

High Court grants a full hearing of judicial review of Home Office delays in determining asylum applications by unaccompanied children

Background to the case

The Government is required to have in place a fair and effective system for determining asylum claims which ensures that claims are determined promptly and that particular priority is given to claims by children in accordance with their best interests.

Delayed asylum applications have a big impact on young people's sense of place in the UK and act as a serious obstacle to their integration and educational progress as well as their access to higher education. The unresolved nature of their status can have a serious impact on their mental wellbeing.

The Home Office's published policy is that an asylum decision should be made within six months. However, Home Office statistics obtained through Freedom of Information Requests show that there are currently 3,457 unaccompanied asylum seeking children ("UASC") awaiting a decision on their asylum claims and, of those, 64% have been waiting for longer than six months and 47% have been waiting for longer than 12 months, with a large number waiting in excess of 36 months.

FOIA statistics show that asylum applications by unaccompanied children under 14 were taking on average 627 days to determine in 2018, and those in the 14-15 and 16-17 categories fared only slightly better (542 and 457 days respectively). 40% of applications by UASC were taking 18 months or longer.

Despite the priority which is supposed to be given to UASC asylum applications, other less urgent applications are routinely decided much more quickly. Non-UASC applications took on average 224 and 347 days in 2017 and 2018 respectively.

The Claimant

The Claimant, known as 'MK', was brought to the UK directly from Calais by the Home Office as part of the Calais camp clearance operation.** Although he applied for asylum in the UK when he was under 18, he is now 20 years old.

After court proceedings were issued the Home Office made the decision to grant MK asylum and have conceded that the delay in MK's case was unlawful.

Permission Granted

Following an oral hearing in December, the Honourable Mr Justice Lewis, granted permission for the case to proceed to a full hearing to consider the arrangements for determining claims

by unaccompanied children more generally on all grounds***. This means that the Court will be deciding whether:

- The delay in determining the Claimant's individual claim was irrational and unlawful at common law and under European law, including an infringement of Article 8 ECHR ('Ground 1');
- The Defendant's arrangements for determining asylum claims by unaccompanied children fail to give effect to international and domestic legal obligations to ensure prompt determination of asylum claims by unaccompanied children and fail to give effect to their best interests as a primary consideration. The system as operated carries an inherent and unacceptable risk of arbitrary and unfair decision making ('Ground 2');
- The Defendant's policy similarly fails to ensure that the child's best interests are a primary consideration in the determination of asylum claims, and is unlawful as contrary to the Defendant's "best interests" duties in domestic, EU and international law ('Ground 3');
- The Defendant's arrangements for determining asylum claims by unaccompanied children discriminate unlawfully against children as compared to adults and breach Article 14 with Article 8 ECHR ('Ground 4').

Not an isolated example

In addition to MK, Deighton Pierce Glynn are also instructed by a further eleven UASC who have faced very similar delays. The ongoing delay and consequent uncertainty over their immigration status, is causing considerable anxiety and distress. The majority are currently living with foster families and the delay is impeding their ability to study and integrate fully into the UK:

"I am living in a state of limbo... So many aspects of my life are suffering because of the delay, including my studies, my health and my relationships. I have reached a desperate point. I simply want to receive confirmation of a fair decision about my asylum claim, so that I can settle into my life as young adult in England".

"I have now waited over 20 months. It is ruining my life. I cannot sleep at night; I cannot concentrate at school. Every day I am so upset. It is the not knowing that is so upsetting for me".

"When the UK Government rescued me from the jungle, I had some hope again in my life. It has already taken the Home Office 21 months and still they have not decided my asylum claim and cannot tell me when they will give me an answer. I am living with the daily fear that I may be sent back where I know my life is in danger. I do not really feel like I have been rescued anymore because I still do not know that I am safe".

There are thousands of vulnerable children across the UK who have faced or are facing similar delays. We believe they are representative of the Government's failure to ensure a fair and effective system for determining asylum claims by unaccompanied children, in breach of its obligations to prioritise the "best interests" of children as established in domestic and international instruments including the UN Convention on the Rights of the Child.

The case is expected to heard later in 2019.

NOTES TO EDITORS

*An unaccompanied asylum seeking child is defined in Immigration Rule 352ZD as a person who:

a) is under 18 years of age when the asylum application is submitted;

b) is applying for asylum in their own right; and

c) is separated from both parents and is not being cared for by an adult who in law or by custom has responsibility to do so.

**In late 2016 the Government agreed to transfer 750 children from Calais and reunite them with family members in the UK as part of the UK's support for the Calais camp clearance.

***The Order granting permission is annexed to this document.

**IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT
BEFORE THE HONOURABLE MR JUSTICE LEWIS**

Claim no: CO/3942/2018

BETWEEN:

**THE QUEEN on the application of
K**

Claimant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Defendant



ORDER

UPON the Claimant's application for permission to apply for judicial review

AND UPON hearing leading and junior counsel for the Claimant and counsel for the Defendant at an oral hearing on 12 December 2018,

IT IS ORDERED THAT:

1. Permission to apply for judicial review is granted in relation to the lawfulness of the Defendant's delay in determining the asylum claim of the Claimant and the arrangements for determining asylum claims by unaccompanied children more generally, on all grounds as set out in the Claimant's grounds of claim, namely:

1.1 The delay in determining the Claimant's individual claim is irrational and unlawful (i) at common law; (ii) in breach of s.55 of the Citizenship and Immigration Act 2009; (iii) as contrary to the Council Directives 2003/9/EC, 2004/83/EC and 2005/85/EC (respectively, the "Reception", "Qualification" and "Minimum Standards" Directives); and (iv) as an infringement of Article 8 ECHR ('Ground 1');

1.2 The Defendant's arrangements for determining asylum claims by unaccompanied children fail to give effect to international and domestic legal obligations to ensure prompt determination of asylum claims by

unaccompanied children, including the s.55 duty, and fail to give effect to their best interests as a primary consideration. The system as operated carries an inherent and unacceptable risk of arbitrary and unfair decision-making ('Ground 2');

1.3 The Defendant's policy similarly fails to ensure that the child's best interests are a primary consideration in the determination of asylum claims, and is unlawful as contrary to the Defendant's "best interests" duties in domestic, EU and international law ('Ground 3');

1.4 The Defendant's arrangements for determining asylum claims by unaccompanied children discriminate unlawfully against children as compared to adults and breach Article 14 with Article 8 ECHR ('Ground 4').

2. The Defendant shall file and serve detailed grounds of defence together with witness evidence and any other evidence relied on by 4pm on 29 March 2019.
3. The claim shall be listed for a case management hearing on 16 April 2019 with a time estimate of 2 hours, to be heard by Lewis J if possible.
4. Costs reserved.

Dated: 12 December, 2018

By the Court

