Neutral Citation Number: [2018] EWHC 2951 (Admin)

Case No: CO/2143/2018 & CO/2294/2018

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 08/11/2018

Before :

MR JUSTICE MOSTYN

- -

Between :

The Queen on the application of

(1) K (2) AM	**Claimants**
- and -	
SECRETARY OF STATE FOR THE HOME DEPARTMENT	**Defendant**
- and -	
(1) SALVATION ARMY (2) HESTIA	**Interested Parties**

- -
- -

Nathalie Lieven QC and Shu Shin Luh (instructed by **Wilson Solicitors LLP**) for the **1st Claimant**
Chris Buttler and Ayesha Christie (instructed by **Simpson Millar LLP**) for the **2nd Claimant**
Clive Sheldon QC and Joe Barrett (instructed by **Government Legal Dept**) for the **Defendant**
The Interested Parties were not represented

Hearing dates: 30 & 31 October 2018

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Approved Judgment

Mr Justice Mostyn:

1. This case is about modern slavery. Specifically, it is about the money paid by the state to certain potential victims of human trafficking[1]. On 1 March 2018 the weekly cash amount payable to such people was cut by 42% from £65 to £37.75. The claimants say that this cut is unlawful. They seek that the decision that brought about the cut be quashed and that they be recompensed at the weekly rate of £27.25 from 1 March 2018 until repayment.

2. Modern slavery is a repulsive, strikingly malignant practice, as damaging in its impact on its victims as was its historical predecessor. Its dire effects have been recognised by Parliament which has passed the Modern Slavery Act 2015. The explanatory notes which accompany the Act say this (under the heading "Background"):

> "Modern slavery is a brutal form of organised crime in which people are treated as commodities and exploited for criminal gain. The true extent of modern slavery in the United Kingdom, and indeed globally, is unknown. Modern slavery, in particular human trafficking, is an international problem and victims may have entered the United Kingdom legally, on forged documentation or clandestinely, or they may be British citizens living in the United Kingdom. Modern slavery takes a number of forms, including sexual exploitation, forced labour and domestic servitude, and victims come from all walks of life. Victims are often unwilling to come forward to law enforcement or public protection agencies, not seeing themselves as victims, or fearing further reprisals from their abusers. In particular, there may be particular social and cultural barriers to men identifying themselves as victims. Victims may also not always be recognised as victims of modern slavery by those who come into contact with them."

3. The explanatory notes go on to explain that the purpose of the Act was to give effect to a number of international instruments, one of which was a Directive promulgated by the European Union into which the UK had opted, and which was therefore of direct effect here. They state:

> "There are a number of international instruments on human trafficking. The main international instrument is the Protocol to the United Nations Convention against Transnational Organized Crime, named the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (the "Palermo Protocol"). The definition of trafficking contained in that instrument was adopted in the Council of Europe Convention on Action against Trafficking in Human Beings (the "Convention on Action against

[1] The claimants have received a decision from the Home Office that there are reasonable grounds to believe that they are victims of trafficking. They await a conclusive determination. Hence, they are technically "potential" victims of trafficking. Nonetheless I will refer to them in this judgment as victims of trafficking. I will not use the acronym PVoT that is scattered throughout my papers as this seems to me to diminish the claimants' vulnerability.

> Trafficking"). That international instrument was ratified by the United Kingdom on 17 December 2008. After this time, the European Commission tabled a proposal for a Directive on trafficking in human beings. A final text was agreed in March 2011 and was adopted on 5 April 2011: Directive 2011/36/EU of the European Parliament and of the Council on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decisions 2002/629/JHA (the "Directive on preventing and combating trafficking"). That Directive adopts and expands upon the obligations and definitions contained in the Palermo Protocol and the Convention on Action against Trafficking. The United Kingdom has opted into this Directive. In order to ensure full compliance with the obligations contained in that Directive in England and Wales, Parliament made changes to the Sexual Offences Act 2003 and the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 through sections 109 and 110 of the Protection of Freedoms Act 2012. "

4. As will be seen, those instruments impose obligations on subscribing states to provide support and assistance to victims of trafficking. Thus, section 49(1) of the 2015 Act provides:

> "The Secretary of State **must** issue guidance to such public authorities and other persons as the Secretary of State considers appropriate about—
>
> (a) the sorts of things which indicate that a person may be a victim of slavery or human trafficking;
>
> (b) arrangements for providing assistance and support to persons who there are reasonable grounds to believe may be victims of slavery or human trafficking;
>
> (c) arrangements for determining whether there are reasonable grounds to believe that a person may be a victim of slavery or human trafficking.
>
> (emphasis added)

5. The explanatory notes for this section say:

> "Section 49 requires guidance to be issued to public authorities and other persons as considered appropriate by the Secretary of State in relation to identifying and supporting victims. The guidance will cover the sorts of things which indicate that a person may be a victim of slavery or human trafficking; arrangements for the provision of assistance and support to persons who there are reasonable grounds to believe may be victims of slavery or human trafficking and any arrangements, including those made under section 50, for determining whether a person is to be treated as a victim of slavery or human

> trafficking. The purpose of the guidance is to further support effective identification of potential victims of slavery and human trafficking and to set out the assistance and support on offer to all slavery and trafficking victims, taking into account international requirements set out in the Convention on Action against Trafficking and the Directive on preventing and combating trafficking."

6. When reading into this case I was struck that there was no reference to this guidance in the copious paperwork. Had it existed I reasoned that there would have been no need for this case where the arrangements for the support of victims of trafficking are dealt with under non-statutory administrative measures issued by the executive. Rather, the arrangements would have been set out unambiguously in the statutory guidance. When I raised this with Mr Sheldon QC I was told that the reason that no guidance had been issued pursuant to section 49 (or, for that matter, no regulations made under section 50) was that these sections were not in force. However overnight I decided to check, and I discovered that by virtue of the Modern Slavery Act 2015 (Commencement No.2) Regulations 2015 (SI 2015/1690), section 49 had been brought into force on 15 October 2015, over three years ago. I asked why the Home Secretary had failed to comply with his statutory duty under section 49(1) to issue guidance over the last three years, but Mr Sheldon QC was not able to give me an answer.

7. Given that the purpose of the guidance would be to put beyond any doubt that the international instruments referred to in the explanatory notes were applicable and binding here, it follows that it does not easily lie in the mouth of the Home Secretary now to suggest through Mr Sheldon QC that the Convention on Action against Trafficking is not. But this unhappy point aside, I agree with Miss Lieven QC that the Convention is domesticated as the non-statutory administrative guidance referred to below is said to be based on that Convention. It is also said to reflect the relevant provisions of the Modern Slavery Act 2015 (which, as explained above, reflects the international instruments). An alleged failure to give effect to the Convention is justiciable: *R (on the application of PK (Ghana)) v The Secretary of State for the Home Department* [2018] EWCA Civ 98 at [34]. Mr Sheldon QC's skeleton at paras 20 – 26 is rightly premised on the Directive being fully applicable here.

8. One thing is certain. It is the Home Secretary's absolute duty immediately to issue the guidance that Parliament has required of him. Any further delay would be completely unacceptable.

9. What the Government has done is to establish administratively a National Referral Mechanism which provides the machinery for determining whether someone is a potential or actual victim of trafficking. The operation of the National Referral Mechanism is regulated by internal guidance issued for Home Office staff on 21 March 2016. Under this guidance the claimants, as potential victims of trafficking, are entitled to, at a minimum, subsistence, counselling, medical care and legal advice and assistance. These benefits or services are provided by means of a contract entered into between the Home Secretary and the Salvation Army. The Salvation Army is the formal principal administrator of these benefits and services but is able to delegate these to subcontractors. The contract in my papers was executed, and took effect, on 1 April 2015 and is stated to expire automatically on 31 March 2018, unless extended by the

Home Office, by notice given in writing. I assume that this has happened, although I have not been shown any extension notice.

10. Clause 37 of the contract states that it shall not be varied unless such variation is made in writing by means of a Change of Control Notice as set out in Schedule 6. Schedule 6 allows the Home Office to vary the contract unilaterally only in the case of an emergency; otherwise variation must be initiated by the Salvation Army and the proposed variation must be fully supported by a quotation. By virtue of paragraph 1.7 the Home Office may either accept or reject any variation proposed by the Salvation Army. So, the strict terms of the contract do not permit the Home Office either to initiate a variation, let alone to impose one unilaterally, save in the case of an emergency.

11. By clause 8.2 the Salvation Army is required to provide the services set out in Schedule 2.

12. In Section 6 of Schedule 2 at para F-001 the parties agreed that the Salvation Army would provide "service users" with subsistence payments in cash in accordance with the following table. That table reads as follows:

Service User Type	Value of Subsistence Payment
Service user in catered accommodation provided by the contractor	£35
Service user in self-catering accommodation provided by the contractor	£65
Service user accommodated by the authority and in receipt of subsistence payments through that service	£65 minus the amount of subsistence received by (sic) the authority
Service user not accommodated by the contractor or the authority (e.g. living with friends or family)	£35

13. A number of points may be made about this table. First, the entitlement is non-means-tested. The victim of trafficking gets these sums irrespective of whether he or she is receiving, for example, voluntary payments from a kindly relative. Second, for the third class (which is the situation of the claimants here) the phrase in the right-hand cell is grammatically incorrect. All are agreed that this should read "£65 minus the amount of subsistence received **from** the authority."

14. What is absolutely clear is that for the second and third classes, that is victims of trafficking who are in self-catered accommodation, the cash payment is £65, albeit in the third class the victim must give credit for any money received by him or her under section 95 of the Asylum and Immigration Act 1999 and the Asylum Support Regulations 2000 (SI 2000/704). Under those Regulations the weekly subsistence payment for asylum-seekers is £37.75. Thus, under the plain terms of the contract a victim in the third-class gets a top-up of £27.25 to achieve the headline figure of £65.

15. Mr Sheldon QC is in difficulty in disputing the plain meaning of this contractual term but says that it is a mistake, and that it was never intended that a victim in the third class (i.e. a victim of trafficking who is seeking asylum), should get more than the weekly subsistence payment for general asylum-seekers, presently £37.75. He says that from the word go the victims in the third class had failed to disclose the contract money to the asylum authorities. Had that disclosure taken place the victim's weekly asylum money of £37.75 would have been reduced *pro tanto* (i.e. £ for £) under regulations 6 and 12 of the 2000 Regulations by £27.25 to £10.50.

16. There are a number of problems with this argument, which I summarise:

    i) There is no contemporaneous evidence at the time of, or following, the formation of the contract that anyone believed that such a mistake existed.

    ii) Under the contract the Salvation Army submits monthly invoices to the Home Office detailing the sums paid out. These would have shown clearly the sums paid to victims under the contract. Yet in only one single case was the asylum money abated. Otherwise the Home Office clearly acquiesced in the contractual top-up. I do not accept the argument that within the Home Office the modern slavery arm did not know what the asylum arm was doing, or vice versa.

    iii) Even if there was a duty of disclosure (which no-one operating the system believed to exist) then the operation of iteration would mean that the contract payment would always win. Assume that there was an abatement of the asylum money to £10.50, as set out above. The victim then goes back to the Salvation Army and asks for his or her entitlement under the contract to be increased to £54.50 to reach the headline figure of £65. That is then disclosed to the asylum authority which eliminates the asylum money altogether. The victim then goes back to the Salvation Army to get the full amount of £65 as no asylum money is now being paid.

    iv) Following on from this, consider a victim in the third class (i.e. seeking asylum) who is receiving £40 a week as a voluntary allowance from a kindly relative. He or she discloses that to the asylum authority which eliminates altogether the £37.75 asylum payment. As this victim is receiving no asylum money then under the plain terms of the contract he or she is certainly entitled to the full £65. Equally, the asylum-seeking victim of trafficking who elects not to make a claim for asylum money. He or she is unquestionably entitled under the plain terms of the contract to the full £65.

    v) If the intention was that victims of trafficking in the third-class (i.e. seeking asylum) should be confined to £37.75 a week then a strange disparity is created between self-catering victims of trafficking who are seeking asylum and self-

> catering victims of trafficking who are not. This would be an absurd reading of the contract, and in my judgment no reasonable interpreter could conclude that that is what the contracting parties had intended, absent some powerful evidence of a contemporaneous nature that demonstrated this.

17. On 26 October 2017 the Minister for Crime, Safeguarding and Vulnerability announced in Parliament a series of reforms to the National Referral Mechanism. (I say parenthetically that this would have been a very good opportunity to have announced that the guidance under section 49 of the 2015 Act was being prepared). Among the mooted reforms was a proposal to "align… subsistence rates provided to victims of modern slavery to those received by asylum seekers". The Home Secretary has said in these proceedings that the cut that was meted out to the claimants from 1 March 2018, as referred to above, was unrelated to this proposed reform. I find this hard to accept.

18. This announcement had been preceded by a briefing note to the Minister two days earlier on 24 October 2017 which stated:

> "Potential victims in NRM are in a comparable situation to those awaiting their immigration decision, but they receive a subsistence rate of £65. There is no clear justification to explain why we give potential victims of modern slavery substantially more subsistence than people in asylum accommodation. This means we have a significant legal and presentational risk."

19. A briefing note to the Minister dated 21 November 2017 stated:

> "Victims of modern slavery receive specialist support in the UK which includes a subsistence allowance of £65 for adults… However, asylum seekers who have comparable day-to-day living needs, currently receive a lower subsistence rate of £36.95 for themselves and their dependents. There is no justification for the different rates received by these cohorts (and over 1000 adults in NRM out of the current cohort over 1700 potential victims are both asylum seekers and victims of modern slavery)."

This was followed on 18 January 2018 by a revised Contract Change Notice being sent to the Salvation Army. The email stated: "please find attached a revised CCN on the immediate changes to subsistence rates … we'd like to get this implemented as soon as possible". The attached draft deleted the third class of victim referred to above and stated instead "when a service user is receiving financial support from the asylum support system, under the Asylum Support Regulations 2000, they are not entitled to receive any additional income above the level set in regulation (sic)". This in turn was followed by further revised Contract Change Notices on 1 and 16 February 2018. The latter became the final version. It provided for a commencement date of 1 March 2018. It did not delete the third class but provided a fixed sum for such (asylum-seeking) victims of £27.25 and went on to provide: "this subsistence is a form of income, and therefore service users should be supported to declare this income to external bodies when requested, for example, the Department for Work and Pensions, the Asylum Support System." Thus, the £27.25 would be deducted £ for £ from the £37.75 asylum money reducing that to £10.50, and ensuring that the overall payment received by this class of victim was only £37.75, in line with other asylum seekers.

20. That revised Contract Change Notice was duly signed by the Salvation Army; of course, they really had no option but to do so. I observe that the procedure was not compliant, in any respect, with Schedule 6 of the contract. From 1 March 2018 the cash provided to the claimants was cut by £27.25, or 42%.

21. In my judgment this was a very substantial cut imposed unilaterally by the Home Office. I just do not understand Mr Sheldon QC's argument in his skeleton that the decision was "taken independently by [the Salvation Army], without instruction or direction from the [Home Office]." Manifestly, the decision was taken by the Home Office and was implemented unilaterally.

22. In my judgment, the decision was taken on a false basis and cannot stand. There was no common mistake which needed to be rectified. Rather, this was a partial implementation of the policy announced on 26 October 2017, although it was not done in a procedurally correct or fair way, and was dressed up as a rectification of a mistake. In public law terms the decision can be characterised as irrational and perverse, as well as being outside the tightly confined variation power within the contract.

23. The irrationality of the decision can be illustrated by showing its effect in tabular form:

	A	B	C
Asylum-seeker	✓	✓	✗
Potential trafficking victim	✗	✓	✓
Number of users	39,000	1,000	700
Weekly payment pre 1/3/18	£37.75	£65	£65
Weekly payment post 1/3/18	£37.75	£37.75	£65

It is impossible to understand the logic that underpins an interim decision that moves 1,000 victims of trafficking to a substantially lower weekly rate of payment while leaving 700 untouched.

24. Mr Sheldon QC argued that this interim (or, as he put it, "staged") decision was lawful and rational because the European Directive covering asylum seekers (The Reception Directive No. 2003/9/EC) at Article 13.2 provides that:

> "Member States shall make provisions on material reception conditions to ensure a standard of living adequate for the health of applicants and **capable of ensuring their subsistence**."

This, he argued, is in substance the same as the Trafficking Directive (No. 2011/36/EU) which provides at Article 11.5:

> "The assistance and support measures referred to in paragraphs 1 and 2 shall be provided on a consensual and informed basis, and shall include at least standards of living **capable of ensuring victims' subsistence** through measures such as the provision of appropriate and safe accommodation and material assistance, as

> well as necessary medical treatment including psychological assistance, counselling and information, and translation and interpretation services where appropriate." (Emphases added)

25. If subsistence is the criterion in each Directive, he argues, how can it be other than lawful for the asylum-seekers generally, and asylum-seekers who happen to be victims of trafficking, to be paid the same? The answer, as Miss Lieven QC and Mr Buttler rightly argued, is that "subsistence" when used in these Directives is a heavily nuanced concept capable of different meanings in different contexts. It does not necessarily mean in the Trafficking Directive that subsistence is that minimal sum necessary to stave off destitution.

26. This is shown by reference to Recital 18 of the Trafficking Directive which provides:

> "It is necessary for victims of trafficking in human beings to be able to exercise their rights effectively. Therefore assistance and support should be available to them before, during and for an appropriate time after criminal proceedings. Member States should provide for resources to support victim assistance, support and protection. The assistance and support provided should include **at least a minimum set of measures that are necessary to enable the victim to recover and escape from their traffickers.** The practical implementation of such measures should, on the basis of an individual assessment carried out in accordance with national procedures, take into account the circumstances, cultural context and needs of the person concerned. A person should be provided with assistance and support as soon as there is a reasonable-grounds indication for believing that he or she might have been trafficked and irrespective of his or her willingness to act as a witness. In cases where the victim does not reside lawfully in the Member State concerned, assistance and support should be provided unconditionally at least during the reflection period. If, after completion of the identification process or expiry of the reflection period, the victim is not considered eligible for a residence permit or does not otherwise have lawful residence in that Member State, or if the victim has left the territory of that Member State, the Member State concerned is not obliged to continue providing assistance and support to that person on the basis of this Directive. Where necessary, assistance and support should continue for an appropriate period after the criminal proceedings have ended, for example if medical treatment is ongoing due to the severe physical or psychological consequences of the crime, or if the victim's safety is at risk due to the victim' s statements in those criminal proceedings." (Emphasis added)

27. This surely requires a more expansive view of "subsistence" than the minimum sum needed to stave off destitution.

28. The point is reinforced by comparing the French text of the two Directives. In French Article 13.2 of the Reception Directive reads:

> "Les États membres prennent des mesures relatives aux conditions matérielles d'accueil qui permettent de garantir un niveau de vie adéquat pour la santé **et d'assurer la subsistance des demandeurs**." (Emphasis added)

That in translation corresponds directly to the English text. In contrast Article 11.5 of the Trafficking Directive reads:

> "Les mesures d'assistance et d'aide visées aux paragraphes 1 et 2 sont apportées aux victimes après les en avoir informées et obtenu leur accord et elles leur assurent au moins un niveau de vie **leur permettant de subvenir à leurs besoins** en leur fournissant notamment un hébergement adapté et sûr, une assistance matérielle, les soins médicaux nécessaires, y compris une assistance psychologique, des conseils et des informations, ainsi que des services de traduction et d'interprétation, le cas échéant." (Emphasis added)

The literal translation is: "a standard of living enabling them to provide for their needs." This is qualitatively very different to the idea of subsistence as used in the Reception Directive. By a supplemental submission Mr Sheldon QC points out that the Spanish text of Article 11.5 of the Trafficking Directive refers to subsistence (*subsistencia*) while the Italian text refers to sustenance (*sussistenza*). The German text uses the word *lebensunterhalt* which covers a spectrum of meanings from subsistence to livelihood. These various shades of meaning confirm to me that what they are talking about is something more than the minimum sum needed to stave off destitution.

29. Miss Lieven QC drew my attention to regulation 9(4) of the Asylum Support Regulations 2000 which excludes, among other things, the cost of computers (which would include smartphones), travel, recreational items and entertainment in the assessment of "essential living needs" for the purposes of asylum support. But some money for these purposes is surely reasonably required by a person in the highly vulnerable and distressing position of a victim of trafficking. This has recently been in effect conceded by the Home Secretary through the contract change of 1 November 2018, to which I refer below.

30. It follows that I do not agree that there is, to quote the author of the Ministerial Briefing of 24 October 2017 (see para 18 above), "no clear justification to explain why the state gives potential victims of modern slavery substantially more subsistence than people in asylum accommodation". On the contrary, I think there are very good reasons why there should be. I respectfully disagree with para 122 of the judgment of Mr Justice Garnham in *R(ZV) v SSHD* [2018] EWHC 2725 (Admin) where he appeared to suggest that the maximum level of support to which a trafficking victim was entitled under the Directive was "modest levels of assistance; to measures, for example, capable of ensuring her subsistence and to emergency medical support". I do not disagree that such a level should be the minimum; it would be clearly wrong in my view for it to be taken to be the maximum, or even normative, level.

31. No doubt account will be taken of this judgment when the overhaul announced in Parliament on 26 October 2017 is formulated and implemented next March as well as in the long overdue guidance to be given under section 49 of the 2015 Act.

32. For the reasons set out above, therefore, the contract change which took effect on 1 March 2018 is quashed. The claimants and anyone else subjected to the cut are entitled to be repaid at the rate of £27.25 per week from the date that the cut was imposed on them until the date of repayment.

33. That being my primary decision I can deal quite succinctly with the human rights arguments.

34. Discrimination happens when like cases are treated unalike or when unalike cases are treated alike. Both kinds of discrimination were caused in this case by the contract change of 1 March 2018. By reference to the table at para 23 above there is discrimination of the first type between Columns B and C and of the second type between Columns A and B.

35. However, in order for discrimination to be justiciable certain things have to be shown. First, it must be shown that the facts come within the "ambit" of one or more of the other articles in the European Convention on Human Rights (see, for example, *Re McLaughlin* [2018] UKSC 48, [2018] 1 WLR 4250 at [16]). Article 14 is not freestanding (in contrast to the Twelfth Protocol, which this country has not signed). By its terms it is ancillary to the other articles. It says:

> "**Prohibition of discrimination**
>
> The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

36. It is said that both Article 4 and Article 1 of the First Protocol are potentially engaged by the facts of this case. These say, respectively, so far as is material to this case:

> "**Article 4 - Prohibition of slavery and forced labour**
>
> (1) No one shall be held in slavery or servitude.
>
> (2) No one shall be required to perform forced or compulsory labour. …
>
> **Protocol 1 Article 1**
>
> (1) Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
>
> (2) The preceding provisions shall not, however, in any way impair the right of a state to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

37. I agree that both of these provisions are potentially engaged. It may well be that the Strasbourg court has not yet deduced from Article 4 positive obligations in relation to the support and assistance of the victims of human trafficking (although the decisions of *Rantsev v Cyprus & Russia* (2010) 51 EHRR 1 and *Chowdury & Ors v Greece* (30 March 2017) are a long way down the road to that destination). However, I am in no doubt Article 4 does indeed carry with it the positive obligations to provide appropriate support and assistance to the victims of the conduct which is referred to there. I am in no doubt at all that Article 1 of the First Protocol is engaged. The claimants had a pecuniary entitlement under the contract which was abruptly abated. I cannot see how this does not fall squarely within Article 1 of the First Protocol.

38. Next, claimants must show that they have been discriminated against by virtue of their "status", as none of the other grounds mentioned in Article 14 are applicable. Again, I am in no doubt that their status as potential victims of trafficking is a qualifying status for the purposes of Article 14, and in fairness Mr Sheldon QC only argued the contrary faintly.

39. Once these qualifying conditions are shown the burden falls on the defendant to prove that the discrimination is objectively justified. He must show that:

    i) the objective of the measure is sufficiently important to justify the limitation of a protected right; and

    ii) the measure is rationally connected to that objective; and

    iii) a less intrusive measure could not have been used without unacceptably compromising the achievement of the objective; and

    iv) when balancing the severity of the measure's effects on the rights of the persons to whom it applies against the importance of the objective, to the extent that the measure will contribute to its achievement, the former outweighs the latter.

    See, most recently, *R (on the application of Steinfeld & another) v Secretary of State for International Development* [2018] UKSC 32, [2018] 3 WLR 415 at [41]. Although the onus is on the defendant there is an overarching standard of review of which I must be satisfied at all stages of the exercise. That is the "manifestly without reasonable foundation" test or standard. See, among many other decisions, *Re McLaughlin* at [33].

40. Ex hypothesi, consideration of whether these tests are met, and whether the measure is, or is not, manifestly without reasonable foundation presuppose that there will be a fully reasoned case set out by the decision-maker explaining why the decision in question met all the tests and why it was not manifestly without reasonable foundation. But here there is no such reasoned case. Instead, the stance of the Home Secretary is that he did not make a decision at all. Rather, he contends, the decision was made by the Salvation Army in order to rectify an obvious mistake. I have rejected that case. In such circumstances it is not now open to the Home Secretary to argue that his decision (if he made one) was objectively justified.

41. If I am wrong about that, then in applying the tests, and having regard at all stages to the overarching standard, I am completely satisfied that the discrimination, of both types, is not objectively justified. I do not need to go into this in any depth, because

unjustified discrimination is in effect conceded by the defendant. This is because very late in the day he has decided to implement a yet further contract change, to take effect on 1 November 2018, the day after this case was concluded in my court, which will provide additional monies for victims of trafficking who are asylum-seekers, for travel and other expenses. This measure recognises the enhanced needs of victims of trafficking who are asylum-seekers and seeks to mitigate the unfair consequences of their alignment with asylum-seekers generally. It seems to me that in promulgating this new contract change the Home Secretary has sold the pass on the question of discrimination.

42. Finally, I am satisfied that in making the contract change of 1 March 2018 the Home Secretary failed to comply with the obligation imposed on him by section 149(1) of the Equality Act 2010. No regard, let alone due regard, was paid by him to the matters listed in section 149(1).

43. For these additional reasons the decision to implement the contract change with effect from 1 March 2018 is quashed. The contract change of 1 November 2018 builds on the change of 1 March 2018 and therefore will need to be rescinded or modified.

44. That concludes this judgment.