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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 AN APPLICATION BY AMAN ANGESOM FOR JUDICIAL REVIEW AND IN THE MATTER OF A DECISION BY THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

AND

THE HUMAN RIGHTS COMMISSION AND THE EQUALITY COMMISSION INTERVENING

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Mr Ronan Lavery KC and Mr Robert McTernaghan (instructed by Phoenix Law Solicitors) for the Applicant
Ms Neasa Murnaghan KC and Mr Joseph Kennedy (instructed by the Crown Solicitor's Office) for the Respondent
Mr Hugh Mercer KC (instructed by the Equality Commission) for the Intervener

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COLTON J

Introduction

[1] This application concerns the allegedly unlawful decision by the respondent, the Secretary of State for the Home Department ("the Home Secretary"), which resulted in the "dispersal" of the applicant to Falkirk, Scotland.

[2] This decision took place against the backdrop of an unexpected increase in the number of individuals seeking asylum in Northern Ireland between June 2021 and March 2022. In an attempt to increase capacity for new arrivals in Northern Ireland, the respondent decided on 26 October 2021 to transfer a number of single male asylum seekers to accommodation in Scotland the following day on 27 October. The applicant was one of the asylum seekers affected by this decision.

Factual background

[3] The applicant arrived in the United Kingdom (Northern Ireland) on 30 June 2021 and made a claim for asylum. He is an Eritrean national and does not speak or read English. On 27 August 2021, he submitted his Personal Information Questionnaire and a supporting statement detailing the basis of his claim for asylum. At the time of the hearing, he was awaiting a date for his substantive interview.

[4] The applicant arrived in Northern Ireland destitute and was provided with support and accommodation on 2 July 2021, pursuant to section 95 of the Immigration and Asylum Act 1999. Initially, he was accommodated in a two-bed house in Belfast (2 July 2021 – 9 July 2021). He was subsequently moved to hotel accommodation at 127 University Street, Belfast (9 July 2021 – 27 October 2021). On 9 September 2021, the applicant signed an Occupancy Agreement with MEARS Housing Management, in which the parties agreed to a legal arrangement for the provision of temporary accommodation to the applicant while his asylum claim continued to be assessed by the Home Office. Since 2019, MEARs Housing have been subcontracted to provide and manage asylum accommodation for Northern Ireland, Scotland and North-East England on behalf of the respondent.

[5] Due to a sustained increase in the number of destitute asylum seekers seeking temporary accommodation, the respondent avers that there was little to no capacity for asylum seekers across Northern Ireland by the end of October 2021. On 25 October, the respondent considered that it would be necessary to relocate a number of asylum seekers.

[6] On 26 October 2021, the applicant was assessed by the respondent as a suitable candidate for dispersal to Scotland. This assessment was based on, inter alia, the fact that the applicant was not an alleged victim of trafficking, was not receiving ongoing medical treatment in Northern Ireland and had no immediate family ties in Northern Ireland.

[7] The applicant received a letter notifying him of this decision that same evening, on 26 October 2021, from MEARS Housing Management around 6pm. The letter was not translated into the applicant's native language, nor was an interpreter present. The applicant, unable to read written English, could not decipher the contents of the letter and decided that it would be best to contact his solicitor.

[8] The letter stated that the applicant would be provided with accommodation in Scotland and that the move would take place at 11:30am the following day (27 October 2021). The letter explained that housing is provided on a "no choice basis" as per the Home Office policy. The letter did not specify the reasons behind the decision to relocate the applicant to Scotland.

[9] Following consultation with the applicant, his solicitor Ms Sinead Marmion of Phoenix Law, sent urgent pre-action correspondence at 9pm on 26 October,

requesting the respondent stay any removal before responding to the pre-action letter.

[10] Between 11-11:30am on 27 October, the applicant was transferred to Falkirk, Scotland from 127 University Street, Belfast.

[11] This was roughly 17.5 hours after the applicant had received the letter from MEARs Housing Management informing him that he would be moved to Scotland the following morning. From February 2022, MEARs Housing Management began providing a five-day notice period to service users before removing them to dispersal accommodation. This has been attributed to an increase in capacity and improvements implemented in processes.

[12] A reply to the applicant's pre-action correspondence was received from the respondent on 27 October at 12:35pm. The response explained that the decision to move the applicant to alternative accommodation within the UK was lawful under Section 95(6) of the Immigration and Asylum Act 1999.

[13] The applicant was moved again on 13 January 2023 and now resides in Redcar, England. The applicant has since availed of legal services in Hull, England.

The grounds of challenge

[14] The applicant challenges the respondent's actions on 26 – 27 October 2021 on the following grounds:

(i) The respondent acted with procedural unfairness by depriving the applicant of the opportunity to seek legal advice and respond to the dispersal decision before it was carried out on 27 October 2021. This is based on the reasoning in *R (on the application of Pathan) v Secretary of State for the Home Department* [2020] UKSC 41 *and Re: Sina Tahmasebi* [2021] NIQB 99.

(ii) The dispersal decision and the manner in which it was carried out constituted a violation of article 8 of the European Convention on Human Rights. Additionally, the applicant makes a separate but related argument that he was left without effective access to justice and therefore the respondent's actions were unreasonable and/or irrational in the *Wednesbury* sense.

(iii) The respondent's actions breached the applicant's legitimate expectation that he would be informed of the dispersal decision in sufficient time as to allow him to make meaningful representations to the respondent.

(iv) The respondent breached her statutory duty under section 75 of the Northern Ireland Act to conduct an equality impact assessment.

(v) The respondent's actions are unlawful by reason of Article 2(1) of the NI Protocol insofar as they have resulted in a diminution of rights, safeguards or equality of opportunity as set out in Strand Three of the Good Friday Agreement. The applicant submits that there are three ways in which the illegality of the dispersal decision arises under Article 2(1) of the Protocol:

(a) The EU Charter of Fundamental Human Rights;

(b) The civil and socio-economic rights referred to in Article 2(1) of the Protocol itself, in particular, the right to freely choose one's place of residence and the right to equal opportunity in all social and economic activity regardless of class, creed, disability, gender or ethnicity.

(c) The EU Directive 2003/9, also known as the Reception Conditions Directive.

The interveners

[15] The court granted the Northern Ireland Human Rights Commission (NIHRC) and the Equality Commission leave to intervene in these proceedings in respect of the applicant's case concerning Article 2 of the Protocol which is part of the Withdrawal Agreement. The NIHRC and the Equality Commission are responsible for the monitoring and enforcement of Article 2 of the Protocol. Their intervention was limited to the interpretation and application of that provision.

[16] The Commission's role in this respect is set out in Schedule 3 of the European Union (Withdrawal Agreement) Act 2020, which amends the Northern Ireland Act 1998 by inserting section 78B-E. Given its significant statutory role the court determined that it was appropriate to permit the Commission to intervene and provide assistance in relation to the proper interpretation of Article 2 of the Protocol.

Relevant statutory provisions

[17] The statutory basis for the provision of asylum accommodation and support to destitute asylum seekers is found in Section 95 of the Immigration and Asylum Act 1999. Section 95 confers the power upon the Secretary of State to provide support for asylum seekers "who appear to be destitute or likely to become destitute within such period as may be prescribed." Subsection 5 provides that the Secretary of State, in making a determination of whether a person's accommodation is adequate, "may not have regard to…matters mentioned in subsection 6."

[18] According to subsection 6, those matters are:

> "(a) the fact that the person concerned has no enforceable right to occupy the accommodation;

(b) the fact that he shares the accommodation, or any part of the accommodation, with one or more other persons;

(c) the fact that the accommodation is temporary;

(d) the location of the accommodation."

[19] Section 97 of the 1999 Act is also important as it lists factors which must be taken into account by the respondent when exercising her power under section 95.

> "When exercising his power under section 95 to provide accommodation, the Secretary of State must have regard to—
>
> (a) the fact that the accommodation is to be temporary pending determination of the asylum-seeker's claim;
>
> (b) the desirability, in general, of providing accommodation in areas in which there is a ready supply of accommodation; and
>
> (c) such other matters (if any) as may be prescribed."

[20] However, subsection 2 provides that the Secretary of State may not have regard to:

> "any preference that the supported person…may have as to the locality in which the accommodation is to be provided."

[21] Based on the above provisions, the Home Office has adopted a policy that housing is provided on a 'no choice' basis.

Ground 1: Procedural unfairness

[22] The power to provide temporary accommodation to asylum seekers, who would otherwise be destitute, is based on section 95 of the Immigration and Asylum Act 1999. Section 95 does not require the Secretary of State to consider the location of the accommodation for the purposes of assessing whether the accommodation provided within the UK is adequate. Likewise, Section 97 permits the Secretary of State to disregard any preference that an asylum seeker may have as to the location in which they are accommodated. It is upon this basis that the Home Office has adopted a policy that temporary accommodation is provided on a 'no choice' basis.

[23] The decision to relocate the applicant to accommodation in Scotland, even if he does not wish to move there, falls squarely within the scope of section 95 of the 1999 Act.

[24] The question, therefore, is whether the manner in which this decision was taken was procedurally unfair.

Common law duty to act fairly

[25] In the present case, the applicant contends that the respondent, by informing him of the dispersal decision after business hours on 26 October, deprived him of the advantage of seeking legal advice and the opportunity to make representations to the respondent.

[26] As recognised by Lord Mustill in *R v Secretary of State for the Home Department, Ex p Doody* [1994] 1 AC 531, 560, the extent of the common law duty to act fairly depends on the circumstances:

> "What does fairness require in the present case? My Lords, I think it unnecessary to refer by name or to quote from, any of the often-cited authorities in which the courts have explained what is essentially an intuitive judgment. They are far too well known. From them, I derive that (1) where an Act of Parliament confers an administrative power there is a presumption that it will be exercised in a manner which is fair in all the circumstances. (2) The standards of fairness are not immutable. They may change with the passage of time, both in the general and in their application to decisions of a particular type. (3) The principles of fairness are not to be applied by rote identically in every situation. What fairness demands is dependent on the context of the decision, and this is to be taken into account in all its aspects. (4) An essential feature of the context is the statute which creates the discretion, as regards both its language and the shape of the legal and administrative system within which the decision is taken. (5) Fairness will very often require that a person who may be adversely affected by the decision will have an opportunity to make representations on his own behalf either before the decision is taken with a view to producing a favourable result; or after it is taken, with a view to procuring its modification; or both. (6) Since the person affected usually cannot make worthwhile representations without knowing what factors may weigh

> against his interests, fairness will very often require that he is informed of the gist of the case which he has to answer."

[27] Thus, there is a presumption that the obligation to act fairly requires a decision maker to give any persons affected, notice of the decision which affects them and an opportunity to respond. However, the extent of that obligation will depend on the circumstances of the case.

The Pathan and Tahmasebi cases

[28] The applicant relies on two cases to demonstrate how the duty to act fairly applies in the immigration context. These are *R (on the application of Pathan) v Secretary of State for the Home Department* [2020] UKSC 41 *and Re: Sina Tahmasebi* [2021] NIQB 99.

[29] In *Pathan*, the issue before the court was whether the applicant, as a matter of procedural fairness, was entitled to be promptly notified of the effect that the revocation of his Certificate of Sponsorship ("CoS") was to have on his asylum application. The revocation of the CoS occurred on 7 March 2016 and the applicant was not informed of this until 7 June 2016. Without the CoS, Mr Pathan's application was doomed to fail. Lord Kerr and Lady Black, delivering the majority opinion considered that:

> "Underpinning the duty to act fairly in this context is the notion that a person such as Mr Pathan should be afforded as much opportunity as reasonably possible to accommodate and deal with a decision which potentially has devastating consequences… To ensure in those circumstances that he had timely notice that, for wholly unanticipated reason his application was bound to fail, so that he could seek to avoid its consequences seems to us to be a self-evident aspect of the duty to act fairly" (para [107]).

The court clarified:

> "The duty to act fairly in these circumstances involves *a duty not to deprive*, not an obligation to create…there is nothing incompatible with the legislation or the Rules in allowing the affected person to know, as soon as may be, of the circumstances which imperil their application, so that they may make use of whatever time remains to them under those provisions. This does not confer a substantive benefit. It may be properly characterised as a procedural duty to act fairly…" (para [108]).

[30] In other words, the Secretary of State, by failing to promptly inform of the circumstances which adversely affected the applicant's asylum claim, deprived the applicant of the opportunity to avoid or take steps to address the consequences of the decision.

[31] However, Lord Kerr and Lady Black placed a limitation on this duty suggesting that:

> "Exigencies, as yet unforeseen, may make such a convergence of decisions and their coincident communication unavoidable. It is only where the coincidence of communication of both has been contrived in order purposely to deprive an affected person of the period between learning of the revocation of the CoS and the refusal of the application that procedural unfairness would arise" (para [110]).

[32] The *Tahmasebi* case involved the systematic practice of the Home Office to delay the notification of all decisions refusing asylum in the UK until removal to a third country was possible. In Mr Tahmasebi's case, the decision to refuse the applicant's request for asylum was made on 14 August 2019, but not notified to him until he was arrested for removal to the third country in January 2020. Scoffield J relied on the UK Supreme Court's judgement in *Pathan* noting that:

> "it remains a decision of the highest authority which in my judgment provides strong support for the applicant's case on common law fairness. That is because the Supreme Court describes the nature and effect of the duty to act in a procedurally fair manner within the immigration context and, in doing so, elaborated principles which are of wider application than merely to the facts in the case before them. It illuminates that there is a duty to provide relevant information promptly and allow the recipient to take the benefit of whatever additional time and facilities of which that permits" (para [87]).

[33] Scoffield J also discussed the caveat in *Pathan* that the procedural duty to give notice is subject to unforeseen exigencies:

> "In the present case, the delay in notifying the applicant of the decision in his case until removal directions were issued was not "unavoidable"; and there appears to me to be much to be said for the contention that this approach was indeed contrived in order to purposely deprive an

> individual such as the applicant of the period between learning of the refusal of his application and the decision to transfer him and the putting into effect of that decision. At least in part, that was for understandable reasons (in order to seek to reduce the risk of absconding in some cases); but a necessary corollary was also that it increases the procedural disadvantage to those who simply wish to exercise lawful avenues of redress open to them" (para [83]).

Application of Pathan and Tahmasebi to the present case

[34] The applicant avers that he was given roughly 17.5 hours, and only 2.5 hours of the working day between the notification of the decision and his removal to Scotland, to respond to the decision. The applicant was also unable to read the notification letter as a translated copy was not provided.

[35] In *Secretary of State for the Home Department v AF (No 3)* [2009] UKHL 28; [2010] 2 AC 269, Lord Hoffmann noted that the purpose of the *audi alteram partem* rule:

> "is not merely to improve the chances of the tribunal reaching the right decision … but to avoid the subjective sense of injustice which an accused may feel if he knows that the tribunal relied upon material of which he was not told" (para [72]).

[36] However, the respondent argues that due to the circumstances more notice could not have been given to the applicant. The evidence presented by the respondent demonstrates that there was a sharp and sustained increase in the number of asylum seekers requiring accommodation in Northern Ireland between June 2021 and February 2022. As a result, there was limited to no capacity for incoming asylum seekers. In order to ameliorate this situation, the respondent decided to relocate single male service users to accommodate new arrivals. Due to the COVID isolation requirements, the respondent avers that it was not possible to send the new arrivals directly to Scotland instead of the single male service users already accommodated in Northern Ireland.

[37] The respondent avers that an individual assessment was made of the single male service users to determine whether they were suitable for relocation. The relevant factors considered by the respondent included whether they had family ties in Northern Ireland and if they required specialist medical treatment. The applicant was assessed as not falling within one of these vulnerable categories and therefore allocated dispersal accommodation in Scotland.

[38] Mr Lavery submits that the *Pathan* and *Tahmasebi* cases illustrate how the respondent should have acted in the present case in discharging the common law

duty to act fairly. He argues that the applicant was entitled to prompt notification of the dispersal decision, which should have been before close of business on 26 October, and an opportunity to respond to that decision.

[39] Neither case deals with the issue of dispersal decisions taken under section 95 and 97 of the Immigration and Asylum Act 1999. Rather, *Pathan* and *Tahmasebi* are concerned with the duty of procedural fairness in a context where the failure to provide prompt notification deprived the applicants of knowledge of a decision which seriously affected their ability to remain within the UK and deprived them of the opportunity to do something about it. In both *Pathan* and *Tahmasebi*, "there were months between the decisions being made and it being communicated without sufficient reason to delay the communication of that decision." In Mr Angesom's case, the decision was communicated to him the day the decision was made.

[40] The circumstances and the decisions being taken in *Pathan* and *Tahmasebi* are markedly different from the decision in this application. Importantly, the dispersal decision has had no effect on his asylum claim and he has been continually supported awaiting a decision on the claim, thereby avoiding destitution.

[41] Unlike the cases relied upon by the applicant the decision under challenge did not have the "devastating consequences" described in *Pathan*. Nor, could it be suggested that there was a deliberate contrivance to purposely deprive an affected person of the period between learning of the revocation of the CoS and the refusal of the application, as was the case in *Tahmasebi.*

[42] The court is inclined to agree that the short time frame and lack of a translation of the letter placed the applicant at a procedural disadvantage insofar as it made it more difficult for the applicant to obtain legal advice and also to challenge the decision. In this respect, it is important to note that since 25 October 2021, the respondent has taken steps to address this disadvantage by allowing for a five-day notice period to be given to asylum seekers subject to dispersal.

[43] However, the court accepts the respondent's contention that even though the short timeframe made it more difficult for the applicant to obtain legal advice, the evidence contained in both the applicant and respondent's affidavits indicates that the applicant was able to secure the services of his solicitor who submitted a pre-action letter to the respondent seeking delay in the removal of the applicant from Northern Ireland.

[44] In *Pathan,* Lord Kerr and Lady Black identified several avenues Mr Pathan could have explored in order to address the consequences of the revocation of his CoS.

[45] In this case, the court accepts that the applicant has not advanced any additional or specific action that he could have taken to avoid dispersal as a result of

earlier notification. The court is satisfied that the applicant was able to take full advantage of the avenues available to him in the period following notification.

[46] The court also does not accept the applicant's contention that the evidence "invites an inference" that the respondent deliberately acted to circumscribe the period during which action could have been taken by the applicant, if more timely notice had been given. In *Tahmasebi*, Scoffield J noted that the respondent's actions appeared to be contrived because the decision was known for a long time, and it was deliberately withheld from asylum seekers to ensure that those individuals would not abscond before their removal to a third country could be carried out.

[47] In the applicant's case, the court is provided with no evidence that the respondent intentionally delayed making the decision until the latest possible moment in order to frustrate the applicant's ability to challenge the decision. The sharp increase in asylum seekers arriving in Northern Ireland began in June 2021 when the applicant arrived. It was around four months later that the dispersal decision was made. Secondly, it would not have served the respondent to withhold making the decision, as it is clear they were fully cognisant of their statutory obligation to ensure that accommodation is provided to all asylum seekers who are destitute within the UK.

[48] Applying the considerations set out in the *Pathan* and *Tahmasebi* cases and by Lord Mustill, the respondent's duty to act fairly must be seen against the context and statutory obligation to provide accommodation to all asylum seekers who are destitute. Given the immediate need and legal requirement to provide accommodation for incoming destitute asylum seekers the court is satisfied that the information pertaining to the dispersal decision, which was delivered on the same day the notification was taken, was issued promptly in light of the difficult circumstances.

[49] While the applicant, as a matter of procedural fairness, was certainly entitled to a translated copy of the letter, the respondent's failure in this instance to provide adequate notification did not affect the overall assessment or outcome of the substantive review of Mr Angesom's application, nor did it deprive him of the opportunity to take a particular course of action which would have prevented his dispersal.

[50] For these reasons, ground 1 is rejected.

Ground 2: The respondent's actions constituted a violation of article 8 of the ECHR

[51] Article 8 ECHR requires respect for private and family life. The text of the article is as follows:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

[52] In the case of *Maslov and Others v Austria* [2009] INLR 47, the Grand Chamber held that:

> "Article 8…protects the right to establish and develop relationships with other human beings and the outside world and can sometimes embrace aspects of an individual's social identity, it must be accepted that the totality of social ties between settled migrants and the community in which they are living constitutes part of private life within the meaning of article 8" (para [63]).

[53] It is worth recalling the decision of the House of Lords in *R (Countryside Alliance) v HM Attorney General and Another* [2007] UKHL 52 and Lord Bingham's concise evaluation of the private life element of article 8(1) at para [10]:

> "… the purpose of the article is in my view clear. It is to protect the individual against intrusion by agents of the state, unless for good reason, into the private sphere within which individuals expect to be left alone to conduct their personal affairs and live their personal lives as they choose."

[54] In *Abdul Said v Secretary of State for the Home Department* [2022] NICA 49, McCloskey LJ helpfully enounced:

> "the themes and concepts which have habitually featured in the Article 8 jurisprudence:
>
> the person's inner circle; one's inner sanctum; how to live one's personal life; establishing and developing relationships with others; freedom from unjustified State intrusion; unjustified prohibitions on working; protection of the physical and moral integrity of the person; one's

> personal sexuality; personal identity; and social life" (para [53]).

[55] The applicant avers that since arriving in Northern Ireland he had begun to integrate into the community, building up a network of friends and had engaged a GP. Mr Lavery explained, the effect of the dispersal, therefore, was to sever all his relationships in Northern Ireland, including access to legal representation. The court accepts that the dispersal decision comes within the ambit of the protections provided by article 8 insofar as it interferes with the applicant's ability to build social ties and fully integrate into the community in which he was temporarily settled.

[56] It is debateable whether there is an evidential basis for establishing an interference with the applicant's article 8 rights. There is no evidence of a disruption to any substantial private life which he had developed in Northern Ireland. There is no suggestion that he was in receipt of specific medical care. There is a focus on an inability to avail of the legal representation he had in Northern Ireland. However, it is clear that he has engaged legal representation to assist in his asylum claim since his removal from Northern Ireland.

[57] Assuming the applicant can establish an interference with his article 8 rights the issue becomes whether that interference is lawful in accordance with article 8(2).

[58] Clearly, the interference was in accordance with law. The real issue is whether the interference was to pursue a legitimate aim and proportionate in the circumstances.

[59] The principles of proportionality are comprehensively considered in domestic and Convention law. As Lord Sumption put it in *Bank Mellat (No. 2)* [2013] UKSC 39:

> "The requirements of rationality and proportionality, as applied to decisions engaging the human rights of applicants, inevitably overlap. […] Their effect can be sufficiently summarised for present purposes by saying that the question depends on an exacting analysis of the factual case advanced in defence of the measure, in order to determine (i) whether its objective is sufficiently important to justify the limitation of a fundamental right; (ii) whether it is rationally connected to the objective; (iii) whether a less intrusive measure could have been used; and (iv) whether, having regard to these matters and to the severity of the consequences, a fair balance has been struck between the rights of the individual and the interests of the community […] The question is whether a less intrusive measure could have been used without unacceptably compromising the objective" (para. [20]).

And per Lord Reed (albeit in dissent):

> "An assessment of proportionality inevitably involves a value judgment at the stage at which a balance has to be struck between the importance of the objective pursued and the value of the right intruded upon. The principle does not however entitle the courts simply to substitute their own assessment for that of the decision-maker … One important factor in relation to the Convention is that the Strasbourg court recognises that it may be less well placed than a national court to decide whether an appropriate balance has been struck in the particular national context. For that reason, in the Convention case law the principle of proportionality is indissolubly linked to the concept of the margin of appreciation" (para. [71]).

[60] As set out above, the impugned decision was made in accordance with law pursuant to section 95 of the 1999 Act. The court accepts Ms Murnaghan's submission that the dispersal decision pursued a legitimate aim which was to increase capacity for incoming destitute asylum seekers who in the absence of the impugned measure would have had nowhere to stay. The court is further satisfied that the respondent opted for the least intrusive approach by choosing only to disperse single male asylum seekers with no family ties, no ongoing medical requirements and who were not victims of trafficking.

[61] Therefore, the court is of the view that a fair balance was struck between any interference with the applicant's right to private life and the public interest. The decision under challenge meets the test of proportionality.

[62] The applicant raised a separate but related argument that the speed with which the decision and the removal was taken effectively left the applicant without access to justice and was unreasonable and/or irrational in the *Wednesbury* sense. For the same reasons as above, the court is satisfied that the dispersal decision and the manner in which it was carried out was rational and pursued a legitimate aim. In any case, the applicant has stated in his affidavit that he has been able to obtain legal representation elsewhere in the UK.

[63] For these reasons, ground 2 is rejected.

Ground 3: The respondent's actions breached the principle of legitimate expectation

[64] The applicant submits that he had a legitimate expectation to timeous notification of the impugned decision so as to allow him to make meaningful representations to the respondent. Insofar as this relates to an allegation of procedural unfairness, that has already been dealt with in this judgment.

[65] The starting point is the 1999 Act. It does not impose a statutory duty to notify destitute asylum seekers of dispersal decisions; nor does it grant a right to challenge those decisions. Section 103 of the 1999 Act only entitles the asylum seeker (who is destitute) to appeal two types of decisions made by the Secretary of State: (i) that the individual does not meet the criteria for section 95 accommodation; and (ii) that the individual is no longer eligible for section 95 accommodation: see sections 103(1) and (2) of the 1999 Act.

[66] In this regard, it is worth returning to section 97(7) of the Act, which is explicit:

> "In determining how to provide, or arrange for the provision of, support under section 95, the Secretary of State may disregard any preference which the supported person or his dependants (if any) may have as to the way in which the support is to be given."

[67] Thus, even if the applicant had the opportunity to make representations to the Secretary of State, there is no statutory obligation for the respondent to consider them.

[68] In the absence of a statutory obligation to notify and consider representations, the applicant must establish that the Secretary of State was under a common law duty to do so. As Lord Reed said in the case of *Moseley* [2014] UKSC 56 there is no:

> "general common law duty to consult persons who may be affected by a measure before it is adopted."

save where:

> "there is a legitimate expectation of such consultation, usually arising from an interest which is held to be sufficient to found such an expectation, or from some promise or practice of consultation" (para [35])

[69] In *Re Geraldine Finucane* [2019] NI 292, the UK Supreme Court "deduced that where a clear and unambiguous undertaking has been made, the authority giving the undertaking will not be allowed to depart from it unless it is shown that it is fair to do so" (para. [62]). In that case, the court found that there was a clear and unequivocal undertaking to hold a public inquiry into the appellant's husband's death, however, the court held:

> "Where political issues overtake a promise or undertaking given by government, and where contemporary considerations impel a different course,

> provided a bona fide decision is taken on genuine policy grounds not to adhere to the original undertaking, it will be difficult for a person who holds a legitimate expectation to enforce compliance with it" (para [73])

[70] The applicant contends that the provisions of the Home Office policy documents "*Living in Asylum Accommodation*" (policy 1 - published on the 29 July 2019) & "*Allocation of accommodation policy*" (policy 2 - [Version 6.0] published on the 27 May 2021)], as well as those provisions contained in the Occupancy Agreement amount to clear and unequivocal representations which are sufficient to give rise to a legitimate expectation.

The Home Office policy documents and the Occupancy Agreement

[71] The applicant alleges that the respondent is breach of several policies of the Home Office:

(i) The applicant was not treated with respect, fairness and impartiality (page 7 of Policy 1).

(ii) The applicant was not provided with translation and interpreting services when necessary (page 13 of Policy 1).

(iii) The applicant was not given an opportunity to challenge the decision contrary to the policy on page 26 of Policy 1, which states:

> "If you are offered a move which you don't think is appropriate, you should raise the issue straight away with the Home Office…and always before the move is due to take place."

(iv) The applicant was not given an opportunity to make a request to the caseworker and not individually assessed by a caseworker contrary to policy guidance on page 5 of Policy 2.

[72] The applicant also alleges breaches of the provisions of the Occupancy Agreement, which can be summarised as follows:

(i) Clause (c): to appoint a housing manager to deal with and resolve matters relating to the service user's occupancy.

(ii) Clause (f): to keep a record of incidents which occur during occupation of the property.

(iii) Clause (h): to provide a complaints service which will ensure that complaints are received and acknowledged within one working day of receipt and that a

response is received within 5 working days where it is non-maintenance related.

(iv) Clause (i): Upon request, provide interpretation services for all formal meetings between the service use and provide formal documentation in their first language if they cannot read English or have no means of other translation.

[73] Based on the authorities discussed above the relevant question, in the first instance, is not whether the respondent is in breach of her own policies or the Occupancy Agreement, but rather, do they amount to clear and unambiguous representations giving rise to an expectation that the applicant would have the opportunity to challenge the dispersal decision following timely notification of the decision?

[74] In relation to the Occupancy Agreement, the Court is not satisfied that the provisions relied upon by the applicant give rise to a legitimate expectation, enforceable at the suit of the applicant. It is clear from the terms of the agreement that the occupancy is provided "on a temporary basis" and is liable to be terminated at the discretion of the respondent. Moreover, there is no suggestion in the Occupancy Agreement that MEARs Housing Management, as a third-party contractor, has any role to play in the administrative decision-making process. Therefore, it would appear unreasonable to presume that the Occupancy Agreement entitles the applicant to a specific procedural safeguard in that administrative process. The Occupancy Agreement itself only relates to the accommodation provided. It refers to the accommodation provider's responsibilities relating to that property.

[75] With respect to the Home Office policy document, the applicant relies on several paragraphs contained therein:

> "Caseworkers must, however, consider requests to be allocated in accommodation in London, the South east, or another specific location and consider whether there are exceptional circumstances that make it appropriate to agree to the request.
>
> All requests should be considered on a case-by-case basis, balancing the overarching principle that accommodation is offered on a 'no choice' basis against the strength of the exceptional circumstances that might make it appropriate to agree to the request to provide accommodation in a particular location.
>
> If it is decided not to agree to arrange accommodation in a particular location, reasons should be given and the

> decision must be compatible with the Home Office's obligations under Human Rights legislation…"

[76] In the court's view, these paragraphs do not give rise to clear and unambiguous undertakings that the applicant would be entitled to challenge the decision to relocate him. The preceding paragraph makes clear that the "The overriding principle when allocating accommodation is that it is offered on a 'no choice' basis and as a general rule is provided…only in areas of the UK where the Home Office has a ready supply." Thus, while the paragraphs above would imply that the applicant would have an opportunity to submit a request to be provided with accommodation in Northern Ireland and be notified of the reasons for refusing that request, that expectation is qualified by the requirement to have regard for the overriding no choice policy and relevant statutory framework.

[77] The court is further satisfied that even if it erred by failing to find that the applicant had a legitimate expectation, it was not unfair for the respondent to depart from policy based on the reasons outlined above under grounds 1 and 2.

[78] For these reasons, ground 3 is rejected.

Ground 4: The respondent breached his statutory duty under section 75 of the Northern Ireland Act to conduct an equality impact assessment

[79] The applicant alleges a breach of section 75 of the Northern Ireland Act 1998. The Northern Ireland Court of Appeal in *Re Neill's Application* [2006] NICA 5 found that Schedule 9 of the Northern Ireland Act establishes a specific framework under which the Equality Commission is charged with the duty to investigate complaints that a public authority has not complied with the equality scheme under section 75. That is the primary means for enforcing the section 75 duty. While the court was anxious not to say that judicial review on this ground would, in all such instances, be unavailable, this court is satisfied that the present case does not displace the clear statutory framework in Schedule 9 of the Northern Ireland Act 1998.

[80] Therefore, in accordance with the well-established legal precedent in this jurisdiction, if the applicant wishes to make any complaint in relation to compliance with section 75, he should avail of the appropriate and alternative remedy open to him in that regard by way of complaint to the Equality Commission for Northern Ireland.

[81] For these reasons, ground 4 is rejected.

Ground 5: The respondent's actions are unlawful under Article 2(1) of the Protocol

[82] The applicant's submissions under this ground can be sub-divided into three headings.

[83] First, the applicant argues that by virtue of his removal to Scotland, there has been a diminution of his rights arising under the EU Charter of Fundamental Rights, which fall within the ambit of protected rights under Article 2(1) of the Protocol. Ground 5(a)

[84] Second, the respondent's actions resulting in the applicant's removal to Scotland have resulted in a diminution of specific rights enumerated in the relevant section of the Good Friday Agreement, in particular, the right to freely choose one's place of residence and the right to equal opportunity in all social and economic activity, regardless of class, creed, disability, gender or ethnicity. Ground 5(b)

[85] Third, the respondent's actions have breached certain provisions of the EU 2003/9 Reception Conditions Directive, which also fall under the protection of Article 2(1) of the Protocol. Ground 5(c)

Article 2(1) of the Protocol

[86] On all three points, the court is assisted by the approach of Mr Mercer, on behalf of the intervening party, which accords with previous jurisprudence of this court in *Re SPUC Pro-Life Limited* [2022] NIQB 9. The court should ask the following questions:

(i) Does the right, safeguard or equality of opportunity protection fall within the relevant part of the Belfast (Good Friday) Agreement?

(ii) Was the right, safeguard or equality of opportunity protection underpinned by EU law binding on the UK on or before 31 December 2020?

(iii) Was the right, safeguard or equality of opportunity protection given effect in NI law, in whole or in part on or before 31 December 2020? Mr Mercer submits that "where UK and NI law was out of alignment with EU law on 31 December 2020, the absence of a 'domestic implementing measure' is not an insurmountable obstacle to demonstrating a diminution of Protocol Article 2, provided the EU obligation existed and was enforceable on or prior to 1 January 2021."

(iv) Has there been a diminution in the right, safeguard or equality of opportunity protection on or after 1 January 2021?

(v) Would this diminution not have occurred had the UK remained in the EU?

[87] Before answering these questions in the context of the three headings identified by the applicant which he argues engage Article 2(1) of the Protocol, it is necessary to set out the relevant framework.

[88] Article 2(1) of the Protocol entitled "Rights of Individuals" provides as follows:

> "The United Kingdom shall ensure that no diminution of rights, safeguards or equality of opportunity, as set out in that part of the 1998 Agreement entitled Rights, Safeguards and Equality of Opportunity results from its withdrawal from the Union, including in the area of protection against discrimination, as enshrined in the provisions of Union law listed in Annex 1 to this Protocol, and shall implement this para through dedicated mechanisms."

[89] The relevant part of the Belfast (Good Friday) Agreement ('GFA') to which Protocol Article 2(1) refers is as follows:

> "1. The parties affirm their commitment to the mutual respect, the civil rights and the religious liberties of everyone in the community. Against the background of the recent history of communal conflict, the parties affirm, in particular:
>
> the right of free political thought;
>
> the right to freedom and expression of religion;
>
> the right to pursue democratically national and political aspirations;
>
> the right to seek constitutional change by peaceful and legitimate means;
>
> the right to freely choose one's place of residence;
>
> the right to equal opportunity in all social and economic activity, regardless of class, creed, disability, gender or ethnicity;
>
> the right to freedom from sectarian harassment; and
> the right of women to full and equal political participation."

[90] Article 4 of the European Union Withdrawal Agreement (agreed between the UK Government and the EU on 17 October 2019 approved by Parliament on 6 November 2019 and implemented by the European Union Withdrawal Act 2020) stipulates:

> "1. The provisions of this Agreement and the provisions of Union law made applicable by this Agreement shall produce in respect of and in the United Kingdom the same legal effects as those which they produce within the Union and its Member States.
>
> Accordingly, legal or natural persons shall in particular be able to rely directly on the provisions contained or referred to in this Agreement which meet the conditions for direct effect under Union law."

[91] Thus, as this court concluded in *Re SPUC Pro-Life Limited*, Article 2(1) has direct effect and legal persons such as the applicant in this case are able to rely on it in domestic courts (para [77]).

Ground 5a: The Charter of Fundamental Human Rights

[92] For the purposes of the Withdrawal Agreements and the Protocol, EU law is defined in Article 2(a) of the Withdrawal Agreement as including:

> "(i) The Treaty on European Union ("TEU") the Treaty on the Functioning of the European Union ("TFEU") and the Treaty establishing the European Atomic Energy Community ("Eurotom Treaty") as amended or supplemented as well as the Treaties of Accession and *the Charter of Fundamental Rights of the European Union*, together referred to as "the Treaties."

[93] Article 4 of the Withdrawal Agreement is given effect in UK law by section 5 of the European Union (Withdrawal Agreement) Act 2020 ('EUWA 2020') which introduced s. 7A into the European Union (Withdrawal) Act 2018 ('EUWA 2018').

[94] The combined effect of section 7A of the European Union (Withdrawal) Act 2018 ("EUWA 2018") and Article 4 of the Protocol limits the effects of section 5(4) and (5) of the EUWA 2018 and Schedule 1, para 3 of the same Act which restrict the use to which the Charter of Fundamental Rights and EU General Principles may be relied on after the UK's exit. Thus, the Charter of Fundamental Rights remains enforceable in Northern Ireland and falls within the ambit of Article 2(1) of the Protocol.

[95] The court also accepts that the Charter of Fundamental Rights was underpinned by EU law binding on the UK on or before 31 December 2021. The scope of the Charter can be found in Article 51:

> "The provisions of this Charter are addressed to the institutions and bodies of the Union with due regard for the principle of subsidiarity and to the Member States only when they are implementing Union law. They shall therefore respect the rights, observe the principles and promote the application thereof in accordance with their respective powers."

[96] The Asylum Seekers (Reception Conditions) Regulations 2005 implemented EU Directive 2003/9. Section 5 of those regulations relates specifically to "asylum support under section 95 or 98 of the 1999 Act." The UK was therefore bound by the obligation to respect rights contained in the Charter when carrying out its duties under section 95 of the 1999 Act, from 2005 onwards. Accordingly, Article 2(1) of the Protocol guarantees that those rights will not be diminished as a result of the UK's withdrawal from the EU.

[97] This leads to the third and fourth questions. In *SPUC Pro-Life LTD's Application* [2022] NIQB 9 (at para [83]) this court formulated the question as follows:

> "in order to establish a breach of Article 2(1) of the Protocol there must be a diminution of rights, safeguards or equality of opportunity, as set out in that part of the 1998 Agreement entitled "Rights, Safeguards and Equality of Opportunity" that is, there must have been a protection that existed before the withdrawal of the United Kingdom from the European Union which does not exist after, and as a consequence of, that withdrawal."

[98] The applicant argues that as a result of being removed to Scotland, he is no longer entitled to rely on the rights contained in the Charter. The applicant did not advance in any great detail, which rights specifically are affected by the dispersal decision. Mr Lavery identified Article 7 of the Charter as potentially engaged by the dispersal decision. Article 7 ensures that:

> "Everyone has the right to respect for his or her private and family life, home and communications."

[99] The right to respect for private and family life is also protected under article 8 of the ECHR, which the applicant alleges was breached in this case and was addressed under ground 2.

[100] The question as to whether there has been a breach of Article 2(1) therefore turns on whether a diminution of rights has occurred by reason of the fact that the applicant can no longer rely on Charter rights outside of Northern Ireland or whether it must be shown that in practice there is a substantive difference in the level of protection offered to the applicant in Scotland under the ECHR.

[101] It is worth returning to article 51 of the Charter, which notably applies only if a state operates in an area governed by EU law. On the other hand, the ECHR's scope is broader and applies to all actions or omissions by a state within its jurisdiction.

[102] Furthermore, the preamble of the Charter provides:

> "This Charter reaffirms, with due regard for the powers and tasks of the Union and for the principle of subsidiarity, the rights as they result, in particular, from the constitutional traditions and international obligations common to the Member States, *the European Convention for the Protection of Human Rights and Fundamental Freedoms*, the Social Charters adopted by the Union and by the Council of Europe *and the case-law of the Court of Justice of the European Union and of the European Court of Human Rights. In this context the Charter will be interpreted by the courts of the Union* and the Member States with due regard to the explanations prepared under the authority of the Praesidium of the Convention which drafted the Charter and updated under the responsibility of the Praesidium of the European Convention."

[103] Taking this into consideration, although the applicant cannot avail of certain rights protected under the Charter, those same rights are largely protected under the ECHR which has a broader scope of application. Therefore, the court rejects the argument that the applicant's rights have been diminished as a result of the UK's withdrawal from the European Union on the basis that, in practice, the applicant is still entitled to those rights, albeit under a different framework.

Ground 5b: The Good Friday Agreement

[104] It is possible to deal with the first two questions posed by the intervener expeditiously. The applicant alleges that there has been a diminution of the rights contained in Strand Three of the GFA, namely, the right to freely choose one's place of residence and the right to equal opportunity in all social and economic activity, regardless of class, creed, disability, gender or ethnicity.

[105] In *Ni Chuinneagain's application* [2021] NIQB 79 Scoffield J considered the direct applicability of the Good Friday Agreement arising from the Protocol in the

context of citizenship rights. He rejected that it was directly applicable to those rights as they did not come within the relevant Strand of the GFA which is referred to in Article 2(1) of the Protocol. However, in the present case, the applicant relies directly on those Strand Three rights which have direct effect.

[106] The next question is whether there has been a diminution of the two rights identified by the applicant:

(i) The right to freely choose one's place of residence

[107] The applicant and respondent both agree that the rights, safeguards and equality of opportunity enshrined in Strand Three of the GFA do not exclude asylum seekers. However, the respondent argues that "this does not create a free-standing right for a supported asylum seeker to freely choose the location of accommodation offered to them by the Home Office."

[108] The court rejects the submission by the respondent that the rights protected by Strand Three of the GFA are frozen in time and limited to the political context of 1998. The GFA was drafted with the protection of EU fundamental human rights in mind and was therefore intended to protect the human rights of "everyone in the community" even "outside the background of the communal conflict."

[109] However, the court accepts that there remains a fundamental difference between the right to choose one's place of residence freely and the right to section 95 accommodation for asylum seekers who would otherwise be destitute. As the court has already found, the respondent acted lawfully and in accordance with the power lawfully conferred upon it by the 1999 Act. The "No Choice" policy has been in place since January 2000, and so, long predates the UK's withdrawal from the EU. As such, it cannot be said that the dispersal decision resulted in a diminution of the right of the applicant to freely choose his place of residence, as he did not possess that right prior to the UK's withdrawal from the EU.

(ii) The right to equal opportunity in all social and economic activity, regardless of class, creed, disability, gender or ethnicity

[110] Mr Lavery submits that the dispersal decision has left the applicant without the right to certain social and economic benefits that he could avail of if he remained in Northern Ireland. He argues that the applicant's removal from the customs union directly impacted his enjoyment of this right under Strand Three of the GFA.

[111] The respondent countered that the applicant did not produce any evidence of the exact social and economic benefits, residing within the customs union would confer upon the applicant.

[112] In the court's view, the applicant was unable to establish what individual entitlement being within the customs union gave him and how as a result of his

dispersal he could no longer avail of that entitlement. Similarly, the applicant has failed to show, in practice, how there would be a diminution of his right to equality of opportunity in social activity by residing in Scotland. There is simply a dearth of evidence to support what are, in effect, general unparticularised assertions.

Ground 5c: ***The EU Reception Conditions Directive***

[113] The applicant further relies on EU Directive 2003/9/EC laying down minimum standards for the reception of asylum seekers, in particular Article 7(1) of that Directive, to ground the claim that there has been a diminution of his rights under Strand Three of the GFA as a result of the UK's withdrawal from the EU.

[114] Article 7 of the Directive states:

> **"Residence and freedom of movement**
>
> "1. Asylum seekers may move freely within the territory of the host Member State or within an area assigned to them by that Member State. The assigned area shall not affect the unalienable sphere of private life and shall allow sufficient scope for guaranteeing access to all benefits under this Directive.
>
> 2. Member States may decide on the residence of the asylum seeker for reasons of public interest, public order or, when necessary, for the swift processing and effective monitoring of his or her application.
>
> 3. When it proves necessary, for example for legal reasons or reasons of public order, Member States may confine an applicant to a particular place in accordance with their national law.
>
> 4. Member States may make provision of the material reception conditions subject to actual residence by the applicants in a specific place, to be determined by the Member States. Such a decision, which may be of a general nature, shall be taken individually and established by national legislation."

[115] Article 7 of the Directive is clearly capable of falling within the ambit of Article 2(1) of the Protocol insofar as it seeks to protect the human rights of asylum seekers. Indeed, para 5 of the Directive's preamble states:

> "This Directive respects the fundamental rights and observes the principles recognised in particular by the

> Charter of Fundamental Rights of the European Union. In particular, this Directive seeks to ensure full respect for human dignity and to promote the application of Articles 1 and 18 of the said Charter."

[116] The next question is whether this Directive was binding on the UK on or before 31 December 2020. In other words, is the Directive capable of having direct effect? According to Article 189(3) of the Treaty establishing the European Economic Community (EEC):

> "a directive shall be binding, as to the result to be achieved, upon each Member State to which it is addressed, but shall leave to the national authorities the choice and form of methods."

[117] In *Becker v Finanzamt Munster-Innenstadt* [1982] ECR 53 the European Court of Justice ("ECJ") discussed the effect of Article 189(3) in the context of deciding whether a particular Directive was capable of direct effect:

> "It is clear from that provision that States to which a directive is addressed are under an obligation to achieve a result, which must be fulfilled before the expiry of the period laid down by the directive itself.
>
> It follows that wherever a directive is correctly implemented, its effects extend to individuals through the medium of the implementing measures adopted by the Member State concerned (judgment of 6 May 1980 in Case 102/79 Commission v Belgium [1980] ECR 1473).
>
> However, special problems arise where a Member State has failed to implement a directive correctly and, more particularly, where the provisions of the directive have not been implemented by the end of the period prescribed for that purpose.
>
> […]
>
> a Member State which has not adopted the implementing measures required by the directive within the prescribed period may not plead, as against individuals, its own failure to perform the obligations which the directive entails.
>
> Thus, wherever the provisions of a directive appear, as far as their subject-matter is concerned, to be

> unconditional and sufficiently precise, those provisions may, in the absence of implementing measures adopted within the prescribed period, be relied upon as against any national provision which is incompatible with the directive or in so far as the provisions define rights which individuals are able to assert against the State." (paras [18]-[25]).

[118] In the seminal case of *Van Duyn v Home Office* 41/74 the ECJ adopted a broad interpretive approach when assessing whether Article 3(1) of Directive 64/221 is sufficiently clear, precise and unconditional.

[119] The applicant, a Dutch national, sought to move to the UK to work for the Church of Scientology. Directive 64/221 allowed Member States to take measures restricting the movement of non-nationals on grounds of public policy or public security. The Home Office refused to admit the applicant to the UK on the basis that she was a member of a group considered to be socially harmful. The applicant relied on Article 3(1) of the Directive which provides, "measures taken on grounds of public policy or of public security shall be based exclusively on the personal conduct of the individual concerned." The respondent's riposte was that the relevant provision did not have direct effect pursuant to Article 189 of the EC treaty, which distinguishes between the effects of regulations, directives and decisions upon Member States.

[120] The ECJ ruled that the applicant was able to rely directly on Article 3(1) of the Directive as it confers upon individuals' rights which are enforceable by them in the national courts of a Member State. The court reasoned:

> "It would be incompatible to with the binding effect attributed to a directive by Article 189 [of the EC treaty] to exclude, in principle, the possibility that the obligation which it imposes may be invoked by those concerned…It is necessary to examine, in every case, whether the nature, general scheme and wording of the provision are capable of having direct effects on the relations between Member States and individuals" (para [12]).

However, the ECJ added:

> "It should be emphasised that the concept of public policy in the context of the community and where, in particular, it is used as a justification for derogating from the fundamental principle of freedom of movement for workers, must be interpreted strictly, so that its scope cannot be determined unilaterally by each member State without being subject to control by the institutions of the

> community. Nevertheless, the particular circumstances justifying recourse to the concept of public policy may vary from one country to another and from one period to another, and it is therefore necessary in this matter to allow the competent national authorities to an area of discretion within the limits imposed by the Treaty" (para [18]).

[121] The ECJ concluded that although the Directive had direct effect, the UK retained discretion to consider whether the applicant's association with an organisation deemed socially harmful constituted personal conduct for the purposes of refusing the applicant entry on public policy grounds.

[122] Returning to the present case, Mr Lavery identified Article 7(1) of the Directive as the relevant provision capable of having direct effect.

[123] The court is willing to accept that Article 7(1) is sufficiently precise insofar as it imposes an obligation on the Member State to ensure, after assigning asylum seekers to a particular area, that their right to private life and other benefits under the Directive remain unaffected within that area. However, as previously held, it does not (as the applicant appears to assert) confer a right to choose where he resides while his asylum claim is being assessed.

[124] The relevant provisions relating to residence can be found under Article 7(2), (3) and (4) of the Directive. The court is not satisfied that these provisions are unconditional. Subsections (2), (3) and (4), when read together with subsection (1) indicate that an asylum seeker's residence is entirely conditional upon the discretion of the Member State and the implementation of national legislation, which in this case would be the 1999 Act.

[125] Article 14 of the Directive is also important as this provides minimum standards in respect of the accommodation to be provided to asylum seekers. The respondent has clearly respected in full all the relevant requirements set out in that article whilst he was resident in this jurisdiction.

[126] The explanatory note attached to UK's Regulation Asylum Support Regulations 2000 and the Asylum Seekers (Reception Conditions) Regulations 2005 explains that those Regulations and the inclusion of a new Part 11B in the Immigration Rules, "make provision which is necessary for the implementation of Council Directive 2003/9/EC." The explanatory note adds that "many parts of the Directive do not require implementation as consistent provision is already made in existing legislation." Assuming this to be the case, the court is persuaded by the jurisprudence of the ECJ in *Becker v Finanzamt Munster-Innenstadt* [1982] ECR 53, that where "a directive is correctly implemented, its effects extend to individuals through the medium of the implementing measures adopted by the Member State concerned" (at para [19]). Thus, the implementation of the Directive, to the relevant

regulations and rules precludes the applicant from directly relying on the provisions contained therein.

[127] However, assuming this court was mistaken and that the provisions meet the conditions for direct effect under EU law and were therefore binding on the UK prior to withdrawal, the court concludes that the applicant has not demonstrated, practically, how his removal has resulted in a diminution of rights and that this was a consequence of the UK's withdrawal from the EU.

[128] For these reasons, the court does not find a breach of Article 2(1) of the Protocol or a breach of the EU Reception Conditions Directive.

[129] The application for judicial review is therefore dismissed.