Neutral Citation Number: [2026] EWHC 2374 (Admin)

Case No: AC 2025-LON-003342

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 15 September 2026

Before :

SIMON TINKLER
SITTING AS A DEPUTY JUDGE OF THE HIGH COURT

- -

Between :

THE KING **Claimants**

(ON THE APPLICATION OF

(1) FNB AND

(2) FNN)

- and -
THE SECRETARY OF STATE FOR THE HOME DEPARTMENT **Defendant**

- -
- -

Chris Buttler KC and Charles Bishop (instructed by **Duncan Lewis**) for the **Claimants**
Colin Thomann KC and Emily Wilsdon (instructed by **the Government Legal Department**) for the **Defendant**

Hearing dates: 23 and 24 June 2026

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JUDGMENT

This judgment was handed down remotely on Tuesday 15 September 2026 at 2:00pm by circulation to the parties' representatives by email and release to The National Archives.

Simon Tinkler sitting as a Deputy Judge of the High Court:

Anonymity

1. There is an anonymity order in relation to the Claimants in this case.

Introduction

2. This is a claim for judicial review and damages following (a) the refusal of a claim for asylum and the certification as "*clearly unfounded*" of applications made by the Claimants for humanitarian protection and leave to remain on human rights grounds and (b) the detention of the Claimants pending removal following that refusal and certification.

3. FNB and FNN are nationals of India and are married to each other. FNB is of the Hindu faith and FNN is of the Muslim faith. FNB was granted leave to enter the UK in 2022 to study at university. FNN was granted to leave to enter the UK as her dependant. On 27 December 2023 the university notified the Secretary of State for the Home Department ("SSHD") that they were withdrawing sponsorship of FNB as she was no longer studying. The leave to remain in the UK of FNB and FNN expired on 11 May 2024 and they became overstayers. They made several applications for fee waivers in order to make applications for leave to remain. These applications were unsuccessful.

4. On 26 March 2025 FNB claimed asylum in the UK on the basis she and her husband feared persecution in India because of their interfaith marriage. FNN was a dependant on that claim.

5. The claim was refused by the SSHD in a decision dated 7 August 2025 (the "Decision"). The human rights grounds and humanitarian protection claims were certified as "*clearly unfounded*" (which I refer to as "*certified*" in this judgment). That meant that there was no right of appeal.

6. FNB and FNN were detained on 11 September 2025 pending removal to India. They were housed separately with FNB in a female accommodation area and FNN in a male accommodation area. The SSHD's position was that although accommodation in the immigration removal estate was generally available in which married couples could be placed, in their individual case they would not be placed into it. The principal reason given was that they were shortly to be removed and, as such, any interference with their article 8 rights was proportionate.

7. The claim for judicial review was issued on 1 October 2025. FNB and FNN were released from immigration detention on 3 October 2025.

8. On 30 January 2026 the SSHD undertook to reconsider the application for asylum. At that time, negotiations were being conducted between the parties to settle the case. The SSHD had proposed to reconsider the asylum claim as part of a settlement proposal. The SSHD seemed to have undertaken to reconsider the application in the mistaken belief that the negotiations had concluded, or would conclude, successfully. The SSHD said the offer to reconsider the decision was, in essence, a mistake.

9. The Claimants provided information for the reconsideration that they had not previously provided. The reconsideration decision (the "Reconsideration Decision")

was issued after the hearing but before judgment was handed down. In it, the claims were again refused but they were not certified as being "*clearly unfounded*". I received submissions from the parties about the effect of the Reconsideration Decision. I address the consequences of this below.

Grounds of judicial review

10. There were four grounds for which permission to bring the claim for judicial review was granted, and which remained live at the start of the hearing. The numbering of the grounds varied during the proceedings. In this judgment I adopt the following numbering:

Ground 1

That the Decision was procedurally unfair and thus unlawful because the Claimants were denied a fair opportunity to respond to the grounds on which certification was being considered.

Ground 2

That the Decision to certify the claim as "*clearly unfounded*" was irrational and thus unlawful.

Ground 3

That, even if the detention was generally lawful, the detention of the Claimants in separate accommodation was an unlawful interference with their right to family life under Article 8 of the European Convention on Human Rights ("EHCR").

Ground 4

That the Claimants were entitled to damages for unlawful detention under Grounds 1 and 2, and for unlawful interference with their rights under Ground 3. It was agreed that any claim under Ground 4 would be transferred to the county court for a determination of quantum.

11. The SSHD denied that the Decision was unlawful on either Ground 1 or Ground 2. The SSHD said that the Claimants had a fair opportunity to provide evidence in relation to the grounds on which their claim was subsequently certified. The SSHD also said that the certification was not irrational.

12. The position of the SSHD on Ground 3 was highly unsatisfactory.

13. Until the second day of the hearing, the SSHD denied that the detention in separate accommodation was an unlawful breach of FNB and FNN's Article 8 rights. The SSHD conceded, however, at the start of the second day of the hearing that the detention in separate accommodation was an unlawful interference with the rights of FNB and FNN. This concession was made in the light of evidence which apparently the SSHD only came to realise shortly before the hearing that they possessed. That evidence showed that since 2020 the SSHD never had any family accommodation in which FNB and FNN could be housed. The position maintained by the SSHD throughout the proceedings to that point that there had been genuine consideration of housing FNB and

FNN together was, the SSHD admitted, essentially a fiction. I address below the consequences of this failure in the duty of candour.

14. Although the SSHD conceded under Ground 3 that the interference with the Article 8 rights of FNB and FNN was unlawful, the SSHD continued, however, to dispute that any damages were payable for that unlawful interference.

15. As the Claimants had been released from detention, and the SSHD had agreed on 30 January 2026 to reconsider the Decision, the declarations of unlawfulness that were sought were only relevant to the question of damages. They had become academic a long time before the hearing in relation to any forward-looking declaratory aspects.

Procedural matters

16. Some procedural matters that were addressed at the start of the hearing are relevant to this judgment and the subsequent transfer of the claim to the county court.

Application to admit witness statements and amend the SFG

17. One working day before the hearing, the SSHD provided two witness statements. This late provision of witness evidence was extremely unsatisfactory. It was in clear breach of the procedural rules and caused significant disruption to the hearing preparation of everyone. Those witness statements were, however, admitted. They disclosed material new information that impacted directly on the pleaded grounds. The SSHD consented to the amendments to the Statement of Facts and Grounds that flowed from the new evidence.

Expert medical evidence

18. The Claimants applied to adduce expert medical evidence. The only live issue to which this had material relevance was the quantum of damages if the detention and /or separation were unlawful. The question of quantum was not being considered at this hearing. The application was therefore stayed until after determination of the substantive claim.

Evidence

19. This section gives an overview of the evidence put before the court. The detailed evidence is set out later in the judgment in relation to the ground to which it was relevant.

Witness evidence

20. FNB and FNN provided witness statements. They gave evidence about their life in India before coming to the UK, about their life in the UK and about the events before, during and after their detention.

21. Jeremy Bloom provided a witness statement. He was the solicitor acting for FNB and FNN. His evidence related mainly to the lack of availability of legal aid generally to people such as FNB and FNN. This was relevant, he said, because FNB and FNN were not legally represented at the time they were interviewed or when the Decision was

made. Mr Bloom also gave evidence about the steps he would have taken if he had been their legal representative at the relevant time.

22. There were witness statements from two employees of the SSHD. The witness statements of Frances Hardy revealed that no family accommodation existed anywhere in the immigration detention estate for married couples without dependent children. The witness statement of Paul Thompson gave evidence about the circumstances in which the SSHD offered in January 2026 to make a fresh decision in relation to FNB and FNN's claim for asylum.

Documentary evidence

23. The principal documentary evidence was the Decision itself, the records of the interviews with FNB and FNN, the Reconsideration Decision and the Country Policy and Information Notes relevant to India ("CPINs").

Ground 1 - Procedural unfairness

Legal Framework

24. The parties largely agreed on the law to be applied in analysing procedural fairness. The principal authorities to which they drew the court's attention, or which were discussed during the hearing are set out below.

25. Lord Mustill identified in *R v Secretary of State for the Home Department, Ex p Doody* [1994] 1 AC 531, 560, six basic principles of procedural fairness including:

> "…(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."

26. Lord Mustill also made it clear that what procedural fairness requires always "*depends on the context of the decision*". This was re-confirmed in *Pyaneandee v Lang Shang Lam* [2024] UKPC 27 in which Lady Simler said at paragraph 68:

> *"The standards of fairness are neither immutable nor are they to be applied identically in every situation. They must depend on the facts and circumstances of the case…".*

27. Beatson LJ said at paragraph 39 of *R (Howard League for Penal Reform) v Lord Chancellor* [2017] 4 WLR 92 that in assessing what procedural fairness requires in a particular context, the Court will consider:

> "*the nature of the function under consideration, the statutory or other framework in which the decision-maker operates, the circumstances in which he or she is*

> *entitled to act and the range of decisions open to him or her, the interest of the person affected, the effect of the decision on that person's rights or interests, that is, the seriousness of the consequences for that person*":

28. The consequences for the person may include the existence of the opportunity to challenge the findings. Lady Simler said for example in *Pyaneandee* at paragraph 70, as approved by Lord Clark in *Hart v Chin* [2025] UKPC 51:

> *"The more finality there is in the conclusions reached by a commission and reflected in its inquiry report and the greater the strength of their expression, the more there is required to be done by the commission to ensure that the process is fair; and vice versa."*

29. Bingham LJ said in *R v SSHD ex p Sittamplan Thirukumar* [1989] Imm AR 402 at page 414 that asylum determinations "*are of such moment that only the highest standards of fairness will suffice*" and that "*if an opportunity to make representations is to be meaningful the mind of the applicant must be directed to the considerations which will, as matters stand, defeat his application*".

30. The Court of Appeal in *R (SP (Albania)) v SSHD* [2019] Imm AR 1288 at paragraph 28 gave examples of how further questions could and should have been asked in that particular case:

> *"Those answers beg any number of further questions that were not asked and which were relevant to the appellant's claim being taken at its highest by the decision maker and the tribunal. For example, why did the appellant fear that her children would be taken away? Who would take them away? What was the connection between AK and the authorities or anyone else who would take the children away? Why would she not be believed if she told the authorities the truth? Those questions were not asked or answered in any sufficient particularity to demonstrate that her case was being considered at its highest."*

31. In *Balajigari*, the Court of Appeal referred to *R v Hackney London Borough Council, Ex p Decordova* (1995) 27 HLR 108, 113, in which Laws J held, in the context of a housing decision:

> "*In my judgment where an authority lock, stock and barrel is minded to disbelieve an account given by an applicant for housing where the circumstances described in the account are critical to the issue whether the authority ought to o›er accommodation in a particular area, they are bound to put to the applicant in interview, or by some appropriate means, the matters that concern them*."

32. The SSHD invited the court to accept the recent findings of Upper Tribunal Judge Mahmood in *R (SPX) v SSHD* JR 2025 MAN 00085**.** That was not a case which the SSHD was entitled to place before the court as an authority. Accordingly, I do not take those findings into account.

33. The Claimant brought to the court's attention *Hart v Chin* [2025] UKPC 51 in which Lord Clark said at paragraph 35 that:

"In any event, as is made abundantly clear in the Cotton case, the law does not require the person against whom the adverse comments and findings have been made to show what the response would have been and how that could have affected the outcome. The failure to give notice may be unfair, even if devoid of practical consequences."

34. *R (Singaram)v Secretary of State for the Home Department* [2025] EWCA Civ. 1375 Lewis LJ said the following in relation to an immigration claim:

"49. The underlying purpose of the principle of public law that has been said to have been violated needs to be borne in mind and consideration should be given to whether that purpose has in fact been achieved. Here the underlying purpose was to enable the claimant to have the opportunity to make representations as to why he should not have his leave cancelled and, in substance, that was achieved on the facts of this case. In those circumstances, the courts have in similar circumstances taken the view that there has been no breach, or no material breach, of the principles of procedural fairness or certainly none that renders the decision unlawful. By way of example, it has long said that there is "no such thing as a technical breach of natural justice" and a court should not find a breach of natural justice (now more commonly called procedural fairness) in the absence of substantial prejudice to the individual as a result of the procedural failing (see George v Secretary of State for the Environment (1979) 38 P & CR 608, per Lord Denning MR at 517). Alternatively, the courts may, depending on the circumstances, find that the decision was vitiated by a breach of the principles of procedural fairness but have refused to grant a remedy to quash the decision either as a matter of the discretion of the court or the operation of section 31(2A) of the Senior Courts Act 1981.

50. The matter was considered recently by this Court in R (Save our Stonehenge World Heritage Site Ltd) v Secretary of State for Transport [2024] EWCA Civ. 1227; [2025] PTSR 726. *There it was said that a judge had erred by considering whether there had been any material prejudice suffered as a result of alleged procedural unfairness. It was said that the position was that if there had been a breach of the principles of procedural fairness, the decision was unlawful and the only question was whether a remedy had to be refused because of section 31(2A) of the Senior Courts Act 1981. That subsection placed a burden on the decision-maker to show that it was highly likely that the outcome for the individual would not have been substantially different if the conduct complained of had not occurred. The Court rejected that argument. At paragraph 75, it said this:*

"75. We consider that submission mistaken. The common law principles of procedural fairness are intended to ensure an individual is treated fairly. What procedures are required to ensure fairness will, as we have said, depend on a number of factors including the nature of the decision, the decision-making process, and the facts. And there will be no breach of the principles of procedural fairness even if a particular step has not been taken where that has not resulted in any prejudice to the individual (see George v Secretary of State for the Environment and another (1979) P. & C.R. 609). It is clear that the judge was doing no more at [115] and the following paragraphs of his judgment than summarising and applying the principles of procedural fairness, and that he did so accurately in the light of the case law. ....".

> *51.That is the position in the present case. Any failure to comply with the principles of procedural fairness by not making it clear to the claimant that he had an opportunity to make representations as to why his leave should not be cancelled immediately, or at a later date, did not in fact result in any prejudice. As a result of the questions that were asked during the decision-making process, the claimant did, in fact, provide the information that he wanted the decision-maker to consider when deciding whether to cancel his leave immediately. In the circumstances, there was no, or no material, breach of the principles of procedural fairness and certainly none that vitiated the decision."*

Applying the legal framework to the facts

When did the SSHD seek information?

35. There was only one substantive interview, and there were no follow up questions asked after the interview. The Claimants did not provide any evidence after the interview. The substantive interview is therefore the critical event.

36. The questions raised in the interview were based on the application made by FNB. It was her claim and it was her responsibility to put forward evidence to support her claim.

37. The SSHD had, however, a duty to make enquiries and if the interviews were the only time when such enquiries were to be made, then the duty of enquiry will be high.

38. At the start of the interview FNB was told "*This interview is your opportunity to tell us your reasons for claiming asylum. It is very important you do not withhold any information you believe to be relevant to support your claim. I will help you by asking you questions so that we have the information we need to make a decision in your case*".

39. She was not told that if her claim was certified then she would have no right of appeal.

40. That interview lasted 2 hours 10 minutes. Some 93 questions were asked covering multiple aspects of her asylum application. Some of the questions asked were in response to the information FNB offered during the interview; they were not a wholly pre-scripted set of questions that took no account of her previous answers.

41. FNB confirmed that she understood what had been said and that she was happy to be interviewed in English. She was sent notes of the interview afterwards and suggested two corrections.

What did the Claimants say the SSHD failed properly to investigate?

42. This ground of challenge firstly requires analysis of the questions put by the SSHD to the Claimants on the relevant topics. The analysis of this question is made more complicated than it might have been. This is because the interviews, the Decision, the Statement of Facts and Grounds and the arguments before me all had slightly different areas of focus. The Claimants, however, relied in the Statement of Facts and Grounds

on two specific excerpts from the Decision as being the elements in relation to which the procedure had unfairly failed to give them opportunity to provide evidence.

> "(i) At paragraph 22(a) of the Certification Decision, it was said that the Claimants did not adduce "*any evidence to show how the individuals you fear will be able to influence the Indian state to either subject you to treatment amount to persecution or not offer you sufficient domestic protection*".
>
> (ii) At paragraph 22(b), it was said that the Claimants had not adduced "*any evidence to show how the group you fear will be able to locate and harm you with impunity, in every part of a vast and populous country like India*".

43. These two paragraphs should not, of course, be read in isolation. They are part of the 18-page assessment set out in the Decision. Although those paragraphs are very important, they are only part of the explanation of the conclusion reached and the evidence on which the conclusion is based. Given how the Claimants brought their claim, it is however convenient to address the two factors they identified.

44. The evidence on those two factors sought by the SSHD would either be generic, in that it related to every person in the Claimants' position, or specific, in that it related to these Claimants in particular.

From whom did the Claimants say that they feared persecution?

45. The first stage in assessing the risk of persecution is to identify those from whom persecution might come. At FNB's screening interview and substantive interview, she formulated her asylum claim by reference to a fear of "*our families, Indian law and the religious societies*", "*mainly religious extremists and family and society and also the local political parties*" and "*everyone is involved in it*". She said that her family did not have any relationship with the state although "*some uncles are religious extremists*".

46. In addition to her family, FNB therefore identified that she feared persecution from "*mainly religious extremists….and society and also the local political parties".* This is a more general assertion regarding the situation in India. She did not give much detail of individuals or specific groups from whom she said she feared persecution and why. The only organisation she identified where she had a specific negative experience was the police.

47. For the purposes of the asylum claim, the persecution could arise either from state actors, or from non-state actors if the state failed to protect someone from them. The classes of persons identified by FNB potentially fell into both categories; the family were non-state actors, whereas the police and possibly local political parties were state actors. A fair reading of her interview is that she expressed her fears most strongly and precisely about persecution by her family; indeed, in the first question about who she feared (Q11), it was only her family that she mentioned. It was therefore reasonable for the SSHD to consider in detail the family, which FNB had said was her primary fear, particularly when the other groups she mentioned were general descriptions, lacking any detail of any historic persecution or feared future persecution.

What did the SSHD ask about the persecution Claimants feared from those people?

48. In order to understand the questions asked, it is helpful first to consider in broad terms what the interview covered. FNB explained in the interview that she had moved away from her family to Mumbai, had subsequently met FNB in Mumbai, that they had moved to and lived together in Hyderabad when she was 25 and had got married shortly some four years later before moving to the UK. Throughout that time, she maintained some contact with her family, but they were unaware that she was in a relationship, or married, or married to a man of the Muslim faith. Her family had not attempted to arrange a marriage for her, but she feared they might do so if she was "*sent back*".

49. FNB was asked a number of questions about the people who she said she feared. These included the following:

    i) "Why do you fear them?"

    ii) "When did this fear begin?"

    iii) "When was this fear starting?"

    iv) "What do you fear would happen to you if you returned there?"

    v) "Do you fear anybody else there?"

    vi) "What do you mean, people complained, who complained?"

    vii) "What did she say when she saw he was muslim?"

    viii) "Did the locals leave you alone…for that year?"

    ix) "Did [the fact you were different religions] worry you?"; and

    x) "You had an issue with the landlady and the police, did anyone else give you issues?"

50. In relation to her family, she was asked

    i) "What family do you have in India?"

    ii) "Are you in contact with them?"

    iii) "Do you have a good relationship with them?"

    iv) "Do they have any relationships with the authorities?"

    v) "Did your family meet [your husband] there?"

    vi) "Have your parents ever mentioned any men they want you to marry?"

    vii) "Who did your parents think you were living with?"

51. She was asked on two separate occasions "*What do you fear would happen if you returned?*". Her answer to this question towards the start of interview (Q11) only referred to family threatening her. Following that answer she was asked, "*Do you fear anybody/anything else in India?*" to which she asserted "*everyone is involved in it*".

52. At the end of the interview she was asked again, "*What do you fear would happen if you returned?*" She again identified that she feared "t*hey will find out and separate and torture us and religious extremists would torture or kill us and local politician will oppose us"*. It is not completely clear, but the context and previous answers indicate that the "*they*" she was referring to was her family.

53. She was asked about the police, "*How many times did you go to the police for help?*" and "*Could you not complain about the police behaviour*"?

54. She was not asked specifically whether she had ever been threatened by a religious extremist or local politicians.

What did the SSHD ask about there being places in India where the Claimants would be safe from persecution?

55. The introductory words to the interview also informed FNB that "*[The decision maker] will…after the interview, make any further enquiries necessary about…the situation in your country"*. FNB was therefore on notice from the start of the interview that any assertions she made about the situation in India may be checked by the decision maker. In this case, they were checked by considering the CPIN.

56. The questioning in the interview on relocation was less fulsome than on the threats she feared. Indeed, it was implicitly contained within other questions rather than being specific. The only real specific questions on this were "*Could you move to New Delhi and live peacefully?*" and "*Bharatiya Janata Party leader Shahnawaz Hussian has married a Hindi lady why can you not live peacefully like him?*". There was no reference to the CPINs.

57. This may have been influenced by context because by that stage in the interview FNB had already confirmed that she and her husband had lived in Hyderabad safely for a year in a house despite previously been said to have been persecuted there and had spent time on holiday in Goa where the "*owner was a Christian and we had no issues*".

Discussion and conclusion

58. The analysis of procedural fairness is highly fact and context sensitive.

59. The SSHD was assessing evidence to support a claim that was made some three years after the Claimants came to the UK. FNB was a university educated person who had taken time to make her asylum application. She was in her 30s and not a young adult. Although the asylum interview would undoubtedly have been an important and stressful event, she was not being interviewed late at night, having only just arrived in the country in a sleep-deprived situation. It could reasonably be expected that FNB would have had sufficient opportunity to consider before the interview what personal experiences would support her claim, although clearly she would have had little experience of being in such an interview.

60. Although she was not told that if her claim was certified she would not have a right of appeal, she was told that she must provide all evidence that she had. If she failed to provide evidence because she believed she could provide it later on appeal then that is not a failure by the SSHD; it is a failure by her.

61. I consider first her argument that she was not given fair opportunity to address the concerns set out subsequently in paragraph 22(a) of the Decision.

62. The areas of questioning in her interview covered (1) identification of the people from whom she said feared persecution (2) why she feared persecution from those people (3) the detail of the incidents she mentioned which she said were persecution (4) protection she had or had not received from the police (5) her current and future relationship with her family from whom she said she feared persecution.

63. The interview gave her opportunity to mention any specific threat or persecution she had suffered. She identified the two specific police incidents, as well as the situation with her landlady, a short-term issue in Goa and harassment from neighbours and in a market. Her answers were not closed down, and she was not prevented from giving more examples.

64. I am satisfied that, in the context of the claim she had made, the suite of questions she was asked plainly identified that she needed to explain from whom she feared persecution, and why. The interview gave her a more than adequate opportunity to explain any persecution she had personally suffered or believed she would suffer whether from her family, the police or non-state actors. It also plainly asked her about the protection she had or had not received from the police. That means that the challenge of procedural fairness identified in relation to clause 22(a) of the Decision fails.

65. I turn to the challenge to paragraph 22(b) of the Decision. The SSHD produces country policy and information notes on individual countries ("CPINs"). The CPINs set out the country information on which the SSHD relies in their decisions as well as the SSHD's policy on issues such as risk and sufficiency of protection in a particular country. Those are public documents, although there is no evidence that in this case the Claimants were aware of them or their contents. Paragraph 22(b) of the Decision in essence relies on the FNB not having displaced the evidence in the CPIN that India is a country where in some places in India people in interfaith marriages are safe from persecution.

66. The question is whether FNB was given a fair opportunity to address the view, that the SSHD ultimately reached, that India was a large country and there would be places within in it in which she and her husband could safely live. Put another way, as she had identified a specific fear in relation to her family and a general fear of state or religious action against her, was she given a fair opportunity to explain why those risks existed throughout all parts of India?

67. She was not taken to the CPINs that set out why India was, in the view of the SSHD a country in which people in interfaith marriages can find places to live safely. She was not asked a general question about why nowhere in India was safe. She was only asked about why New Delhi would not be safe, and why she could not generally be safe like a prominent politician who the interviewer named. Her answer to the question about New Delhi did, however, include her assertions about why she could not live anywhere in India (including that no one would rent her a flat as they didn't have any money).

68. She had been asked questions that allowed her to give her own personal evidence about places in India, which she had been safe for a time. These included Goa and Hyderabad, although her time in Hyderabad included periods and areas of the city where she said she felt persecuted. It included questions that allowed her to give evidence about the

police, her landlady and people in the market in Hyderabad. She was also twice asked general questions about her fear of returning and whether anyone else gave her issues apart from the incidents she mentioned.

69. I consider the assessment of questioning on the safety of India to be more finely balanced than in relation to her fear of persecution.

70. Her fears about other parts of India, which she had not lived in or visited, were said to be based partly on concerns that her family would find them. She was asked multiple questions about her family and her interactions in the six years since she started her relationship with FNB. She had explained how in that time her family had not found them or taken steps to find them. She was also questioned generally about the people who might persecute them generally.

71. She was asked the specific question about New Delhi but gave an answer relating to all of India. She was asked about a prominent interfaith couple but essentially said that she did not have money to be like them.

72. Stepping back, although she was mostly asked questions about her personal experience of safety in India, I am satisfied she was given sufficient indication that there were areas in India in which the SSHD would consider that they would be safe to put her on notice of that concern, and for her to provide information about her personal experience to counteract it. I consider that she was given sufficient opportunity to respond to the view in the CPIN that some parts of India would be safe on which the SSHD would come to rely. Her claim on this ground in relation the conclusion in paragraph 22(b) also therefore fails.

Would she have added anything material if asked more questions?

73. In case I am wrong in this assessment, I shall consider now whether there was anything material that FNB would have mentioned had she been asked different questions.

74. *Chin v Hart* was a Privy Council decision relating to a person who had not been given any notice of, or opportunity to comment on, adverse findings made against him in the context of an inquiry. It did not relate to a situation where a person was on notice that their asylum claim was being questioned, and where the matters they had raised were covered in the questioning. *Singaram*, on the other hand, related to an immigration claim. The analysis in both is, of course, consistent, and emphasises that each analysis of procedural fairness is context specific. This case seems to me to be more aligned with the factual circumstances in *Singaram*, but I have considered the question of procedural fairness in the light of both.

75. In this case, there is evidence as to the information that the Claimants would have provided if given the opportunity. This is because the Decision was reconsidered and the Claimants were given opportunity to provide everything they wished for that reconsideration.

76. Neither party suggested that the court should ignore the reconsideration; it was implicit, if not explicit, that the court should take it into account. I therefore considered the matters that were evident from the face of the Reconsideration Decision.

77. The information FNB provided for the Reconsideration Decision included independent evidence commissioned by the solicitors that FNB instructed after the interview. That evidence, by definition, is not something that FNB could have provided herself in the interview.

78. The personal information she provided for the Reconsideration Decision included medical evidence. FNB had been asked about her medical situation in the interview. She therefore had opportunity to explain in that interview, and was on notice that she should, any relevant medical issues. Her claim was also not refused on the basis of a medical assessment. The evidence for the Reconsideration Decision also included a report from September 2025, some months after the interview, in which FNN gave an account of attacks by his own family, which FNB failed to mention at all in her initial interview. Those attacks seem to have happened in 2009/2010, some seven years before FNN and FNB met. It is difficult to see how they are relevant to the Decision but in any event, in my judgment, she had ample opportunity to mention them in the original interview when asked, for example, about who she feared.

79. The Reconsideration Decision does not, in my judgment, assist the Claimants in their procedural unfairness argument. It shows that with the assistance of legal advice they have put forward more evidence. It does not show that they were not on notice of the areas of concern to the SSHD and given the chance to put forward evidence before the Decision.

80. Put another way, they have now had full opportunity to bring to the attention of the SSHD every relevant incident that might indicate that for these two individuals there is nowhere India that is safe from persecution. They have not, in my judgment, brought anything new and material to the attention of the SSHD that FNB would have mentioned in the interview with different questioning.

81. It follows that this is a case in which, for similar reasons to those in *Singaram*, any procedural unfairness was, in my judgment, immaterial and the claim would also fail for that reason.

Legal representation

82. I turn to an argument raised regarding legal representation. In essence, the Claimants argued that the interview was procedurally unfair because they were not legally represented. When they subsequently obtained legal representation, they provided more and /or different information. It therefore followed, said the Claimants, that the lack of legal representation had led to procedural unfairness.

83. I can address this point briefly. FNB was not legally represented at the interview. Her evidence was that she had made enquiries about obtaining legal representation from some 8-10 firms. She said that a combination of her inability to pay, the lack of legal aid and the low availability of firms able to undertake this work meant that she had been unable to obtain legal representation. There was little documentary or detailed witness evidence as to her financial situation or which firms she had contacted or the basis on which they would not assist her. FNB was able subsequently to obtain legal aid.

84. Many claimants do not have legal representation. I do not accept that as a matter of general principle an absence of legal representation makes a procedure unfair.

85. The lack of legal representation may, however, affect the questions that should be put, and the way in which they should be put, and the degree to which matters should be explained to a person.

86. FNB is an individual educated to graduate level, admitted to the United Kingdom to pursue education to tertiary level, and advancing an asylum claim based upon her personal circumstances and experiences. She communicated in English without an interpreter. Although not a lawyer, FNB could realistically be said, in my judgment, to be able to understand and put forward the factual evidence related to the claim she was making that she and FNB had suffered, and would, suffer persecution.

87. Taking the interview as a whole, I do not accept that in this case the absence of legal representation has resulted in any procedural unfairness that brings into question the lawfulness of the decision. The claims were straightforward. FNB had herself had all the personal knowledge of the factual matters in their lives. FNB was a highly educated adult. The substantive interview took place many months after she made her application and several years after she arrived in the UK.

88. The fact that after the interview she obtained legal aid, and that her solicitors then sought further evidence, does not retrospectively make the interview and the Decision process procedurally unfair.

Alternative remedies

89. The SSHD argued that there were readily available remedies under the Immigration Rules and in law for individuals dissatisfied with certification, and wishing to furnish further evidence and/or submissions having received an adverse determination including an opportunity:

    i) to advance further submissions or evidence under Rule 353 which would have to be considered prior to removal; or

    ii) to challenge both the certification decision, and any subsequent decision taken under Rule 353, by way of judicial review.

90. The SSHD is correct that the above provisions apply. They do not, however, relieve the SSHD from an obligation to make proper enquiry in the first instance. The Rule 353 right to provide further information is to assist a claimant who has information that is "*significantly different*" that has not previously been considered, whether because they themselves omitted to mention it, or because it came into their possession subsequently, or for any other reason. The fact that a person may bring a claim for judicial review also does not assist the SSHD. The purpose of judicial review is to ensure decisions are made lawfully, not to provide a justification for failing to make lawful decisions in the first place.

Ground 2 – unlawful certification of claim as clearly unfounded

Legal framework

91. In *R (Brown)* at paragraph 31 it was said that when considering whether a claim is "*clearly unfounded*" the decision-maker must ask whether the claim is one which "*is*

bound to fail, or, to put it another way, one which cannot, on any legitimate view of fact and law, succeed".

92. In *ZT (Kosovo) v Secretary of State for the Home Department* [2009] 1 WLR 348 it was made clear by Lord Phillips in paragraph 23 that "*If any reasonable doubt exists as to whether the claim may succeed then it is not clearly unfounded*".

93. *ZT (Kosovo)* also makes it clear that there is only one answer as to whether or not a claim is "*clearly unfounded*" such that, if the court disagrees with the decision made by the Secretary of State, it must conclude that the decision was irrational. The test is an objective one.

94. In *FB & anr (Albania) v SSHD* [2016] EWCA Civ 605, Beatson LJ confirmed at paragraph 53 that "*If...the claim cannot on legitimate view succeed then the claim is clearly unfounded; if not, not*".

95. He also at paragraph 64-65 endorsed the guidance of the SSHD that

    i) a manifestly unfounded claim is a claim which is so clearly without substance that it is bound to fail, and

    ii) it is possible for a claim to be manifestly unfounded even if it takes more than a cursory look at the evidence to come to a view that there is nothing of substance in it.

96. At paragraph 49 he confirmed that:

> *"a reviewing court must ask itself essentially the questions which would have to be asked by a Tribunal considering an appeal"*

97. Beatson LJ made clear at paragraph 77 that:

> "*What must be assessed is the claim which has in fact been put forward, including the answers in interview and the contents of witness statements, the detail given and any supporting evidence put forward. To do otherwise is to let a genuine subjective fear be conclusive, whether or not it is objectively well-founded and regardless of what the objective evidence about a State is".*

Applying the legal framework to the facts

98. India is a country listed in s94(4) Nationality, Immigration and Asylum Act 2022. The SSHD therefore is required to certify a protection claim or human rights claim as "*clearly unfounded*" unless satisfied that it is not clearly unfounded.

99. The claim was certified as clearly unfounded on two bases. The first was that there were places in India to which they could safely relocate. The second was that their fear of an absence of police protection against identified risks was clearly unfounded. If certification was correct on either of those two bases, then the claim under Ground 2 would fail.

100. The SSHD asked the court to consider the fact that the Upper Tribunal has promulgated Country Guidance on the position of minorities in India. The guidance to which they referred was not, as far as I can see, before the decision maker. It also related to lesbian couples and not interfaith couples. It therefore had limited relevance to the issues in this case.

101. The assessment by the decision maker was based on two underlying sets of evidence. The first was the general country guidance issued by the SSHD ("CPINs"). The second was the individual experience of the claimants. That assessment was made taking into account the evidence in front of the decision maker at the time.

CPINs

102. The CPINs included the *Country Policy and Information Note India: Religious minorities and Scheduled Castes and Tribes* (Version 4.0 April 2024). *Religious minorities and Scheduled Castes and Tribes* (April 2024), *Actors of protection* (June 2023); and *Internal relocation* (June 2023).

103. The CPIN *India: Religious minorities and Scheduled Castes and Tribes* included an assessment of the position of people in interfaith marriages. It says at 3.10.1 and 3.10.2:

> *"In general, persons in or entering inter-faith and inter-caste marriages are unlikely to be subject to treatment by state and/or non-state actors that is sufficiently serious, by its nature and/or repetition, to amount to persecution or serious harm. The onus is on the person to demonstrate otherwise."*
>
> *"Inter-faith and inter-caste marriages are legal in most states. However, many Indian families still prefer marriages arranged within their own religious group and caste. Around 10% of all marriages in India take place between different castes while around 2.1% of marriages are inter-faith. According to research by Pew between late 2019 and early 2020, there is less objection to intercaste marriages in the South and Northeast of India compared to other areas. Persons entering inter-faith marriages may, in some cases, be subject to disapproval from their families, discrimination, societal exclusion or family or communal violence. There are examples of high-profile interfaith marriages including between BJP politicians"*

104. The CPIN included, in section 10, a four-page review of material from organisations such as Human Rights Watch, USCIRF and DFAT. It describes a number of challenges faced by interfaith couples. These are said to differ state by state. There are some states in which some degree of persecution and lack of state protection may arise. There are some states in which there seems to be an increasing tendency for religious intolerance.

105. The evidence of the CPINs was clear that safe places exist in India. The CPIN cannot, in my judgment, be read as supporting the view that generally there are no states within India where an interfaith couple can live without persecution or effective state protection.

106. The fact that some places to some degree, even a high degree, may not be safe does not cut across that conclusion. Neither does the fact that in some places the protection from the police may be inadequate cut across that conclusion. The Decision specifically addresses this when assessing that "*there is an established police force from which you could seek protection, though they are susceptible to corruption.*" The conclusion as "*the authorities in India are in general able to provide citizens with effective protection to the appropriate standard in* ***Horvath***".

Personal evidence of the Claimants

107. FNB gave the following evidence in her substantive interview in addition to that that set out above under Ground 1. I have left the typographical errors in the quotes from the transcript except where it was necessary to correct them so that they made sense.

> ***"46. How did you hide the relationship?***
>
> *....when we left mumbai we thought its a new place but society there meant we had to hid at home and it was covid but the landlord would know and they completely opposed it and caused chaos for us I went there first and got as flat and the hindu owner was ok and i got a job and then my partner when he started staying they noticed there was a guy staying with a girl and people complained to the landlord and she was cross i lied to her and she was more furious when she saw it was a muslim guy and wanted us to leave but she couldnt force us out as we had an agreement and we called the police and they agreed with her and said we should leave and we said we are not minors and can live together and they said if the landlord wants you out you should leave"*
>
> ***"47. What do you mean complained, who complained?***
>
> *.... its was a small gated society and people staying in other flats noticed we were living as a couple i told the owner im single and staying alone then they had an issues as a guy was staying and then they noticed it was a live in relationship and that created heat and then it was worse when they saw he was muslim"*
>
> *"**49. What did she say when saw he was muslim?***
>
> *[the landlady] was furious that we were in a live in relationship as we are easily identified as single hindu woman she was cross as this was a hindu society and why is he dirtying my house if id known he was here id never have let you in and she said get him out"*
>
> ***"62. You had issues with the land lady and the police did anyone else give you issues?***
>
> *We faced more [persecution] after we left that home we got time of 30 days notice and we had hard time finding another home as we were not accepted and then we found a home in a muslim area and he let people know I was ok and it was cove=id and there was not much interference and it was smooth and we thought things would be oin track but when covid stopped we went for a holiday to goa and when we got there you have to show id card for book in and whern they saw we are interfaith couple he rejected to give us the room and said tio leave it was late at*

night so we went far away and we got a room and the owner was a Christian and he had no issues with us then at new year which was 2022 it happened in January and my husband worked from office and I worked from home and i didnt go out much and 1 day i was at home cleaning the balcony and i was dresses in hindu attire and as they were muslims and she saw i wasnt muslim and she yelled why are you here and she got furious and she was calling people saying there is a non muslim here and the door started banging and there was men there and i was scared and rang husband and he came back and he came home he explained to them but he tried to calm them down and said she is muslim and we will get married and he pleaded them to not create chaos and its because they thought i was changing they said I can stay if they get proof I've converted to keep their mouths shut they wanted a donation fir the building and it'll help us and we had to give 1 months pay for a bribe"

"63. How long did you stay in this house once this happened?

A year they also said if she doesnt get converted soon we will report you to religious community and we will make sure she gets converted or we will kill her in this house"

"67. How many times did you go to the police for help?

this was couple of times 1 landlady and also in Hyderabad when we went to market and it was in a hindu area and people saw my husband and there is a difference between hindu and muslim guys they figured it out and abused him why are you trying to convert her and taking our daughters while i was shopping for vegetables and the men surrounded him and i called the police and the police heard them and they told the police we were interfaith and the police didn't listen and the police said its better if we go away and they will tell our parents and we should go home and not live together and we will tell your religion too if you waste police time again we will jail you and it wont be good for you just go live with your parents we feared the police too"

"68. Could you not complain about the police behaviour?

there was nowhere we could complain if we did complain their head they will say we will look into it but it will backfire and they will look after each other instead of helping us they won't help us they all look after themselves they all fear religious extremists"

"93. What do you fear would happen if you returned?

they will find out and separate us and torture ius and religious extremists would torture and kill us and local politician will oppose us and that will lead to forceful house arrest or forceful death we will be shot or stabbed or burnt to death and itll happen on both sides and if a forceful marriage we will end ourselves by our own hands and be together in heaven or hell
we tried after our application to look if theres any help in india if we have to go back there is a community and ngo called dhanak we approached them for help

> *they support people like us we called them and asked if they can protect us and we explained it all and in the call they said fill in a form and we did that and submitted and no response after a few days and we called them again and they listened and the ngo said no we cant help you all we can do is talk to your parents for you its your life now in india ngo are a face to save taxes we thought they would help us and we asked if they could give us help and he denied and cut the call and they never received our calls again and we looked for other help but we couldnt find anything"*

Discussion and Conclusion

108. The question of whether the Decision was irrational is a binary one. The decision to certify the claim as clearly unfounded was either irrational, or it was not.

109. At a general level, it is clear to me that the SSHD engaged with the evidence put forward by the Claimants. The letter containing the Decision runs to some 18 pages. It summarises all the key factual matters put forward by the Claimants. It sets out the conclusions SSHD draws from the CPIN. Its summary of the reasons why the claim is rejected is generally clear. It meets, in my judgment, the threshold of anxious scrutiny of the specific case put forward by FNB. It also cannot be said to have been taken in breach of the *Tameside* duty of enquiry; the decision maker had the benefit of a long and detailed interview by the SSHD of FNB on all the matters underpinning the claim she had made and had also considered in detail the CPIN. FNB had also been given the opportunity to provide further information and had not done so.

110. The decision maker accepted the evidence from the Claimants. This was not a case in which the Claimants version of events was doubted "*lock stock and barre*l".

111. The Claimants raised an argument that it can be inferred from the word "*void*" in the wording of paragraph 22(a) that the decision maker used the wrong legal test in assessing the claim. The Decision sets out precisely at paragraph 7 the legal test that is being applied. The analysis throughout the Decision is consistent with that correct legal test. Plainly it would have been better if the wording in paragraph 22 (a) was even more clear, but I reject the argument that the decision maker applied the wrong legal test.

112. The primary evidence before the decision maker on the general position for interfaith couples in India is that set out in the CPIN. The CPIN shows that there are risks in some states, for some couples, at some times. There is no evidence that there is a blanket risk in all states.

113. It seems to me that the inevitable conclusion from the CPIN is that their claim that India is entirely unsafe for them is bound to fail unless FNN and FNB can show some specific personal evidence that all states in India would be unsafe for them. The question is therefore whether the evidence they put forward about their personal situation was sufficient to make the certification of the claim as "*clearly unfounded*" irrational.

114. The Claimants argued that the Decision unfairly focussed on the threats from the families rather than threats more generally from members of society. It was, however, FNB who said in her interview that she feared threats from her family. It was right that SSHD addressed those threats. FNB also raised the fear of persecution from state actors (including the police and local politicians) as well as non-state actors (such as religious

extremists). The Decision considered the evidence FNB provided in relation to all these categories of people. I consider that it was correct to do so.

115. In the Decision, the SSHD did not accept that the Claimants would be subject to persecution in every state in India. The SSHD also did not accept that the Claimants would be unable to access protection from the state to the extent needed to protect them from persecution. In making that assessment the SSHD considered in particular:

i) The limited number of times which the Claimants said that they had been persecuted;

ii) The nature of the persecution in the incidents that were said to have taken place;

iii) The periods of time and locations in which the Claimants had lived or spent time without persecution;

iv) That no family member of either Claimant had found them, or attempted to find them, in the years 2018 to 2022 in which they had been having a relationship and for a significant part of which they had been living together in India;

v) There had been two incidents in which the police had been called but had not taken steps to protect them;

vi) Although it was said that the police had threatened to contact the family after those incidents, they had not done so;

vii) One of the incidents followed a dispute with a landlady that had already resulted in "heat" when the landlady discovered that FNB was living with FNN, when she had said she was single; it escalated further upon the discovery of the interfaith aspects of the relationship but the initial problem was that FNB was living with someone when the apartment was rented to her alone;

viii) Three friends of FNN had been present at the wedding and had supported them in their relationship; and

ix) The absence of any persecution said to have been effected by agents of the state.

116. The Claimants argued that the Decision failed to take their evidence at its highest. On the contrary, in my judgment it explicitly did so. The Decision contained all the material facts that came from the interview. It set out that, based on those facts, the claim was refused and certified. This was not a case in which they were disbelieved; they were believed but the evidence they put forward even if true was insufficient to reach the threshold required for the application to succeed.

117. The Decision also made it plain that "*The Immigration rules provide that grant of refugee status will not be made if in part of the country of origin a person would not have a well-founded fear of persecution and the person can reasonably be expected to live there*.", before moving on to consider whether FNN and FNB fell within that category.

118. The assessment that there would be places in India in which the Claimants could safely live also requires them to be able to relocate. The Decision addressed this. The decision maker concluded that (a) it would not be unduly harsh to expect the Claimants to relocate within India given her education, language skills, and prior relocation experience (b) the Claimant did not provide sufficient evidence to show that the individuals she fears could locate and harm her with impunity across India.

119. At paragraph 10 (i) the Decision considered the actual ability of the families to locate the Claimants throughout India. It noted that there is no central register of inhabitants in a particular state, let alone across India, thereby making the likelihood of locating them "remote".

120. The personal evidence of the Claimants reinforces the conclusion that they were able to relocate safely within India. Following one of the incidents they remained living in the same place apparently without further issue for 6-12 months. Following the incident in Goa they stayed in a house where the owner "*had no issues with us*". FNN and FNB had spent their entire lives until 2022 in India. They had, on their own evidence, already lived for several years in Hyderabad away from their families, and had relocated to the UK.

121. There was nothing, in my judgment, that the Claimants put forward as personal evidence that could override the evidence from the CPIN that there were places in India that were safe. They had not shown that India was entirely unsafe for them, and any analysis of the evidence was bound to reach that conclusion.

122. It is therefore clear to me that the decision maker was, under s94, required to conclude on the evidence before them, that the claim was clearly unfounded in relation to the Claimants' inability to live safely anywhere in India. That means that the decision to certify the claim as a whole as clearly unfounded was also one that the decision maker was required to take. Whatever subjective concerns the Claimants had, they did not come close to meeting the objective test of demonstrating that they fear their life is not safe in all parts of India to which they could relocate, such fear is objectively well founded and that protection is not available from the authorities. The conclusion of the SSHD expressed in paragraph 22(b) of the Decision is the correct conclusion.

123. The SSHD only needs to succeed on that aspect of the defence in order to defeat the claim on Ground 2. Accordingly, it has done so and Ground 2 fails.

124. I set out for completeness, and having considered the evidence, my conclusions on the part of Ground 2 which related to paragraph 22(a) of the Decision. This is a slightly theoretical question, in that I am considering the position if there were places in India in which the Claimants could live but only with police protection from those people who they said who would persecute them. I have set above the analysis of the people from whom the Claimants said they feared persecution.

125. The personal interview evidence from the Claimants described two incidents in which their personal safety was not protected. Those were serious incidents. They are consistent with the CPIN evidence that sometimes the police in India are not effective. They are however, to be taken in context. FNB and FNN had lived together for some three or four years in Hyderabad with only these incidents. The police did not contact their families. One of the incidents seems to relate to a time when FNB was discovered

to be living with a man when she was renting a room as single lodger. Even taken at their highest, these incidents do not in my judgment, show that the Claimants were unable to access state protection to prevent persecution. Any appeal saying that they did show such inability to access state protection against the threats identified would, in my judgment, be bound to fail.

126. I would therefore also be satisfied in relation to Ground 2 relating to paragraph 22(a) that the Decision to certify the claim as "*clearly unfounded*" was correct.

Reconsideration

127. The Claimants argued that the fact that claim in the Reconsideration Decision was not certified as "clearly unfounded" is evidence that the Decision was irrational. The SSHD objects to that conclusion. They said that the fact that the Claimants had subsequently provided more, or different, information did not mean that the Decision was irrational. That Decision was based on the information in front of the original decision maker at the time.

128. There was no evidence before the court as to the basis on which SSHD had concluded that the claim could not be certified as "*clearly unfounded*". The Reconsideration Decision did, however, set out the further information that had been provided by the Claimants. That included evidence relating to an alleged attack on FNN in India by his family. That had not been mentioned in interview by FNB at any prior stage and so plainly could not have been considered by the SSHD when making the Decision. Other evidence related to the situation in India generally. That had been commissioned by the Claimants' lawyers. Again, it was plainly not in front of the decision maker at the time the Decision was made so does not assist the Claimants. Finally, the evidence included medical evidence which was not before the decision maker.

129. I do not consider that the Claimants have shown that the Reconsideration Decision demonstrates that the original decision was irrational. It is a new decision on new evidence.

130. There is also a theoretical weakness in the Claimants' argument. The Reconsideration Decision has been made by a new decision maker. It has considered all the evidence the Claimants have been able to put forward, with the benefit of expert legal assistance. In other words, it is effectively the best evidence that the Claimants would have put forward at an appeal if the claim had not been certified as "clearly unfounded". They have not succeeded in their Reconsideration Decision. That is evidence that the appeal would have failed. It is of course not conclusive, because the case might have been strong enough that an appeal might have been permitted and still failed, but it weakens the argument the Claimants might have had if the Reconsideration Decision was based entirely on the same evidence as was before the maker of the Decision.

131. In my judgment, even taking into account the Reconsideration Decision, it remains the case that the conclusion in the Decision based on the evidence in front of the decision maker at the time that there were parts of India in which the Claimants could live without persecution was correct, as was the conclusion that their claim that there were no such places was "clearly unfounded". For the avoidance of doubt, this is not confirmation that the Decision was one that was reasonably open to the decision maker

to take; it is that the Decision was correct and is the decision the court would have made.

Ground 3 – Article 8

132. The Claimants were a husband and wife. During the period when they were at the Immigration Detention Centre they were accommodated separately in the male and female accommodation areas, respectively. They said this was an unlawful interference with their Article 8 rights to family life.

133. The SSHD accepted that this was an interference with their family rights. In its defence the SSHD argued, however, that the interference was both lawful and proportionate. This was, the SSHD said, because the SSHD had genuinely considered whether FNB and FNN should be housed in family accommodation or whether they should be housed separately. The SSHD maintained this position from the pre-action correspondence until the second morning of the substantive hearing.

134. At that point, the SSHD made the following concession:

> *"The Defendant has listened carefully to the submissions made in response to the evidence filed.*
>
> *In particular, the Defendant has considered the Claimants' characterisation of the position as one whereby the Claimant enjoyed an expectation, prior to the withdrawal of the DSO* [Detention Service Order]*, of being considered for family accommodation, unless there were reasons to depart from that policy, and that in the absence of a good reason to depart from the policy the accepted interference with family life was not in accordance with the law.*
>
> *The Defendant concedes that as at September 2025, the Defendant is not in a position to defend the interference with Article 8 on the basis that the Article 8 interference met the expectation arising from the DSO as it then stood. The Defendant was not in a position either to (1) accord the Claimants family accommodation whilst detained or (2) to consider a departure from the policy on an exceptional basis, because there was no adult family accommodation in IRCs.*
>
> *In consequence, the Defendant accepts that the Article 8 based ground succeeds, as there was no lawful basis for the interference with family life. That concession is made without prejudice to the question of whether there is a consequent entitlement to a just satisfaction award, in those unusual circumstances. That, however, is an issue of quantum that is best considered by the County Court."*

135. In other words, the SSHD accepted that the interference was unlawful because there was no actual decision made regarding the Claimants. The evidence of Frances Hardy that the SSHD placed before the court immediately prior to the hearing revealed that there had not been any family accommodation available when the SSHD purportedly considered whether or not FNB and FNN should be housed in it.

136. The Claimants are therefore successful in seeking a declaration under Ground 3 that their separation in detention was an unlawful interference with their Article 8 rights.

137. The hearing before me was not listed to assess the quantum of damages (if any) as a consequence of any unlawful separation. The claim to assess those damages will be transferred to another court.

138. The parties, however, asked this court to make findings of fact, and to decide whether the separation was proportionate in order to assist the subsequent damages assessment. I do not consider, however, that this court should undertake any assessment of the facts beyond those necessary to determine the lawfulness of the decisions made under Grounds 1 and 2. The hearing in relation to quantum is the appropriate forum for a court to consider Ground 3 in its entirety including, for example, the effect of the separation on the Claimants, based on the medical and other evidence the parties put before the court.

Duty of Candour

139. The duty of candour in judicial review cases is well known. It is of the utmost importance. In this case, there has been a serious failure by the SSHD.

140. The Claimants first articulated their claim that their rights to family life had been unlawfully interfered with in September 2025. From that point on, the SSHD maintained that the SSHD had considered whether to place them in family accommodation but had decided in their specific case not to do so.

141. The Detailed Grounds of Defence stated:

> *"While they were not housed in adjoining rooms, the policy allows for flexibility where logistical or security considerations apply. That applied in this case: the 'Family Separation Pro Forma' records that DEPMU requested a split because they do not currently have any family accommodation".*

142. That assertion was misleading. It states that *"the policy allows for flexibility where logistical …considerations apply*.". The clear implication is that the policy was capable of being complied with. It had not, as a matter of fact, been capable of being complied with for some five years. It further states that they "*currently*" do not have accommodation. The implication is that such accommodation normally exists or might exist at that time at another detention centre.

143. The Claimants sought clarification from the SSHD as to what family accommodation was available elsewhere in the detention estate in order to assess the proportionality of the SSHD's purported decision not to accommodate the Claimants together.

144. It was only when the SSHD filed the witness statement of Frances Hardy on 19 June 2026 that the SSHD revealed that as a matter of fact there had in September 2025 not been any adult family accommodation at all, anywhere in the entire detention estate. There could never have been any genuine consideration of logistical flexibility and whether FNN and FNB should be placed in adult family accommodation because there simply wasn't any. It had all been closed down in 2020. It may (or may not) be entirely legitimate not to provide family accommodation for families without dependent children for a short period pending removal. But it is not legitimate to mislead the Claimants and the court into believing that such accommodation exists. Nor is it

legitimate to mislead the Claimants and court that such accommodation was actively considered for these Claimants and that the option of it was rejected.

145. It is a matter for the SSHD as to what processes need to be put in place to ensure that courts are not mislead in the future. It is also for the SSHD urgently to review all current cases in which a similar matter has been raised to ensure that the SSHD is complying with their obligations to the court and other parties. The issue was identified in June. I would expect such a review was started urgently at that point and all courts and parties notified forthwith.

Conclusion

146. The claim for judicial review of the Decision fails on Ground 1 and 2. The claim for damages under Ground 4 fails in relation to the alleged unlawfulness of detention on those Grounds. The Ground 3 claim that the separation of FNB and FNN during their detention was unlawful succeeds. The claim under Ground 4 in relation to that Ground therefore also succeeds. The claim will now be transferred to the county court for the assessment of the quantum of damages payable (if any).