave to each of them for a period of 30 months i.e. until 8 April 2016. The Respondent imposed a condition on this leave, prohibiting the Applicants from having recourse to public funds (the "NRPF condition").

2.
The Respondent has given further consideration to the Applicant's case during the course of these proceedings, concluding in a decision of 8 October 2014 that the imposition of the NRPF condition of the Applicants' leave should be maintained.

3.

At the core of this application is the lawfulness of (i) the Respondent's decision of 8 October 2013 to grant Limited Leave to Remain as opposed to Discretionary Leave and (ii) her decisions of 8 October 2013 and 8 October 2014 to impose, and refuse to remove, the condition prohibiting the Applicants recourse to public funds. Upper Tribunal Judge Pitt granted permission to bring these proceedings by way of an order dated 17 July 2014.

Decisions under challenge

Decision of 8 October 2013

4.
The Respondent's decision of 8 October 2013 states, insofar as is relevant to these proceedings:

"…[y]ou were granted discretionary leave to remain in the United Kingdom under Article 8 European Convention Human Rights, as a dependent on your fathers application for leave to remain. From the evidence you have provided, it is clear that you are leading an independent life and no longer dependent on your father.

Therefore, after carefully reviewing your application for active review of discretionary leave, the Secretary of State is not satisfied that the grounds under which you were previously granted discretionary leave still persist and your application for further discretionary leave is refused…

Because of your particular circumstances, you have been granted leave within the Immigration Rules under paragraph 276BE with reference to 276ADE.

Conditions attached to your stay in the UK

The conditions attached to this period of stay in the United Kingdom permit you to work… However, access to Public Funds is not permitted as explained below.

Employment

You may establish yourself in business or take employment without the need to apply for a work permit.

Public Funds

Under the Immigration Rules you are not entitled to receive public funds to help meet your living and accommodation costs (or those of any dependents). In addition your sponsor is not entitled to claim or receive public funds on your behalf. The term "public funds" is defined in paragraph 6 of the Immigration Rules…"

Decision of 8 October 2014

5.
The Respondent's decision of 8 October 2014 reads:

"…You stated that you now have a child [ABD] who was born in the United Kingdom. You also provided information regarding your tenancy arrangements, which were in your own name. You also provided a letter of employment.

As previously mentioned these factors were considered and it was found that your circumstances had materially altered since your first grant of Discretionary Leave to Remain. In order to be granted a further period of Discretionary Leave to Remain your circumstances have to remain the same as when

that leave was given. As previously mentioned these facts were considered and it was found that your circumstances had materially altered since your first grant of Discretionary Leave to Remain. As set out in the policy on Discretionary Leave (…) if there have been significant changes in an applicant's circumstances since the original grant of leave, the application for Discretionary Leave should be refused. That is the case here. Clearly your circumstances had altered substantially. Not only where (sic) you living independently, as shown by the fact that you held a tenancy and employment, but you had also gone on to create an independent family unit distinct from that of your parent.

It was because you were a dependent child that you were initially granted Discretionary Leave to Remain as has previously been mentioned a consideration was given to your current situation and if you should be granted a further period of Discretionary Leave to Remain. However as your circumstances have changed substantially, you no longer qualify for Discretionary Leave. Discretionary Leave is granted outside the Immigration Rules. It must not be granted where a person qualifies for asylum, Humanitarian Protection (HP), or where there is another category within the Immigration Rules under which they qualify. As your application did not meet the requirements for Discretionary Leave to Remain it was considered under the Appendix FM Regulations and it was found that you now meet the requirements of the Immigration Rules and therefore you now qualify for leave to remain under the Immigration Rules.

…

In view of the above the Secretary of State is not satisfied that you meet the requirements of the transitional arrangements for a grant of further Discretionary Leave to Remain.

…

Request for a Change of Conditions of leave granted on basis of family or private life.

You have now requested permission to apply for Judicial Review of this decision because you were granted leave to remain for 30 months on code 1 conditions. Your circumstances were fully considered in your original application and within this supplementary letter. It has been explained to you that you are not entitled to a grant of Code 1A conditions because you are not regarded as being destitute for the purposes of this application. As previously explained above you are now in employment and whilst you may rely on your father for extra funds this fact alone does not make you destitute for the purposes of deciding your immigration status and what code of conditions you would be entitled to.

The policy is clearly explained in the document "Request for a Change of Conditions of leave granted on the basis of family or private life"

…

Consideration of Section 55 of the Borders, Citizenship and Immigration Act 2009

We have taken into account the need to safeguard and promote the welfare of children in the United Kingdom in accordance with our duties under section 55…

…You are allowed to remain in the United Kingdom, your child is also allowed to remain and they will have the full benefits of being resident in the United Kingdom. Your child will be able to access education, health and social services and all the components open to a child resident in the United Kingdom. Your child will continue to live with you and continue to have the benefits of her close relationship with other family members.

You will not be forbidden to work therefore you will be able to continue to support your child as can their grandparent and other family members. You have stated that because your father has and is helping to support both you and your child that their best interests have not been served by a grant of 30 months and a condition of code 1. It has been considered whether the decision to grant you leave to remain with a code 1 decision of no recourse to public funds should be changed in light of the help you receive from your family should change the decision to grant you code 1 (sic). However as previously stated you are not destitute, you have employment and also a separate place of abode. The fact that your father makes a financial contribution to your living expenses is not a sufficiently engaging argument for you to be considered destitute and therefore qualify for a change of condition code. These circumstances show that you and your family are capable of supporting yourself and your child and as such, neither you nor your child are in a situation that would be deemed to put your child in danger or risk, so as to engage Section 55 of the Borders, Citizenship and Immigration Act 2009…"

Grounds of Challenge

6.
The Applicants submit that the Respondent has acted unlawfully by:

(i) irrationally failing to grant them Discretionary Leave to Remain;

In the alternative by:

(ii) failing to lawfully consider the exercise of her discretion under the Immigration Rules when imposing the NRPF condition;

(iii) failing to comply with her duties under section 55 of the Borders, Citizenship and Immigration Act 2009; and/or

(iv) breaching their protected rights under Article 8 of the Human Rights Convention.

7.
On the second day of the hearing of this application Ms Chapman also submitted, for the first time, that the Respondent's decisions were unlawful as a consequence of her failure to abide by the duties imposed on her by section 149 of the Equalities Act 2010. Having first carefully considered all of the circumstances of the case, I refused to admit this ground for consideration. This ground was not pleaded in the grounds of application and neither is it to be found in the Applicant's skeleton argument or written submissions drawn for the purposes of the substantive hearing; indeed, the ground has not been reduced to writing at any stage. Neither, significantly, was notice given to the Respondent of the Applicant's intention to rely on such ground.

8.
Ms Chapman did not pursue the pleaded ground founded in Article 14 of the ECHR at the hearing and, as a consequence, I say no more about this ground herein.

Issue (i): Did the Respondent irrationally fail to grant the Applicant Discretionary Leave to Remain?

Summary of the parties' submissions

9.
Ms Chapman submits that the Respondent's Discretionary Leave policy mandates that those persons previously granted Discretionary Leave will continue to be dealt with under the pre 9 July 2012

regime and that, as a consequence, the Applicant's Discretionary Leave application ought to have been dealt with in accordance with the terms of such policy.

10.
The Respondent, it was said, was obliged to grant the Applicant Discretionary Leave unless there had been a significant change in her circumstances. In the context of the Applicant's case that could only mean where the Applicant's removal would no longer lead to a breach of Article 8 ECHR.

11.
Ms Chapman continued by asserting that: (i) the Applicant's personal circumstances have not materially altered to this extent; (ii) she now has greater family and private life ties to the UK than she did in 2010 and (iii) she is also dependent on her father financially to an even greater extent than she was in 2010. The Respondent's refusal to consider a grant of Discretionary Leave under the policy was, it was said, therefore irrational.

12.
It was further submitted that the Respondent determined the Applicant's application on an incorrect factual basis because, contrary to the Respondent's statements in her decision letters, the Applicant was not granted Discretionary Leave in 2010 on the sole basis of her being her father's dependent child; rather, she was granted leave at that time because the Respondent had delayed in determining her application of 2005 during which time she had built up significant private and family life ties in the United Kingdom.

13.
In response, Ms McArdle submitted that the Respondent had lawfully interpreted and applied the transitional arrangements of the Discretionary Leave policy. In particular she asserted that:

(i) the Applicant had no legitimate expectation that she would be granted Discretionary Leave because she had not accrued 6 years' continuous leave in this capacity;

(ii) the Respondent rationally concluded that the Applicant's circumstances had significantly changed since the grant of Discretionary Leave in 2010;

(iii)the interpretation placed on the words "significantly changed" by the Applicant is untenable and is contrary to the ordinary and natural meaning of the words;

(vi) the policy "aims to use discretionary leave sparingly";

(v) the Applicant was granted leave in 2010 because she was named as a dependent on her father's successful application for leave. Her circumstances, as disclosed in her application of 11 June 2013, were significantly different because: (a) she was employed; (b) she no longer lived with her father; (c) she had formed her own family unit with the second Applicant; and, (d) she had taken out a tenancy of a property in her own name;

(vi) the evidence before the Respondent did not disclose that the Applicant received more financial support from her father in 2013 than she did in 2010. However, even if this were the case this would not undermine the conclusions reached by the Respondent.

Legal Framework

14.
On 24 June 2013 the Respondent amended her Discretionary Leave policy so as to read as follows:

“1. Introduction

…

This instruction explains the limited circumstances in which it may be appropriate to grant DL…

1.1 Key points

DL to be granted only if a case falls within the limited categories in the section below “Criteria for granting Discretionary Leave“. It is intended to be used sparingly.

DL is granted outside the Immigration Rules. It must not be granted where a person qualifies for asylum, HP, or where there is another category within the Immigration Rules under which they qualify.

From 9 July 2012 DL must not be granted for Article 8 family or private life reasons…

…

Those granted DL on or after 9 July 2012 will normally be expected to make charged applications for subsequent periods of leave or settlement and meet the criteria in place at the time of decision. However, see the section on Transitional Arrangements which apply to cases granted an initial period of Discretionary Leave before 9 July 2012.

Those granted Discretionary Leave have access to public funds and are entitled to work.

1.2 Application of this instruction in respect of children and those with children

…

In cases where it is considered appropriate to grant DL, decision makers must also consider whether to exercise discretion in relation to the length of leave to be granted. This is because a decision about duration of leave granted outside the rules is an immigration function to which section 55 applies. Decision makers must demonstrate they have had regard to the child’s best interests when considering the type and length of leave granted following a decision to grant a period of leave outside the rules

4. Duration of grants and Discretionary Leave

The duration of Discretionary Leave granted will be determined by a consideration of the individual facts of the case but leave should not normally be granted for more than 30 months (2.5 years) at a time.

Subsequent periods of leave can be granted providing the applicant continues to meet the relevant criteria.

From 9 July 2012 an applicant normally needs to complete at least 120 months, (i.e. a total of 10 years normally consisting of four 2.5 year periods of leave), before being eligible to apply for settlement. Separate arrangements exist for cases granted 3 years DL prior to 9 July 2012. See Transitional Arrangements below.

…

10. Transitional Arrangements

All decisions made on Discretionary Leave on or after 9 July 2012 will be subject to the criteria set out in this guidance.

Where the decision was taken before 9 July 2012 but an appeal is allowed on or after 9 July on Article 8 family life or private life grounds, staff must refer to IDI CH8 (Family Members transitional cases).

Individuals granted DL on a date prior to and including 8 July 2012 may apply to extend that leave when their period of DL expires. Decision makers must apply the following guidance:

Applicants granted Discretionary Leave before 9 July 2012

Those who, before 9 July 2012, have been granted leave under the DL policy in force at the time will normally continue to be dealt with under that policy through to settlement if they qualify for it (normally after accruing 6 years continuous DL). Further leave applications from those granted up to 3 years DL **before 9 July 2012** are subject to an active review.

Consideration of all further leave applications will be subject to a criminality check and the application of the criminality thresholds, including in respect of cases awaiting a decision on a further period of DL on that date. See Criminality and Exclusion section above.

Decision makers must consider whether the circumstances prevailing at the time of the original grant of leave continue at the date of the decision. If the circumstances remain the same and the criminality thresholds do not apply, a further period of 3 years DL should normally be granted. Decision makers must consider whether there are any circumstances that may warrant departure from the standard period of leave. See section 4.4 above.

If there have been significant changes or the applicant fails to meet the criminality thresholds (see criminality and exclusion section above), the application for further leave should be refused… “

Discussion and Decision

15.
The crux of the dispute between the parties is not whether the Respondent gave consideration to the Discretionary Leave policy when determining the Applicant’s application but whether she lawfully applied the transitional arrangements therein to the Applicant’s case.

16.
Being granted Discretionary Leave as opposed to leave granted pursuant to the Immigration Rules is important to the Applicant for two reasons:

(i) if she had been granted Discretionary Leave the Applicant would have remained on a six-year track to settlement. Having already completed three of those six years she would, all other things being equal, be eligible for settlement in 2016. However, having been granted limited leave to remain pursuant to the Immigration Rules she is now on a 10-year route to settlement;

(ii)if the Applicant had been granted Discretionary Leave she would be entitled to access public funds (paragraph 1.1 of the Discretionary Leave policy); however, having been granted limited leave to remain pursuant to the Immigration Rules she is not entitled to recourse to public funds, save in certain exceptional circumstances which the Respondent concludes do not apply to her.

17.

The lawfulness of the Discretionary Leave policy is not in issue. The centrepiece of Ms Chapman's case is that the Respondent has misunderstood, and therefore misapplied, the transitional arrangements found in section 10 of the Discretionary Leave policy ("section 10").

18.
Persons who apply for an extension of Discretionary Leave where such leave has previously been granted to them prior to 9 July 2012 are eligible for consideration under section 10. Normally such persons will be dealt under the Discretionary Leave policy "through to settlement…"

19.
Both parties agree that for the purposes of this application the following paragraphs of section 10 are of importance:

"Decision makers must consider whether the circumstances prevailing at the time of the original grant of leave continue at the date of decision. If the circumstances remain the same … a further period of 3 years DL should normally be granted.

If there have been significant changes…the application for further leave should be refused"

20.
Ms Chapman's primary submission is that in the context of this case it would only be permissible for the Respondent to refuse to grant an extension of Discretionary Leave if she first concluded that the Applicant's removal would no longer lead to a breach of Article 8 of the Human Rights Convention. Given that the Applicant was granted limited leave to remain under the Immigration Rules on the basis that requiring her to leave the United Kingdom would lead to such a breach, the Respondent's conclusion not to grant the Applicant Discretionary Leave must be irrational.

21.
Ms McArdle submits that such an interpretation of section 10 is not warranted when the transitional arrangements are viewed in their proper context i.e. as part of the framework of reforms introduced by the Respondent in July 2012.

22.
The approach to be taken by the courts to the meaning of policies and guidance has most recently been considered by the Supreme Court in Tesco Stores Limited v Dundee City Council [2012] UKSC 13, a planning case, in which Lord Reed JSC (with whom all other members of the Supreme Court agreed) said:

"[18]... As in other areas of administrative law, the policies which it sets out are designed to secure consistency and direction in the exercise of discretionary powers, while allowing a measure of flexibility to be retained. Those considerations point away from the view that the meaning of the plan is in principle a matter which each planning authority is entitled to determine from time to time as it pleases, within the limits of rationality. On the contrary, these considerations suggest that in principle, in this area of public administration as in others (as discussed, for example, in R (Raissi) v Secretary of State for the Home Department), policy statements should be interpreted objectively in accordance with the language used, read as always in its proper context . (emphasis added)

[19] That is not to say that such statements should be construed as if they were statutory or contractual provisions. Although a development plan has a legal status and legal effects, it is not analogous in its nature or purpose to a statute or a contract. As has often been observed, development plans are full of broad statements of policy, many of which may be mutually irreconcilable, so that in a

particular case one must give way to another. In addition, many of the provisions of development plans are framed in language whose application to a given set of facts requires the exercise of judgment. Such matters fall within the jurisdiction of planning authorities, and their exercise of their judgment can only be challenged on the ground that it is irrational or perverse (Tesco Stores Ltd v Secretary of State for the Environment and ors, per Lord Hoffmann, p 780). Nevertheless, planning authorities do not live in the world of Humpty Dumpty: they cannot make the development plan mean whatever they would like it to mean."

23.
Having considered the parties competing submissions on the issue of whether the Respondent rationally applied section 10 of the Discretionary Leave policy to the facts of the Applicant's case, I unhesitatingly prefer those made by Ms McArdle.

24.
First, in my view Ms Chapman's submission as to how the phrase "significant changes" should be applied in practice is inconsistent with the ordinary and natural meaning of those words. The adjective 'significant' is not apt to quantify with any precision the degree of change required in an applicant's circumstances before the Respondent can depart from the norm and refuse to grant an extension of Discretionary Leave, yet this is exactly the effect of applying the policy in the manner suggested by Ms Chapman.

25.
I reach the same conclusion when considering the phrase 'significant changes' and section 10 as a whole in the wider context.

26.
The Discretionary Leave policy covers a large range of possible scenarios in which leave may be granted to an applicant, despite that applicant not having met the requirements of the Immigration Rules. For example, Discretionary Leave may be granted where removal of an applicant would lead to a breach of Article 3 of the Human Rights Convention, where an applicant has been identified as a victim of trafficking or where it has been established that they are a refugee but are excluded from a grant of asylum for certain specified reasons. Prior to 9 July 2012 an applicant whose removal would lead to a breach of Article 8 of the Human Rights Convention would also have been granted Discretionary Leave [1] .

27.
On 9 July 2012 the Respondent introduced a package of reforms aimed at reducing the burden on the taxpayer, promoting integration and tackling abuse. The reforms were preceded by a major public consultation and they were debated at length in Parliament. After this date persons whose removal would lead to a breach of Article 8 are either granted leave pursuant to the Immigration Rules or Limited Leave Outside the Rules (LLOR), which is to be distinguished from Discretionary Leave. The reforms also made reliance on public funds by persons granted leave to remain on family or private life grounds an exception to the default position precluding such reliance.

28.
In my view, reading the transitional arrangements in section 10 of the Discretionary Leave policy in the aforementioned context supports the interpretation advocated by Ms McArdle.

29.

This is also the case if section 10 is considered in the context of co-existing instructions to caseworkers issued by the Respondent specifically in relation to applications made on private and family life grounds – such instructions being found in the document headed: “Immigration Directorate Instruction Family Migration: Chapter 8 Transitional Provisions: Family Members under Appendix FM of the Immigration Rules” .

30.
Paragraph 2.3 of these instructions provide the following guidance to caseworkers [2] :

“ **Individuals granted Discretionary Leave before 9 July 2012**

Applicants who were granted leave under the Discretionary Leave policy before 9 July 2012 will continue to be considered under the discretionary leave policy through to settlement provided they continue to qualify for leave and their circumstances have not changed ” (emphasis added)

31.
Although these instructions should not be construed as if they are a statute, it is readily apparent that paragraph 2.3 anticipates that a person applying for an extension of Discretionary Leave on private and family life grounds will be granted such an extension only in circumstances where they qualify for leave and their circumstances have not changed. This dual requirement does not fit easily with Ms Chapman’s submission that, in the context of a case in which an applicant has previously been granted Discretionary Leave because their removal would breach Article 8, the only change in that applicant’s circumstances significant enough to justify a departure from the norm of granting a further period of Discretionary Leave would be if that applicant’s removal would no longer lead to such a breach.

32.
For all the reasons I give above, I reject Ms Chapman’s submission that “a change [in a persons circumstances for the purposes of section 10 of the Discretionary Leave policy] can only be significant if it is a change capable of rendering removal from the United Kingdom lawful.” [3]

33.
Ms Chapman submits in the alternative that: (i) the Respondent determined the Applicant’s application on the basis of a misunderstanding of fact and (ii) her conclusions on this issue were irrational, irrespective of whether the policy should be read as she submits.

34.
Taking these submissions in turn. In both of her decisions the Respondent considered the application on the basis that the Applicant had been granted leave in 2010 as a dependent on her father. Ms Chapman submits this was not the case and consequently that the Respondent’s decision-making process was fundamentally flawed.

35.
Although the chronology provided by the Applicant asserts that it was in 2005 that she made the application that led to her being granted leave in 2010 I have not been provided with copies of such application, or any other evidence to support this assertion. I do, however, have before me a letter to the Respondent dated 19 April 2007 written by Duncan Lewis solicitors on behalf of the Applicant and her father. This letter focuses primarily on the Applicant’s father’s circumstances in the United Kingdom but does also refers to circumstances specific to the Applicant. The letter ends by requesting that the Respondent grant the Applicant’s father “and his dependent” (i.e. the Applicant) leave to

remain in the United Kingdom. It makes no mention of an application having previously been made in 2005.

36.
I have further been provided with an incomplete copy (8 pages) of a FLR(O) application form drawn in the Applicant's father's name, which is stamped as having been received by the Respondent on the 12 October 2007. Section 2 to this form identifies the Applicant as being a "Dependent included in" the application of her father.

37.
The Secretary of State's response to a subject access request made by the Applicant's father revealed the following file note made by the Respondent on the Applicant's father's file on 15 June 2010:

"Does the applicant meet ALL the following, as a result of delay by UKBA?

1.
Application has been outstanding for over 2 years and

2.
No decision has been received from UKBA during that time and

3.
They have built up significant private and family life as a result of the delay

Applicant has met the criteria above, applicant and dependent child granted 3 yrs DL under Paragraph 395C, until 13 June 2013."

38.
Reference to "the Applicant" in this file note is a reference to the instant Applicant's father. Although it is possible to infer from the file note that there were features of the instant Applicant's case other than her dependency on her father that led to her being granted leave to remain in 2010 – the fact that this is so is far from clear.

39.
Having viewed the Respondent's file note in the context of the terms of the application made to the Respondent, which on the evidence before me I treat as being formed by the letter and FLR(O) of 2007, I conclude that it has not been demonstrated that the Respondent misdirected herself in fact in either the decision of 8 October 2013 or that of 8 October 2014. I find that it was open to her to proceed on the factual matrix identified within those decisions.

40.
However, if I am wrong in this conclusion, and the Applicant's dependency on her father was not the sole reason for her being granted Discretionary Leave in 2010, I find that the Respondent's misdirection of fact on this issue is not a matter capable of affecting the outcome of her considerations. Even if the Applicant's dependency on her father in 2010 was not the sole reason for her being granted Discretionary Leave at that time there can be no doubt that it was a matter of great importance in the mind of the decision maker.

41.
I also reject Ms Chapman's submission that because the Applicant's dependency on her father was greater in 2013 than it was in 2010 it was irrational of the Respondent to conclude that there had been a significant change in the Applicant's circumstances.

42.
I was not drawn to any evidence to support the contention that once the Applicant had left her father's household she remained dependent on him for anything other than financial support. In such circumstances I conclude that, on the basis of the evidence available to her, the Respondent did not irrationally fail to take into account a material matter i.e. the fact that the Applicant had a greater dependency on her father in 2013 than she did in 2010.

43.
Ms Chapman's submission, that it was perverse of the Respondent not to extend the Applicant's Discretionary Leave having extended her father's leave in this capacity, is equally unattractive. The evidence before me does not demonstrate that the circumstances of the Applicant and her father are comparable and the submission must fail for this reason alone.

44.
In summary I find that the Respondent was entitled to conclude that the Applicant's circumstances have significantly changed since 2010 and that, consequently, she was entitled to refuse to grant the Applicant a further period of Discretionary Leave.

Issue (ii): Discretion under the Immigration Rules to impose/refuse to remove the NRPF condition.

Summary of the parties' submissions

45.
Ms Chapman's submissions on this issue can be summarised in the following terms: having granted the Applicants leave to remain pursuant to the Immigration Rules (i) the Respondent had a discretion as to whether to impose an NRPF condition on such leave (ii) she failed to consider the exercise of such discretion or, in the alternative (iii) if she did consider the exercise of such discretion, she failed to do so lawfully.

46.
Ms McArdle submitted in response that the Respondent had rationally considered the exercise of her discretion in line with the terms of her published policy. In any event, the facts of the Applicant's case as presented to the Respondent were not capable of leading to a conclusion that the Applicant was either destitute or that the "welfare of her child requires recourse to public funds" . The Applicant has not brought a challenge to the lawfulness of the Respondent's policy.

Legal Framework

Statute

47.
Part 1 of the Immigration Act 1971 ("the 1971 Act") is concerned with the regulation of entry into and stay in the United Kingdom. Section 1(2) provides that those not having a right of abode in the United Kingdom may live, work and settle here by permission and:

"…subject to such regulation and control of their entry into, stay in and departure from the United Kingdom as is imposed by this Act…"

48.
By section 3(1)(c) of the 1971 Act:

“Except as otherwise provided by or under this Act where a person is not a

British citizen…

…

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

…

ii) A condition requiring him to maintain and accommodate himself, and any dependants of his, without recourse to public funds….”

Immigration Rules

49.
As referred to above, on 9 July 2012 the Respondent introduced (by HC 194) a large number of new Immigration Rules, including those relating to the grant of leave on private life (paragraph 276ADE) and family life (Appendix FM) grounds. Amongst the rules introduced by HC 194 was Paragraph 276BE:

“Leave to remain on the grounds of private life in the UK

276BE. Limited leave to remain on the grounds of private life in the UK may be granted for a period not exceeding 30 months provided that the Secretary of State is satisfied that the requirements in paragraph 276ADE are met. Such leave shall be given subject to such conditions as the Secretary of State deems appropriate.”

50.
This rule was subsequently amended on 28 July 2014 by HC 532 so as to read:

“276BE(1) - Limited leave to remain on the grounds of private life in the UK may be granted for a period not exceeding 30 months provided that the Secretary of State is satisfied that the requirements in paragraph 276ADE are met, or, in respect of the requirement in paragraph 276ADE(vi) and (v), were met in the previous application which led to a grant of leave to remain under this sub-paragraph.

Such leave shall be given subject to a condition of no recourse to public funds unless the Secretary of State considers that such a person should not be subject to such a condition.”

The Respondent’s guidance

51.
The guidance relevant to the Respondent’s consideration in the instant case of whether to impose a NRPF condition on a grant of limited leave is to be found in Part 8 of the chapter on Appendix FM of the Immigration Directorate Instructions (“RPF Guidance”) which, as of May 2013, read [4] :

“Those seeking to establish their family life in the United Kingdom must do so on a basis that prevents burdens on the taxpayer. The changes to the Immigration Rules implemented on 9 July 2012 are predicated in part on safeguarding the economic well-being of the UK, which is a legitimate aim under Article 8 of the ECHR (the right to respect for private and family life) for which necessary and proportionate interference in the Article 8 rights can be justified.

Under Appendix FM, limited leave:

- Under the 5 year partner and parent routes;
- As a bereaved partner;
- As a fiancé(e) or proposed civil partner.

will be granted subject to a condition of no recourse to public funds .

In:

- All other cases in which limited leave is granted as a partner or a parent under Appendix FM;
- All cases in which leave on the grounds of private life is granted under paragraph 276BE or paragraph 276DG; and
- All cases in which limited leave is granted outside the rules on the grounds of family or private life

leave will be granted subject to a condition of no recourse to public funds, unless there are exceptional circumstances set out in the application which require access to public funds to be granted. Exceptional circumstances which require access to public funds to be granted will exist where the applicant is destitute, or where there are particularly compelling reasons relating to the welfare of a child of a parent in receipt of very low income…

…

…[t]he onus is on the applicant to evidence their destitution…

…

When an applicant who was granted access to public funds at the initial grant of leave applies for further leave to remain, they will be re-assessed and only granted further leave with access to public funds if they continue to be destitute, or where there continue to be particularly compelling reasons relating to the welfare of a child of a parent in receipt of a very low income."

52.
In January 2014 the Respondent introduced guidance identifying the circumstances in which she will remove a NRPF condition imposed on an applicant's leave; such guidance being headed: "Request for a change of conditions of leave granted on the basis of family or private life" ("2014 Guidance").

53.
The 2014 Guidance reproduces parts of the Respondent's policy of October 2013 [5] and states that a NRPF condition may be removed if:

"1. Since being granted leave to remain your financial circumstances have changed and you have become destitute or there are now particularly compelling reasons relating to the welfare of your child; or

2. You were destitute, or there were particularly compelling reasons relating to the welfare of your child, at the time of your application was being considered but you failed to provide evidence of this and you now wish to send in this evidence”

Discussion and Decision

54.
There is no dispute that the Respondent has a discretion whether or not to impose a NRPF condition on a grant a leave. The manner in which such discretion is to be exercised is informed by detailed guidance provided by the Respondent to her caseworkers – the RPF Guidance. There is a presumption that a NRPF condition will be imposed on a grant of leave made pursuant to the Immigration Rules on private or family life grounds; however, that presumption is displaced, and a NRPF condition is not imposed on a grant of leave, in circumstances where an applicant has demonstrated that they are destitute or “there are particularly compelling reasons relating to the welfare of a child of a parent in receipt of a very low income.”

55.
The covering letter to the Applicants’ application for leave, dated 11 June 2013 and headed “Application under Article 8 of the European Convention on Human Rights” , sets out, inter alia : (i) brief details of the Applicant’s history in the United Kingdom; (ii) the fact of the second Applicant’s birth and that she is no longer in contact with her father; (iii) the Applicant’s familial connections to the UK including with her father who, at that time, provided the Applicant with fortnightly financial support;(iv) that the Applicant had recently (May 2013) taken up employment as a steward; and, (v) that the Applicant is also a student.

56.
This letter initially requests that a further period of Discretionary Leave be granted to the Applicant. Thereafter, detailed reference is made to the Immigration Rules and paragraph 276BE of the Rules is cited. Immediately following this citation is a request that the Applicant be granted 30 months leave to remain on the basis that she meets the requirements of paragraph 276ADE of the Rules.

57.
No reference is made within the letter either to the potential imposition of a NRPF condition on the Applicant’s leave, or to the RPF guidance. Furthermore, no submissions were advanced in the letter to the effect that there were in existence “exceptional circumstances” which would require the Applicants to be granted access to public funds.

58.
Significantly the letter states as follows on its page eight:

“While the applicant is currently in receipt of various benefits, she has recently secured employment; she is being supported by her family members; she is working towards furthering her education; and she aims to secure stable employment to enable her to support herself and her daughter in the future. It is hence submitted that, should she be granted further leave to remain in the UK, she would not be seeking recourse to public funds for much longer and so interference with her rights that would result from her removal would not be in the interests of the economic well-being of the country.” (emphasis added)

59.

Appended to the application of 11 June 2013 was, amongst other things, a tenancy agreement in the Applicant's sole name and evidence as to her receipt of public funds in the tax years to 5 April 2013.

60.
The Applicant's solicitors wrote to the Respondent on 8 July 2013 in relation to the inability of the second Applicant to supply her biometrics, but made no reference therein to the Applicants' circumstances having materially changed since the date of the application.

61.
The Respondent's decision of 8 October 2013 to impose a NRPF condition must be viewed in the context of the evidence and information that was before her when she made such decision. It forms no part of the Applicant's case that the Respondent ought to have requested updated information from her prior to making the decision of 8 October 2013, nor in my view was there any requirement on the Respondent to have done so.

62.
Despite being legally represented there was no assertion in the application letter that the Applicant should be provided with access to public funds, neither was there any identification of the circumstances it was thought would exist for the Applicants if their continued access to public funds were to be denied. Indeed, if anything can be gleaned from the application letter it is the Applicant's belief that she would not require recourse to public funds 'for much longer' because she had taken up employment. It is to be recalled that the Respondent made her decision approximately three months after the date of the Applicant's application and it was made in the absence of any further information having been provided by the Applicant regarding her claimed need to have recourse to public funds.

63.
It is in this context that the Respondent's decision of 8 October 2013 to prohibit the Applicant's access to public funds must be viewed. Having considered the Respondent's decision through the lens of the information put before her I have no hesitation in concluding that the it is one that was rationally open to her; indeed in my view it was inevitable given the terms in which the Applicant's application was drawn.

64.
Furthermore, in light of evidence and information put before the Respondent, I do not accept that the Respondent was required to provide anything more by way of reasoning than is to be found in her decision letter of 8 October 2013.

65.
Ms Chapman also submits that the Respondent's later decision of 8 October 2014 refusing to remove the NRPF condition is unlawful on ostensibly the same basis as the October 2103 was said to be unlawful. Again, I reject this submission.

66.
In a Pre-Action Protocol (PAP) letter of 18 December 2013 the Applicants positively put the case for the first time that they ought to be provided with access to public funds. They did so initially on the basis that they should have been granted Discretionary Leave and thus, following the terms of the Discretionary Leave policy, access to public funds. This submission fails as a consequence of my conclusions on the first issue above.

67.

The PAP letter continues by making submissions broadly in line with those made by Ms Chapman to this Tribunal.

68.
Insofar as to the relevant factual circumstances are alluded to in the PAP, the following is stated:

“Furthermore, the imposition of a ten year ban on claiming access to public funds is manifestly excessive, especially when the imposition of such an absolute bar inevitably impacts adversely upon the welfare of our client’s two year old child…

…

Furthermore, in placing an absolute prohibition upon our client having access to public funds, the SSHD has manifestly failed to have due consideration to the fact that our client’s daughter is just two years old, and is therefore solely dependent upon our client for daily care and support.

It is accordingly extremely difficult for our client to support herself and her two year old daughter solely from working, in view of the level of dependence that her two year old child currently has upon her, which necessitates our client being physically present with her child on a continuous day to day basis.”

69.
In her decision of 8 October 2014 the Respondent gives consideration to exercise of her discretion to remove the NRPF condition imposed on the Applicant’s leave. When doing so she concludes that the Applicant has not demonstrated that she is destitute. This I find to be an entirely rational conclusion on the limited evidence and information made available to the Respondent. Her reasons for coming to this conclusion are clear and the Applicant is able to understand from them why the Respondent concluded as she did on this issue.

70.
Although the Respondent does not address as a discrete issue the question of whether the NRPF condition should be removed as a consequence of the Applicant having established the existence of particularly compelling reasons relating to the welfare of the child , it is clear from reading the decision as a whole that she did so in substance. She gave consideration to all of the features of the Applicants’ circumstances relevant to this issue, and in particular she also gave consideration to issues relating to the welfare of the second Applicant, insofar as there were any, within the context of her duties under section 55 of the 2009 Act.

71.
In any event, in my conclusion neither the Applicants’ original application nor their subsequent correspondence with the Respondent disclose any features of their circumstances capable of leading to a finding that there existed particularly compelling reasons relating to the welfare of the child such that they should be provided with access to public funds.

72.
In summary I find, irrespective of whether the decisions of 8 October 2013 and 8 October 2014 are considered separately or together, that the Applicants have not demonstrated that the Respondent failed to lawfully consider the exercise of her discretion not to impose, or to remove, the NRPF condition. Furthermore, the conclusions reached by the Respondent in this regard were entirely rational when viewed in the context the evidence and information put before her.

Issue (iii): Section 55 of the 2009 Act

Summary of the parties' submissions

73.
Ms Chapman observed that one consequence of the Applicant being granted leave to remain pursuant to the Immigration Rules, as opposed to Discretionary Leave, is that she is now on a 10-year path to settlement and will not be eligible for Indefinite Leave to Remain under this route until 14 June 2020. Had she been granted Discretionary Leave she would have been eligible for settlement in 2016.

74.
This extended period of stay in the United Kingdom without settlement must, it was submitted, have an adverse impact on the welfare of the second Applicant, a minor, who will have to live without access to public funds, and below the minimum level of subsistence, until settlement is granted.

75.
It was further asserted that the Respondent failed to have any regard to her obligations under section 55 of the 2009 Act when imposing the NRPF condition on the Applicants' leave and that, consequently, she failed in her duty to safeguard and promote the second Applicant's welfare.

76.
Ms Chapman additionally submitted that given: (i) the Applicant arrived in the United Kingdom aged seven; (ii) she and her father made an application for leave to remain in 2005; and, (iii) it was not until June 2010 that a decision was made in relation to such application, that the Respondent's entire approach to the Applicant's case is in breach of her section 55 obligation to make timely decisions in relation to children.

77.
In response Ms McArdle asserted that:

(i) the ordinary position for a person granted leave on Article 8 grounds pursuant to the Immigration Rules is that a NRPF condition is imposed on such leave. However, the Respondent has a power to permit recourse to public funds and she does so in accordance with the terms of her published policy i.e. when an applicant is destitute or where there are particularly compelling reasons to do so relating to the welfare of a child of a parent in receipt of a very low income;

(ii) the Applicants can apply for the NRPF condition to be removed at any time and it will be removed if the conditions for doing so, as set out published policy, are met;

(iii)the Tribunal should not entertain the Applicant's submission that the historic delay in considering the 2005 application led to the Respondent failing in her obligations under section 55 of the 2009 Act. Permission has not been granted in relation to such ground and it was pleaded at a late stage of the proceedings.

Legal Framework

78.
Section 55 of the Borders, Citizenship and Immigration Act 2009, provides:

"(1) The Secretary of State must make arrangements for ensuring that-

(a) the functions mentioned in subsection (2) are discharged having regard to the need to safeguard and promote the welfare of children who are in the United Kingdom…

(2) The functions referred to in subsection (1) are-

(a) any function of the Secretary of State in relation to immigration, asylum or nationality:

(b) any function conferred by or by virtue of the Immigration Acts or an immigration officer;

(c) any general customs function of the Secretary of State;

(d) any customs function conferred on a designated customs official

(3)A person exercising any of those functions must, in exercising the function, have regard to any guidance given to the person by the Secretary of State for the purpose of subsection (1)"

79.
The relevant guidance introduced by the Respondent pursuant to section 55 is headed “Every Child Matters…” and amongst other things defines “Safeguarding and promoting the welfare of children” as protecting children from maltreatment, preventing impairment of children’s health or development, ensuring that children are growing up in circumstances consistent with the provision of safe and effective care and undertaking that role so as to enable those children to have optimum life chances and to enter adulthood successfully.

80.
In ZH (Tanzania) v SSHD [2011] UKSC 4; the Supreme Court observed that as a consequence of the introduction of section 55 :

"In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration…

…any decision which is taken without having regard to the need to safeguard and promote the welfare of any children involved will not be 'in accordance with the law' for the purpose of article 8(2). Both the Secretary of State and the tribunal will therefore have to address this in their decisions."

Discussion and Decision

81.
Ms Chapman’s first submission is founded on the fact that the Applicant will not now be eligible for Indefinite Leave to Remain until 2020, whereas had she been granted Discretionary Leave she would have been eligible for settlement in 2016.

82.
In the present case both Applicants have been granted limited leave to remain in the United Kingdom for 30 months. My attention has not been drawn to any features of their circumstances that could be said to require a longer period of leave to be granted. In particular there is an absence of evidence relating to the disadvantages that it is said will be faced by the second Applicant by reason of her, and the first Applicant, having only been granted leave for 30 months under the Immigration Rules and now being on a 10-year track to settlement.

83.
In addition, contrary to the submissions made by Ms Chapman, the Applicants will not “effectively be barred from claiming any form of benefits” during the period prior to them being granted settlement. They will be permitted to access to public funds if they can demonstrate the existence of exceptional

circumstances requiring that such access to be granted – as set out in the RPF Guidance and the January 2014 policy. This is an important safeguard protecting the welfare of the second Applicant.

84.
In reality Ms Chapman's first submission under this head of her grounds is ostensibly the same argument, albeit dressed up differently, as was rejected by Kenneth Parker J in NS - whose conclusions I am in full agreement with. At [59]–[62] of his judgment Kenneth Parker J found as follows:

"[59] On this evidence I am satisfied that there were powerful reasons of public policy that led the Defendant to consider that in principle those granted LTR in the circumstances of C1 should be prohibited from having recourse to public funds. However, when the policy is considered as a whole, I do not accept Ms Weston's submission that the reasons for the policy have been elevated to the primary considerations or the paramount considerations for the decision maker who seeks to apply the policy in any particular case, with the result that the policy would prevail whatever the impact on the welfare of any child concerned. The Defendant clearly recognised that under section 55 the best interests of any child concerned in the decision is a primary consideration for the decision maker, and that, depending on the specific impact, the welfare of a child concerned would prevail over the general policy….

[60] It is clear from the case law on section 55 (…) that the best interests of a child do not in each case necessarily dictate the outcome. Such interests may yield to other demands of policy, so long as the decision maker has genuinely given weight to those interests as a primary consideration. The primary nature of the best interests of any child concerned has in this context been duly recognised by mandating the decision maker not to impose a NRPF condition where there are particularly compelling reasons relating to the welfare of a child concerned. The policy requires the welfare of a child concerned to trump the general policy in those circumstances. In carrying out that analysis the caseworker must no doubt consider how lack of access to what Ms Weston called 'passported benefits' would affect the welfare of a child concerned in the specific case …. (emphasis added)

[61] At the end of the day Ms Weston's case is in effect that under the guidance the decision maker should be mandated to remove the NRPF condition if he was satisfied that such a condition would, or might, have a significant effect on the welfare of a child. That case implicitly rests on an interpretation of section 55 that would place a very substantial fetter on the making and implementation of public policy, in this case to achieve a fair and coherent immigration regime and to promote what the Defendant believes to be a more equitable distribution of fiscal burdens in a period of relative economic austerity. Such an interpretation, in my view, was not intended by section 55 and is not supported by the case law.

[62] I readily recognise that many people are likely to believe strongly that the Secretary of State ought to have given greater weight, in the adoption of her policy, to the welfare of any child concerned by the decision, and ought to have directed caseworkers to override the general policy if there were adverse, albeit not exceptionally serious, consequences for the child or children concerned. However, in my view, that final decision as to how to weigh important and competing considerations was a political one for the elected government which ultimately chose to give significant, though far from controlling, weight to the perceived needs of a fair and coherent immigration policy and fiscal equity…"

85.

Despite Ms Chapman's assertions to the contrary I do not accept that the decision in NS is distinguishable on its facts and the submission that the Respondent has failed to abide by her section 55 duties by granting the Applicants limited leave to remain with a NRPF condition also fails, in my conclusion, for the same reasons that the submission in NS failed. The RPF Guidance itself caters for and protects the welfare of the child.

86.
Turning to a consideration of the issue of whether the Respondent has given specific consideration in the instant case to her section 55 duties.

87.
I accept Ms Chapman's submission that the decision letter of 8 October 2013 does not reflect the fact that the Respondent gave consideration at that time to her section 55 duties, either when determining the length of the period of leave that should be granted to the Applicants or when determining whether to impose a NRPF condition of their leave.

88.
Nevertheless, the Applicants have not identified any features of their circumstances that could be said to require a consideration of whether to grant a period of leave than longer that specified in the Rules. An Applicant who wishes to persuade the Secretary of State to grant leave for a longer period longer than that provided for in the Rules has to do more than simply point to the fact that she is, or has, a child.

89.
Furthermore, although it was submitted on behalf of the Applicants that there would be an adverse impact on the second Applicant's welfare if access to public funds were not granted, the evidential foundation for this submission is not even close to having been made out on the evidence put before the Respondent.

90.
Given what I say above, even if the Respondent's decision of 8 October 2013 was unlawful for the failure of the Respondent to consider therein her duties under section 55 of the 2009 Act, I would not grant the relief sought by the Applicants in relation to such decision.

91.
This conclusion is further reinforced by the fact that the Respondent has now given detailed consideration to her section 55 duties in the decision of 8 October 2014. Ms Chapman submits that I should not take account of this decision because it is no more than an ex-post facto rationalisation by the Respondent of her "previously unlawful and irrational decision". I do not accept this to be so. It is quite clear to me that the Respondent has given fresh thought to this case in October 2014 on the basis of the evidence she had before her.

92.
In the absence of any evidence or information which called for further consideration by the Respondent of the best interests of the second Applicant I find that the considerations and reasoning on this issue set out in the 8 October 2014 decision are sufficient to discharge the Respondent's duties under section 55.

93.

As to the final submission made by Ms Chapman under this head i.e. that the five year delay by the Respondent in considering the application made in 2005 was in breach of her section 55 obligation to make a timely decision – I find this to be entirely misconceived.

94.
First, even if Ms Chapman is correct in her submission, she has not established the existence of a nexus between the aforementioned breach and the decisions under challenge in the instant proceedings.

95.
Second, in any event, the Respondent took into account the fact of the delay when granting the Applicant, and her father, Discretionary Leave in 2010. If the granting of such leave was not thought to be adequate recompense for the delay, then proceedings in this regard should have been brought at that time. Any attempt to re-open this issue now is clearly brought significantly out of time and it is not appropriate in such circumstances for me to entertain it.

96.
For all the reasons I have given above I conclude that the Respondent has discharged her section 55 duties to the Applicants, and I reject Ms Chapman's submissions to the contrary.

Issue (iv): Article 8 of the Human Rights Convention

Summary of the parties' submissions

97.
Ms Chapman asserts that the imposition of the NRPF condition on the Applicants' leave disproportionately interferes with the second Applicant's family and private life in the United Kingdom and is therefore in breach of Article 8 ECHR.

98.
It is further said that the foreseeable consequence of the imposition of the NRPF condition is that the Applicants will be required to live on less than the minimum level of income considered adequate for a family to live on in the United Kingdom and that this interference is based on an arbitrary application of policy and without any consideration of the individual circumstances of the Applicant's case. It is thus a disproportionate interference with the Applicants' Article 8 rights.

99.
In response to these submissions Ms McArdle largely relied upon the same points she made in response to the previous ground. She reminded the Tribunal that the Applicant has permission to work and can at any time apply for the NRPF condition to be removed. If such an application is made the Respondent will consider it in line with the published criteria, which have not been challenged as being unlawful. The imposition of an NRPF condition on those granted leave on Article 8 grounds pursuant to the Immigration Rules is legitimate in this "time of straightened economic circumstances"

Discussion and Decision

100.
The Applicants have not established on the available evidence that the imposition of the NRPF condition has led, or would lead to, an interference with any of their protected Article 8 rights.

101.

The Applicants remain living together as a family unit and it is not contended that this situation will change as a consequence of the imposition of the NRPF condition on their leave. In such circumstances there can be no interference caused to their family life with each other.

102.
As to the assertion that the Applicants will find themselves required to live on less than the minimum level of income considered adequate for a family entitled to be in the United Kingdom, this is entirely speculative and has no foundation in the evidence before me. Insofar as the evidence does throw light on such matters it discloses that the Applicants receive monies fortnightly from the first Applicant's father and that the first Applicant is lawfully in employment (although Ms Chapman asserted that the Applicant is no longer in employment this is not evidenced before me). In any event the Applicants also have the safeguard of being able to apply for the NRPF condition to be removed should they meet the requirements laid down in the January 2014 policy and RPF Guidance. If such an application is made the Respondent will consider the Applicants particular circumstances against the published criteria.

103.
If I am wrong, and the Applicants can establish on the facts that the imposition of the NRPF condition has led, or will foreseeably lead, to an interference with their protected Article 8 rights I, nevertheless, conclude that such interference is justified and proportionate given (i) the powerful public policy reasons for prohibiting recourse to public funds for those granted leave to remain on family or private life grounds [6] (ii) the fact that the Applicant has been given permission to work and (iii) the safeguards provided for in the January 2014 policy and the RPF Guidance.

Conclusion

104.
For all the reasons I give above I reject the Applicants' claims that the Respondent has (i) acted irrationally in failing to grant Discretionary Leave to remain (ii) failed to lawfully consider the exercise of her discretion under the Immigration Rules when imposing the NRPF condition (iii) failed to comply with her duties under section 55 of the Borders, Citizenship and Immigration Act 2009 or (iv) breached their protected rights under Article 8 of the Human Rights Convention.

105.
Consequently, this application for Judicial Review is dismissed.

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[1] See for example the judg ment of Kenneth Parker J at [55] in R (NS & Ors) v SSHD [2014] EWHC 1971 (Admin) - summarising and accepting the evidence of Ms Kajita , a Grade 7 officer in the Family Migration Policy Team in the Immigration and Border Policy Directorate of the Home Office overseeing " policy in respect of immigration cases engaging the ECHR Article 8" .

[2] As introduced in April 2013 – paragraph 3.3.1 of the November 2014 version of the policy being in identical terms

[3] Paragraph 61 of the Applicants skeleton argument of the 24 October 2014

[4] It was agreed by the parties that the relevant version of the RPF G uidance for the purposes of the instant application was introduced in May 2013; it having been subsequently amended on the numerous occasions inc l uding on 8 October 2013 .

[5] Which is not materially different to the May 2013 NRPF guidance

[6] As to which see the decision in NS at [54] - [59]