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	ICOS No: **24/99328/01; and 25/04132**
Judgment: approved by the court for handing down (subject to editorial corrections)*	*Delivered:* **23/01/2026**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

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KING'S BENCH DIVISION
(JUDICIAL REVIEW)

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IN THE MATTER OF APPLICATIONS BY 'JR330' AND 'JR331'
FOR LEAVE TO APPLY FOR JUDICIAL REVIEW

AND IN THE MATTER OF DECISIONS OF THE
SECRETARY OF STATE FOR THE HOME DEPARTMENT

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John Larkin KC and Andrew Beech (instructed by Phoenix Law) for the applicants
Tony McGleenan KC and Philip McAteer (instructed by the Departmental Solicitor's Office) for the proposed respondent

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SCOFFIELD J

Introduction

[1] This ruling relates to two applications for leave to apply for judicial review in cases which raise the same, or very similar, issues. In each case, the applicant seeks to challenge a decision of the Secretary of State for the Home Department (SSHD) that their asylum claim is inadmissible under sections 80B and 80C of the Nationality, Immigration and Asylum Act 2002, as amended ("the 2002 Act"). The basic grounds of challenge relate to delay in taking the decisions, which is alleged to be unfair but also in breach of the applicants' rights under Article 2 of the Windsor Framework (WF). In addition, there is a more substantive claim, separate from the procedural challenge, by which the applicants contend that the respondent erred in determining that their removal to Bulgaria would not breach their rights under article 3 ECHR.

[2] Mr Larkin KC appeared for each applicant with Mr Beech, of counsel; and Mr McGleenan KC appeared for the respondent in each case, along with Mr McAteer of counsel. I am grateful to all counsel for their helpful written and oral submissions.

[3] The grounds pursued by the applicants have been amended on a number of occasions (without the need of the leave of the court, given that these amendments were made in advance of any determination as to whether leave to apply for judicial review should be granted). However, one leave hearing had to be adjourned as a result of further developments in the case being made by the applicants. After the leave hearing, supplementary submissions were made by the respondent, further replying submissions were made by the applicants and further affidavits and amended Order 53 statements were also filed and served. The final versions of the Order 53 statements for present purposes are dated 26 August 2025. Sometime after that, the proposed respondent indicated that she did not wish to augment her submissions further to the provision of the applicants' further materials.

Factual background

[4] For present purposes it is unnecessary to set out in very great detail the factual background to each case. In accordance with the usual practice, since each applicant has claimed asylum in this jurisdiction, they have each been granted anonymity and are known in these proceedings as 'JR330' and 'JR331' respectively. That is because the fact of having claimed asylum here may itself give rise to some difficulty for them if it were to become public knowledge and in due course they were to return to their country of origin (although, for reasons explained further below, this appears unlikely).

[5] JR330 brought the first case (ICOS reference 24/99328) and challenges a decision made on 11 December 2024. JR331 brought the second case (ICOS reference 25/04132) and challenges a decision made on 23 January 2025. Each is a Syrian asylum seeker.

JR330

[6] JR330 fled Syria in September 2021 with the assistance of people smugglers. He travelled through Turkey and Greece before entering Bulgaria in December 2021. He says he was forced to claim asylum there and was granted subsidiary protection status. His evidence is that he was mistreated by the Bulgarian authorities and fled, travelling again through Greece, Germany and then the Republic of Ireland before arriving in the United Kingdom (UK) and claiming asylum on 31 July 2023.

[7] On 28 November 2023 (three months and 28 days after he claimed asylum in the UK) JR330 was served with a Notice of Intent by the Home Office indicating that consideration was being given to declaring his claim as inadmissible as he had been present in, or had a connection to, Bulgaria, Germany and Ireland.

[8] On 21 March 2024 the Home Office indicated that Bulgaria had agreed, on 12 February 2024, to accept the applicant's relocation. The Home Office indicated that agreement for JR330's admission to Bulgaria had been obtained within six months

and indicated that his case would not be admitted to the UK system at this time. Rather, it would be seeking to progress his removal to Bulgaria in due course. The applicant says that Bulgaria agreed to his relocation there some six months and 12 days after his asylum claim.

[9] Despite repeated correspondence, the Home Office refused to admit JR330's claim, nor to provide an inadmissibility decision. He therefore commenced proceedings for judicial review and, on 11 December 2024, the SSHD formally determined that his asylum claim was inadmissible.

JR331

[10] JR331 fled Syria sometime in 2022, again with the assistance of people smugglers. He also travelled through Turkey and Greece before entering Bulgaria in December 2022. He says he was forced to claim asylum, and he too was granted subsidiary protection status there.

[11] JR331 claims that he was "not supported" by the Bulgarian authorities and fled, travelling through Greece, Spain and the Republic of Ireland before arriving in the UK and claiming asylum on 7 July 2023. On 24 August 2023, he was served with a Notice of Intent in similar terms to that discussed above in relation to JR330's case, this time relying upon the fact that JR331 had been present in, or had a connection to, Bulgaria, Spain or Ireland.

[12] On 27 February 2024 the Home Office indicated that Bulgaria had agreed, on 30 October 2023, to accept JR331's relocation. Again, the Home Office contended that this was within six months and indicated that it would not be admitting JR331's case to the UK system. Rather, it would be seeking to progress removal to Bulgaria. Again, in the absence of a formal decision, JR331 issued judicial review proceedings challenging the ongoing delay. On 23 January 2025 the Home Office formally determined that JR331's asylum claim was inadmissible.

The challenged decisions

[13] In each case, the inadmissibility decision was said to have been made on the basis of section 80B and 80C of the 2002 Act; and the related humanitarian protection claims, made on the same facts, were considered inadmissible on the basis of para 327F of the Immigration Rules. The decision on the safety of the country of removal was made on the basis of section 80B(4) of the 2002 Act in conjunction with Part 2 of Schedule 3 to the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 ("the 2004 Act"). The human rights claims were assessed by the proposed respondent as clearly unfounded and they were certified accordingly, removing the usual appeal rights.

[14] In each case the relevant connection was to Bulgaria, which was considered a safe third country in which each applicant had been afforded protection status.

Bulgaria is one of the countries listed in Part 2 of Schedule 3 to the 2004 Act in respect of which there is an irrebuttable statutory presumption that each applicant's "life and liberty are not threatened" for reasons relevant under the Refugee Convention and from which they would not be removed to another country otherwise than in accordance with that Convention; and a rebuttable statutory presumption that a person can be removed there without their rights under article 3 ECHR being infringed.

[15] The effect of the certification was that the applicants could not appeal to the First-Tier Tribunal by virtue of section 80B(3) of the 2002 Act and para 327 of the Immigration Rules.

The grounds of challenge

[16] As noted above, the grounds of challenge advanced on behalf of the applicants have been amended on a number of occasions in these cases. The grounds pursued have been helpfully summarised in the applicants' skeleton argument into three main points. These are referred to as 'the Framework Ground', 'the Procedural Grounds' and 'the Safety of Bulgaria Ground' respectively.

[17] The Framework Ground alleges that the decisions to declare the applicants' asylum claims as inadmissible under Part 4A of the 2002 Act are unlawful and incompatible with the applicants' rights under Article 2 WF (and section 7A of the European Union (Withdrawal) Act 2018) in that the current statutory regime diminishes the applicants' previous rights as a result of the UK's exit from the EU. Allied to this is a claim that the decisions breach the applicants' rights under articles 3, 6 and 8 ECHR. This ground embraces a challenge to the WF-compatibility of Part 4A of the 2002 Act, as amended by the Illegal Migration Act 2023 ("the 2023 Act").

[18] The Procedural Grounds consist of more traditional public law grounds, including breach of legitimate expectation and procedural unfairness. The Safety of Bulgaria Ground essentially contends that, in the circumstances of these cases and generally, Bulgaria is not a safe country for removal, such that the applicants' rights under article 3 ECHR will be breached by removal there and this would be contrary to para 3(1A) of Schedule 3 to the 2004 Act (ie the applicants can rebut the presumption that their article 3 rights will not be breached).

Summary of the proposed respondent's position

[18] Mr McGleenan for the SSHD submitted that none of the proposed grounds were arguable with a realistic prospect of success and that, in relation to the Safety of Bulgaria Ground, the issues raised were already under consideration in related litigation in England and Wales, such that there was no utility in the same issues being litigated in this jurisdiction. As to the Framework Ground, the proposed respondent firstly observed that the cases relied upon by the applicants (see below) were each under appeal and it was not accepted that they were correctly decided on

the aspects relied upon by the applicant. (It was recognised, however, that, given the doctrine of precedent and threshold for the grant of leave, this did not form a basis upon which leave should be refused at the present time.) Nonetheless, the SSHD argued that the applicants were in no worse position than had the Dublin III Regulation remained in force since, in the circumstances of their cases, they would not be treated any differently in that event. As to the delay grounds more generally, the proposed respondent denied that there had been unreasonable delay and contended that there was no basis to suppose that the Bulgarian authorities had changed their position on the return of the applicants to that jurisdiction (as the applicants had suggested may be the case).

The Framework Ground

[19] The applicants rely upon the test for WF-compatibility set out in *Re SPUC's Application* [2023] NICA 35, which was essentially approved in *Re Dillon's Application* [2024] NICA 59. They contend that asylum seekers are within the ambit of the relevant portion of the Belfast Agreement and the reference therein to "civil rights" (relying on *Re Angesom's Application* [2023] NIKB 102, at paras [107]-[108]; and *Re NIHRC and JR295's Applications* [2024] NIKB 35, at para [68]). The respondent contests those propositions but was prepared to concede that this was arguable in the present cases in light of the authorities mentioned above and pending further consideration of the matter upon appeal.

[20] The applicants further relied upon the legal position in Northern Ireland in advance of 31 December 2020 and the regime in place at that time which was underpinned by EU law in the form of Regulation (EU) No 604/2013 (commonly known as "the Dublin III Regulation") and the Charter of Fundamental Rights of the European Union ("the Charter"). That underpinning having been removed, the applicants contend that their rights have been diminished by the 2002 Act, in particular as amended by the 2023 Act, in a way which would not (or could not lawfully) have occurred if the United Kingdom had remained within the EU.

[21] The applicants accepted, having been awarded subsidiary protection in Bulgaria, that they would have been beneficiaries of protection for the purposes of Dublin III and, by virtue of Article 25 of Council Directive 2005/85/EC ("the Procedures Directive"), the SSHD would have been entitled before 31 December 2020 to determine that the UK was not required to examine whether they qualified as a refugee and to declare their claims inadmissible. In substance, therefore, the applicants accepted that there was no diminution of their rights by virtue of the SSHD considering the issue of inadmissibility. The focus of the challenge was on the procedural issue discussed below. (For her part, the proposed respondent considers that this concession was made on a mistaken basis but was nonetheless a correct concession for other reasons explained in the *MS* case (discussed below), at paras 46-54. In short, where the applicant had "sufficient protection" from a third country, the member state in a situation such as the UK's was able to declare an asylum claim inadmissible; and it could not be the case that it was entitled to do so where a third

country had granted such protection but not where another member state had done so in the form of granting subsidiary protection).

[22] In particular, the applicants contended that their *procedural* protections guaranteed by Articles 23 and 29 of the Dublin III Regulation have been diminished, in terms of the following timescales:

(a) Under Article 23(2), a request to another member state to take back an individual should (in a case such as this) have been made within three months of the date on which the applicant's asylum application was lodged.

(b) Under Article 29(1), the transfer of an applicant had to be carried out as soon as practically possible and at the latest within six months of acceptance of the request by another Member State to take charge or to take back the person concerned. Where the transfer did not take place within that six-month time limit, the Member State responsible (here argued to be Bulgaria) was relieved of its obligations to take charge or take back and responsibility for the person was transferred to the requesting Member State.

[23] In JR330's case his asylum claim was made on 31 July 2023. The request to Bulgaria to take him back was made on 16 January 2024 (outside three months of his claim). Bulgaria agreed to that request on 12 February 2024 (within six months of his claim). However, it is correct that the actual transfer did not take place within six months of that (ie by 12 August 2024). In JR331's case his asylum claim was made on 7 July 2023. The request to Bulgaria to take him back was made on 4 September 2023 (within three months of his claim). Bulgaria agreed to that request on 30 October 2023 (within six months of his claim). It is again correct that the transfer did not take place within six months of that (ie by 30 April 2023).

[24] The applicants assert that, if the Dublin III Regulation applied, responsibility would have transferred back to the UK. They further submit that the Home Office misunderstood the significance of the six-month period, assuming this to require *agreement* from the third country to a transfer within six months of their claims, rather than the transfer to be effected within six months of that agreement. On these facts, if the Dublin III Regulation applied to the applicants, there would be a breach of the requirements of Articles 23(2) and 29(1) in the first case; and a breach of the requirements of Article 29(1) in the second. The key issue on this ground became whether these provisions would have been applicable to the applicants even if the Dublin III Regulation was still in force.

[25] The applicants contend that these provisions applied to them as each being "another person as referred to in Article 18(1)(c) or (d)" for the purposes of Article 29(1) so that they could have availed of this protection. If that is correct, if they were not removed to Bulgaria within six months of its agreement to accept them, responsibility for processing their claims would have transferred automatically to the UK. In short, the UK intention to remove to the safe third country would have

been 'timed out' and the applicants would have been entitled to have their claims considered in the UK. The applicants further rely on Articles 41 and 47 of the Charter, the right to have their affairs handled impartially, fairly and within a reasonable time and the right to an effective remedy.

[26] The proposed respondent fundamentally took issue with the suggestion that the applicants fell within the ambit of the procedural rights in the Dublin III Regulation upon which they rely. Initially, it was submitted that the applicants had not explained in any detail how it was said that these provisions would have applied to them. In the proposed respondent's submission Article 18(1)(d) relates to a person who had their application for international protection rejected by a member state and was then subsequently present in another member state. In this case, the applicants accept, they were in fact granted protection by Bulgaria. The proposed respondent therefore submitted that it was not arguable that they met the definition of persons whose applications had been rejected. In addition, Article 19 transferred obligations to a member state if they issued a residence document to an applicant, which it was submitted had no relevance to these applicants, and provided for circumstances in which the obligations under Article 18(1)(c) and (d) ceased. It was further submitted that the applicants did not fall within the remit of Article 18(1)(c), which relates to persons who withdrew their protection claim in the original member state. In summary, the respondent contended that there would be no conceivable diminution of rights in this case because the Dublin III Regulation would never have applied to the applicants in their circumstances. The category of persons listed in Article 18(1)(a)-(d) did not include those who had already been granted protection.

[27] As the arguments on this issue later became more focused, it became clear that the applicants relied solely on Article 18(1)(d) as the gateway to their enjoyment of the rights contained in the Dublin III Regulation (if it were still to apply). Reliance on Article 19 was not pursued.

[28] The proposed respondent drew the court's attention to, and strongly relied upon, the case of *MS and Others v Minister for Justice and Equality* (Case C-616/19), at paras 27-54, as authority that, in a situation such as the present where subsidiary protection had been granted by another member state, the asylum claim should be declared inadmissible and the take-back procedure in the Dublin III Regulation did not apply.

[29] Having considered the arguments, I have concluded that the proposed respondent's interpretation of Article 18 of the Dublin III Regulation is plainly correct, and supported by the authority mentioned above, for the reasons summarised below.

[30] Article 18(1) provides as follows:

"The Member State responsible under this Regulation shall be obliged to:

(a) take charge, under the conditions laid down in Articles 21, 22 and 29, of an applicant who has lodged an application in a different Member State;

(b) take back, under the conditions laid down in Articles 23, 24, 25 and 29, an applicant whose application is under examination and who made an application in another Member State or who is on the territory of another Member State without a residence document;

(c) take back, under the conditions laid down in Articles 23, 24, 25 and 29, a third-country national or a stateless person who has withdrawn the application under examination and made an application in another Member State or who is on the territory of another Member State without a residence document;

(d) take back, under the conditions laid down in Articles 23, 24, 25 and 29, a third-country national or a stateless person whose application has been rejected and who made an application in another Member State or who is on the territory of another Member State without a residence document."

[31] On the applicants' case, the phrase "or who is on the territory of another Member State without a residence document" can and should be read independently, so that it is sufficient to fall within the remit of Article 18(1)(c) or (d) if an applicant is "on the territory of another Member State without a residence document." However, I agree with the proposed respondent's submission that this ignores the full text of both provisions and deprives of effect the important word "and" in the middle of each sub-paragraph. In each case, two conditions must be met. Article 18(1)(c) applies where the asylum application in the first country has been withdrawn and *either* an application has been made in another member state *or* the applicant is residing in another member state without a residence document. Similarly, Article 18(1)(d) applies where an application has been rejected in the first country and *either* (again) an application has been made in another member state *or* the applicant is residing in another member state without a residence document. (The same may also be said of Article 18(1)(b)). It applies where the individual has made an application for international protection in the first country, which is under examination but not determined, and they go to another

member state and make a further application there *or* are there without a residence document.)

[32] Put another way, in each case a member state where an asylum seeker made an application or was residing without a resident permit could (pursuant to and in accordance with the procedure in the Regulation) be sent back to another member state where they had previously applied for international protection in cases where the first country was processing their application, had rejected their application or it had been withdrawn. These provisions do not speak to a situation where the application was determined and granted in the first country by way of the conferral of asylum or subsidiary protection. (Nor does Article 18(1)(a) apply in such a case, where the first country could be requested to take charge of the applicant for the purposes of *examining* their application under Article 21.) In those cases, the application in the second country could simply be declared inadmissible.

[33] The above interpretation gives effect to the conjunctive requirements which must be met in each sub-paragraph. The interpretation contended for by the applicants would, in my view, undermine the logical and clear purpose and effect of these provisions. On that interpretation, the repetition of the phrase ("or who is on the territory of another Member State without a residence document") would be redundant, since this would only have to have been used in one sub-paragraph (or, indeed, more sensibly, in its own discrete sub-paragraph if it was to act as a freestanding gateway).

[34] The proposed respondent is right to note that the applicants cite no authority for their interpretation; and I consider that the proposed respondent's interpretation is consistent with the purpose and effect of the provisions as discussed in the *MS* case. In that case, subsidiary protection had been granted in the first country (Italy) and Irish law provided that an application for international protection in such circumstances was inadmissible. (The question for the court was whether the grant of subsidiary protection sufficed for this purpose, particularly in light of Ireland not having adopted the Recast Procedures Directive.) Recital (22) of the Dublin III Regulation makes clear that a country such as the UK in this instance need not assess the substance of an asylum claim where a first country of asylum has granted the applicant refugee status "or otherwise sufficient protection and the applicant will be readmitted to this country." The CJEU concluded that, where such a state was entitled to declare a fresh application inadmissible because of the adequacy of protection in a third country (ie a non-member state of the EU), it must also be able to do so where subsidiary protection had been granted in another member state: see paras 47-48 of the decision in *MS*. This was not as a result of the application of the Dublin III procedures but on the basis of the principle of mutual trust between member states where the applicant would be readmitted to the first country which had granted protection.

[35] The applicants' riposte was that the proposed respondent's interpretation of Article 18 creates gaps in protection in terms of refugee administration since, if the

applicants were not regarded as falling within Article 18(1), then no (current) member state of the EU, nor the UK (when it was a member state), could make a 'take back' request under Articles 23 or 24 in such circumstances. However, that appears to me to be the basis upon which the decision of the court in *MS* proceeds. The claim in the second country may be declared inadmissible where the protection already granted is sufficient and the country which granted it will readmit the applicant. The issue of readmission is a factual question, governed in those circumstances (at least while the UK was a member state of the EU) largely by the principle of mutual trust. The important point is that, where the first country is prepared to readmit an individual to whom it has granted international protection, this is *not* as a result of a 'take back' request and obligation under the Dublin III Regulation, which is a provision of EU law designed to regulate the *examination* of applications for international protection. In this case, the applications have already been examined and protection granted, with the consequence that the provisions for determining responsibility for examining them (and ensuring that that happens expeditiously) no longer have any purchase.

[36] The applicants further submitted that their applications *were* rejected by Bulgaria, since they were seeking asylum or refugee status but were only granted subsidiary protection. However, that was precisely the point addressed in the *MS* case, where subsidiary protection was considered to be adequate protection for this purpose. (I note also that, for the purposes of the Dublin III Regulation, an application for international protection means such as application as defined in Article 2(h) of Directive 2011/95/EU: see Article 2(b). In turn, the 2011 Directive defines such an application as including an application for refugee status or subsidiary protection status.)

[37] In the present case, the applicants did not withdraw their protection claims in Bulgaria and nor were those claims rejected by Bulgaria. Rather, they were granted. In those circumstances, neither Article 18(1)(c) or (d) applies to them; and they could not have availed of the rights in Articles 23 and 29 upon which they now rely (and which they claim have been diminished). When the UK was a member of the EU it would not have required to, nor been entitled to, request take-back under those provisions. I do not consider that the contrary construction contended for by the applicants is arguable. That is enough to dispose of the Framework Ground.

[38] I do not consider that the Charter grounds added anything of substance to the other aspects of the applicant's pleaded case. As the Court of Appeal held in *Dillon* (at para [137]) the Charter cannot be relied upon in a freestanding manner to find a claim of breach of article 2 WF. It must operate through and in the context of concrete provisions of EU law which, for the reasons given above, do not avail the applicants in this particular case.

Breach of Convention rights

[39] The applicants also challenge the 2022 Act (as amended) as incompatible with their rights under articles 3, 6 and 8 of the Convention. On this basis they submit that the SSHD could and should have exercised the discretions under sections 80B(1) and 80B(7) – either not to declare their claims inadmissible (even though she could) or to nonetheless consider their inadmissible claims in the exceptional circumstances – so as to prevent a breach of their rights. Alternatively, they submit that this should give rise to declaration of incompatibility under section 4 of the Human Rights Act 1998 (HRA) in respect of the relevant provisions.

[40] The respondent correctly objects that much of this aspect of the applicant's claim is advanced without elaboration, nor was it pursued with any vigour in the oral submissions. The article 3 aspect of the claim is dealt with below in the context of the Safety of Bulgaria Ground. The articles 6 and 8 aspects of the claim, in my view, add nothing to the complaint of procedural unfairness (which is really a complaint of unreasonable delay), also dealt with below.

[41] The most fully developed aspect of this claim is the assertion that the delay gave rise to an unlawful and disproportionate breach of the applicant's rights under article 8 ECHR, relying on the decision of Colton J in *JR247's Application* [2024] NIKB 72 (especially at para [84]). Again, I return to that aspect of the claim below.

The Procedural Grounds

[41] The crux of the applicants' case on the procedural grounds is that there has been a disproportionate, unreasonable and procedurally unfair delay on the part of the Home Office in considering the (in)admissibility of their claims. The delays in receiving the decisions were over 16 months and 18 months respectively after lodging their asylum claims. Neither applicant has been served with any removal directions (although that is, of course, in part now because of these proceedings).

[42] In addition to a procedural unfairness claim at common law, the applicants contend that the delay is in breach of the proposed respondent's guidance for caseworkers entitled 'Inadmissibility: Safe Third Country Cases' (Version 9.0, 15 August 2024) ("the Guidance"). It is convenient to deal with that aspect of the argument first.

[43] The applicants submit that the whole inadmissibility scheme is predicated on there being a "reasonable prospect of removing them in a reasonable time to a safe third country" (quoting from page 8 of the Guidance). The Guidance goes on to say that it may not be appropriate to make an inadmissibility decision if there is evidence before making the decision that the Home Office is not likely to be able to remove the individual within a reasonable timescale. It says there are "no rigid timescales" within which third countries must agree to admit a person before removal but – in an excerpt relied upon strongly by the applicants – that the

inadmissibility process "must not create a lengthy 'limbo' position." The Guidance further says that "as a general guideline" it is expected in most cases that the safe third country will agree to admit a person within six months of the claim being recorded, enabling removal soon after.

[44] Para 345D of the Immigration Rules permits the applicant's claim to be admitted for consideration in the UK if the SSHD believes, their application having been treated as inadmissible, that removal within a reasonable period of time is unlikely. In this respect the applicants rely upon the lack of evidence that the SSHD was seeking to progress removal after the agreements with Bulgaria (of 12 February 2024 and 26 October 2023 respectively).

[45] I do not consider the applicants' claim founded on legitimate expectation to have a realistic prospect of success when one carefully considers the wording used in the Home Office guidance document relied upon. The Guidance is clearly couched in non-prescriptive terms referring to removal "within a *reasonable* period", which is discussed further below. The Guidance itself expressly recognises that "what is reasonable will depend upon the particular facts of each case, including any matters which may delay removal, such as outstanding legal proceedings, late claims and uncooperative behaviour." A key provision however, upon which the proposed respondent heavily relied, is as follows:

> "A person who has been granted protection in a third country and who can continue to access that protection, and who has or who can obtain a travel document for return to there will be expected to do so. They will not be in 'limbo', unable to either further pursue their asylum claim in UK or seek protection elsewhere, and so the reasonable period before removal is likely to be significantly longer than in other cases."

[46] In my view, this clear statement within the Guidance scotches any claim (at least as a matter of legitimate expectation engendered by the terms of the Guidance) that the applicants have wrongly been kept in limbo. The Guidance itself states that those who have been granted protection in a safe third country – such as the applicants have in Bulgaria – are not considered to be in limbo for this purpose. In short, they can return to the country in which they have already been granted protection. Further, however, the flexibility inherent within the wording of the Guidance is extended in a case such as the present in light of the recognition that, in circumstances such as those of the applicants, what is reasonable in terms of removal "is likely to be *significantly longer* than in other cases" [italicised emphasis added]. In the circumstances, the applicants' somewhat mechanistic reliance on references elsewhere to target timescales of six months is misplaced.

[47] The delay claim really resolves to a complaint (at common law) that it has taken too long for the decisions to be made, or to be implemented, in these cases.

[48] As to the time taken to make the decisions, it seems to me that any such complaint is now academic, save that damages could be sought, to the extent that the delay is claimed to constitute a breach of Convention rights, pursuant to the HRA. Such a breach is unlikely in my view to require an award of damages in order to give just satisfaction but, in any event, this could be pursued by way of a normal civil claim. It is important to recall that these cases commenced as a means of seeking to force the Home Office to issue decisions, which then followed. Indeed, in the course of exchanges, Mr Larkin accepted that the issue of delay was to be looked at from the date of the decision, although (in his submission) taking into account any delay prior to that.

[49] The next aspect of the delay complaint is that, in view of the time taken to make the inadmissibility decisions (or to implement them since), the decisions could not properly be taken (or should now be superseded by a decision to admit the applicants' claims), as the agreements to remove had become 'stale.'

[50] The proposed respondent rejected this suggestion. Her submission was that there was no reason to suppose that the position of Bulgaria had changed, much less was there any evidence to that effect. Indeed, the applicants' concern in this regard amounted to mere speculation; and, in fact, after the leave hearing the proposed respondent's position in this regard was confirmed (see below). However, I accept the proposed respondent's submission that there was nothing in these cases which required the Home Office to consider that there were exceptional circumstances such that the claims ought not to be declared inadmissible or, alternatively, that these inadmissible claims ought nonetheless to have been processed within the UK system. As noted in the Guidance, the context was at all material times that Bulgaria had granted protection to each applicant.

[51] Further to the leave hearing, the Home Office made enquiries with the Bulgarian authorities in respect of the applicants. Correspondence from those authorities was received in July 2025 which advised that new readmission requests should be made in respect of each applicant. Fresh such requests were made and the Bulgarian authorities (the Chief Directorate Border Police within the Ministry of the Interior) subsequently confirmed the status of both applicants as having been granted subsidiary protection and confirmed that they were ready to take both applicants back into the territory of Bulgaria. This was confirmed to be pursuant to the Agreement between the Government of the United Kingdom and the Government of the Republic of Bulgaria on the Readmission of Persons agreed at Sofia on 21 February 2003 and coming into force on 6 June 2004 (laid before Parliament in Command Paper Cm 6279). The position therefore remained that the Bulgarian authorities were content to take the applicants back.

[52] Having regard to Colton J's decision in *Re JR247's Application*, the applicants accept that what amounts to a 'reasonable time' for an immigration decision is fact specific and that it is not for the courts to be prescriptive. However, they submit

that, on the facts of these cases, there is (and has been) no reasonable prospect of removing them within a reasonable time. They rely upon the timescales indicated in the Guidance and the previous timescales under the Dublin III Regulation, namely a decision within six months of the claim being recorded and removal soon after (or at least within six months thereafter).

[53] Having conducted a helpful review of relevant authorities, Colton J gave the following guidance at para [100] of his decision in *JR247*:

> (i) In certain circumstances delays in making decisions may give rise to a breach of an asylum seeker's article 8 rights.
>
> (ii) The court cannot be prescriptive about what constitutes an unlawful period of delay.
>
> (iii) An important factor will be whether an actual decision has been made. If a decision has been made, then it would only be in exceptional circumstances that a breach of article 8 will be established. If a decision is pending then the court will have to make an individual assessment of the period of delay, the reasons for any delay and whether a decision is imminent. Any delay must be so excessive as to be regarded as manifestly unreasonable. In a case such as *BAC* it was easy for the court to determine that the relevant delay was inexcusable.
>
> (iv) In order to establish a breach of article 8 in any case, the applicant will need to point to specific evidence-based factors which demonstrate an interference with article 8 rights, above and beyond what one would expect of any person awaiting such an important decision. Any impact on private or family life must be serious. This could include factors pointing to serious deprivation such as homelessness, lack of medical attention required in respect of significant health issues, impact on the welfare of children and significant interference with family or personal relationships."

[54] (I pause to note that, although determined after the leave hearing in this case, the Court of Appeal recently approved this guidance, with only a modest alteration: see *Re JR247's Application* [2025] NICA 46, at paras [32] and [40].)

[55] In these cases, decisions have been made. They may have taken longer than one would have liked. However, as indicated above, a complaint about the length of time taken to reach the decision is now academic. As Colton J observed, when an actual decision has been made, it will only be in exceptional circumstances that a breach of article 8 will be established. In my view, there is nothing in the facts of either applicant's case even approaching the type of exceptional circumstance which would give rise to a realistic prospect of such a finding. Indeed, there was nothing persuasive in either case by way of the "specific evidence-based factors" which would be required in this regard.

[56] In this regard, in JR330's case, I note the following factors:

(a) He was issued with a 'notice of intent' by the proposed respondent within 4 months of his asylum claim advising him of the Home Office's intended approach to his case.

(b) He was on immigration bail at all material times.

(c) His PIQ was only lodged with supporting documentation on 15 March 2024.

(d) There then followed correspondence in relation to arranging an interview.

(e) On 21 March 2024, the applicant was kept up to date by being informed that Bulgaria had agreed to take him back.

(f) The following month pre-action correspondence was sent and the interaction moved into litigation stance.

(g) Before these proceedings were issued, the respondent sent a further notice of intent in August again indicating an intention not to admit his claim.

[57] In JR331's case, I note the following factors:

(a) He was issued with a 'notice of intent' promptly by the proposed respondent on 24 August 2023 advising him of the Home Office's intended approach to his case.

(b) This was followed by a further such notice on 16 January 2024 indicating that there had been no change of approach or position in his case.

(c) Shortly after this, on 21 February 2024, he was kept up to date by being informed that Bulgaria had accepted the request for his return.

(d) In light of this, he failed to report to the Home Office on both 14 February 2024 and 5 March 2024, which he accepts was wrong.

(e) His PIQ was only lodged with supporting documentation on 22 March 2024.

(f) The following month pre-action correspondence was sent and again the interaction moved into litigation stance.

(g) Before these proceedings were issued, however, the applicant's immigration bail conditions were amended permitting him to work in the UK in some circumstances.

[58] In my view, neither applicant raises anything remotely indicating any impact on them of any delay over and above the usual nervousness or impatience which might be expected in such circumstances.

[59] The complaint about delay *after* the decisions also fails to raise an arguable case in my view. First, as noted above, the speculation that Bulgaria's position would have changed has been shown to be misplaced. Second, the existence of these proceedings is itself obviously a reason why there will have been delay in implementing the decisions.

[60] On the whole, it seems to me that the delays which arose in these cases cannot be regarded as so excessive as to be unreasonable in all of the circumstances (including by reference to the factors and guidance contained throughout the judgment in *JR247* and the authorities referred to in that decision) and so as to be unlawful.

[61] For these reasons, I consider that the applicants have also not established an arguable case in relation to the Procedural Grounds.

The Safety of Bulgaria Grounds

[62] Finally, the applicants contend that their removal to Bulgaria would breach their rights under article 3 ECHR and they are able to rebut the contrary presumption under para 3(1A) of Schedule 3 to the 2004 Act. They rely on the case of *MSS v Belgium and Greece* (2011) 53 EHRR 2 in which the ECtHR held that the return of those seeking international protection to a third country would breach article 3 where the individual faced extreme material poverty and deficiencies in protection procedures.

[63] This was an additional ground added well after the proceedings were commenced. In their respective third affidavits, sworn on 2 May 2025, the applicants give accounts of their treatment in Bulgaria and their fears as to return there. JR330 contends that he was detained and beaten there and suffered discrimination and corruption. His experience is corroborated by correspondence from the British Red Cross. He also informed the Home Office of attempts by Bulgarian authorities to push him back to Turkey. JR331 raised issues concerning

lack of assistance, support and safety in Bulgaria. His case is patently much weaker than that of JR330.

[64] The applicants contend that the impugned decisions lack any meaningful consideration of the accounts provided by them, relying simply on the statutory presumption and observing that the burden of proof lay with the applicants. The applicants are critical of the proposed respondent's failure to apply anxious scrutiny or to appreciate the lower standard of proof which applies in relation to potential breaches of article 3 (recognized in the Guidance, that is, "whether the matters in question are reasonably likely to be true", also expressed as a "real risk" of breach). This element of the case has also now been supplemented by evidence collated by the applicants' solicitor and exhibited to an affidavit sworn by her, consisting of reports of organisations such as the UNHCR, the Centre for Legal Aid – Voice in Bulgaria, and (what is described as an) expert report from an individual who volunteered in refugee camps in Bulgaria from between November-December 2024.

[65] The proposed respondent contends that the applicant's experiences which are recounted in their evidence represent experiences as "illegal" entrants or asylum seekers in Bulgaria, prior to the grant of protection. She contends that this is not reflective of any experience they would have had (or will have) as someone who had been granted such protection. She further says that this evidence is unsubstantiated and not relevant in the manner contended for.

[66] On these issues, I note the following in JR331's case:

(a) His concerns as to his treatment in Bulgaria is given little prominence in either his statement in support of his asylum application or his grounding affidavit.

(b) His main concern appears to be "lack of support" from the Bulgarian authorities. However, he was able to secure work as a builder in Bulgaria.

(c) He relies upon the conditions in a camp in which he lived in Bulgaria for a number of months, in which there was violence (against others, no complaint is made of any assault on him) at the hands of smugglers. Upon return, with the grant of protection, it is quite possible that his living conditions will be better than the camp in which he lived when he initially arrived irregularly.

[67] As indicated above, JR330's case is somewhat stronger on this ground but appears to relate primarily to ill-treatment in prison (which caused injury to his wrist) before he was granted protection; and being beaten and moved on by the police when he was living on the streets (having been "kicked out" of the refugee camp). However, he found people to live with and he too started working to earn money. In his third affidavit, specifically dealing with his treatment in Bulgaria, he does not mention being homeless but says he stayed with a friend. Not a great deal is made of this in the applicant's statement in support of his asylum claim which was furnished to the proposed respondent.

[68] I consider it significant that neither applicant relied upon a breach of article 3 ECHR on the basis of their fears for their treatment in Bulgaria grounded solely on their own experiences until the broader systemic challenge came into view.

[69] As to the evidence exhibited by Ms Marmion in her affidavit, the proposed respondent observes, firstly, that this evidence was not placed before the relevant decision-maker at the appropriate time. It is now relied upon ex post facto. In my view, this is a powerful point. Mr Larkin submitted that these are essentially generic materials which show what was in any event well-known, such that these issues should have been considered by the Home Office. It is clear that the evidence is simply the product of research by Ms Marmion in relation to materials which are generally available; save for materials she obtained from the lawyers instructed in the English proceedings (contacted through the Immigration Law Practitioners' Association), upon which they relay in those proceedings.

[70] The respondent also submits that the same evidence is relied upon in the related cases in England (or is sourced through that evidence), along with other external open source material, ie material which is publicly available. These materials support *systemic* challenges to the safety of Bulgaria, rather than arguments based on any individualised risk or threat in the applicants' cases. The thrust of this element of the case is, it is submitted clearly to mirror the related litigation in England, which is more advanced.

[71] In regard to the litigation in England, I was previously provided with a case management directions order from the Upper Tribunal (Immigration and Asylum Chamber) of 16 April 2025 dealing with several cases raising the same issues and timetabling the provision of consolidated statements of facts and evidence, along with directions obviously designed to promote an expeditious hearing and determination. I was informed by Mr McGleenan from the Bar that there were four consolidated lead cases which were expected to be heard in October. In light of this the proposed respondent invited the court, even if there was an arguable case (which she contested), to adjourn or stay this aspect of the case. To do otherwise would, in her submission, risk the wasting of court time, unnecessary duplication of work, and therefore the unnecessary expenditure of resource, time and costs. The result would be to concurrently litigate essentially the same issue in two jurisdictions creating a risk of inconsistent judgements at first instance and then unnecessary duplication of further appeals, with implications for the public purse and the limited resources of the court. In response, the applicants contended that the English courts and the Upper Tribunal are no more experienced on Convention issues than the courts in this jurisdiction.

[72] More recently, at the court's request, the Crown Solicitor's Office on behalf of the Home Office provided an update in relation to the litigation in England. From this, I understand that the substantive hearing in the English proceedings took place

on 2, 4 and 5 December 2025, with judgment awaited and expected between late February to mid-March.

[73] On the individual facts of the applicants' cases, I consider their article 3 claims to be weak. I would not be inclined to grant leave on this issue in the absence of a credible systemic challenge to the safety of Bulgaria more generally.

[74] As to that, I accept the proposed respondent's argument, particularly as matters now stand, that it would be an inappropriate use of the court's resources (and inconsistent with the overriding objective in RCJ Order 1, rule 1A) to proceed to determine these issues when a materially identical case is at a very advanced stage before the courts of England and Wales. I accept the applicants' point that the courts in this jurisdiction need not defer to the courts of another UK jurisdiction as a matter of course. Each case will turn on its own particular facts. However, in the circumstances of this case, I am clearly of the view that the appropriate course is not to proceed with this aspect of the applicants' claim pending, at least, the first instance outcome of the similar proceedings in England.

Conclusion

[75] The Home Office has not acted with alacrity in these cases; but that is not legal test. As Colton J's decision in *Re JR247's Application* indicates, there is a significant degree of flexibility for the Home Office. But, in any event, these claims were initially brought in order to seek to prompt a decision in each case from the Home Office. Inadmissibility decisions followed thereafter. In my view, the complaints about delay preceding decisions are now simply academic. The complaint about the Bulgarian authorities having lost the willingness to take back the applicants was factually misplaced and there was no proper basis for suggesting it other than speculation. The central point in the case – certainly as advanced orally in the course of the leave hearing – was the ground relating to Article 2 WF. Since I have found that the applicants' interpretation of Article 18 of the Dublin III Regulation is incorrect, such that they could not have relied upon it whilst the UK was in the EU (and therefore cannot have had their rights underpinned by it diminished), that ground is unarguable. Leave to apply for judicial review on all of those grounds is refused.

[76] The remaining point relates to possible breach of article 3 ECHR. I do not consider this a particularly strong case on the facts of either applicant's case. I also have concerns that the case now advanced was not properly advanced, if at all, before the decision-maker whose decisions are now impugned. However, I consider that the proper course in relation to those grounds is to stay them for the question of leave to be reconsidered after judgment has been given in the proceedings raising the same or similar issues in England and Wales. (If an appeal is to be pursued against the partial refusal of leave, that could also be dealt with in the meantime.)

[77] I do not consider that, when the question of leave on that ground arises again, there is any need for that issue to be dealt with by me (rather than a judge who remains assigned to the Judicial Review Division).

[78] I will hear the parties on the question of the appropriate directions in light of the above conclusions.