Neutral Citation Number: [2025] EWCA Civ 1264

Case No: CA-2025-002338

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
ADMINISTRATIVE COURT
Mr Justice Sheldon
AC-2025-LON-003132

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 9 October 2025

Before:

LORD JUSTICE ARNOLD
LORD JUSTICE LEWIS
and
LADY JUSTICE ELISABETH LAING

- -

Between:

THE KING (on the application of CTK)	**Claimant/ Respondent**
- and -	
SECRETARY OF STATE FOR THE HOME DEPARTMENT	**Defendant/ Appellant**

- -
- -

Kate Grange KC, Edward Brown KC, Sian Reeves and Naomi Hart (instructed by the **Treasury Solicitor**) for the **Appellant**
Sonali Naik KC, Nicola Braganza KC, Gordon Lee, Ali Bandegani, Emma Fitzsimons and Georgina Rea (instructed by **Duncan Lewis Solicitors Ltd**) for the **Respondent**

Hearing date: 23 September 2025

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Approved Judgment

This judgment was handed down remotely at 10.30 am on 9 October 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Lord Justice Arnold, Lord Justice Lewis and Lady Justice Elisabeth Laing:

Introduction

1. This is the judgment of the Court after a rolled-up hearing on 23 September 2025 of an application for permission to appeal and, if permission was granted, of the appeal by the Secretary of State against an order made by Sheldon J ("the Judge") on the evening of Tuesday 16 September 2025. We will refer to the Respondent as "CTK". In brief, CTK claimed that he was the victim of trafficking. That claim was referred to the National Referral Mechanism ("the NRM"). The Competent Authority under the NRM ("the Competent Authority") decided that there were no reasonable grounds for believing that CTK was a victim of trafficking. We will refer to that decision as "the Competent Authority's decision". In accordance with the statutory guidance then in force, and which applied to the Competent Authority in deciding CTK's case, the Competent Authority's decision letter said that CTK could apply for a reconsideration of that decision within 30 days. The Secretary of State confirmed to the Judge during the hearing that, if CTK were removed to France, the Competent Authority would not reconsider the decision and would not receive further evidence from CTK. In those circumstances, the Judge ordered the Secretary of State to refrain from removing CTK to France pending resolution of the application for interim relief. He indicated in the course of his judgment that CTK's solicitors were to use their best endeavours to provide representations to the Competent Authority for it to reconsider the trafficking claim within 14 days.

2. On this appeal the Secretary of State was represented by Ms Grange KC, Mr Brown KC, Ms Reeves and Ms Hart. CTK was represented by Ms Naik KC, Ms Braganza KC, Mr Lee, Mr Bandegani, Ms Fitzsimons and Ms Rea. We are grateful to all counsel for their written submissions and Ms Grange for her oral submissions. It was not necessary for us to hear from Ms Naik.

3. We announced at the end of the hearing on 23 September that we had decided to refuse permission to appeal on all four grounds of appeal, and that we would give full reasons for that decision in writing. Arnold LJ summarised briefly why permission to appeal was refused. He said that the Judge made no error of law or error of principle, and that none of the grounds of appeal was arguable with a realistic prospect of success. He added that the key issue concerned ground 1 of the grounds of appeal, and whether the Judge was correct to hold that there was a serious issue to be tried as to whether or not the Secretary of State acted unlawfully, in domestic law, in proposing to remove CTK the following day when her own statutory guidance provided at the relevant time for an opportunity for CTK to request, within 30 days of the relevant decision, reconsideration of that decision, and when the Competent Authority's decision itself expressly gave CTK the same opportunity. This judgment explains those reasons in more detail. It also explains why, for reasons which were to some extent clarified at the hearing, there is no other compelling reason for giving permission to appeal in this case.

The facts

4. CTK is from Eritrea. He was born on 2 January 2000. He claims to have fled to Ethiopia with his mother in 2003. He left Ethiopia in October 2023 with the help of an agent. He claims to have been treated badly in Sudan and in Libya. He travelled to Italy by boat in April 2025. He stayed there for a month and then went to France.

5. CTK arrived in the United Kingdom by boat on 12 August 2025. He claimed asylum when he arrived. He was detained. He had an asylum screening interview on 13 August 2025. He had an Amharic interpreter in his interview. He was asked if he had any medical issues and said that he had a sore shoulder because he had been hit by "a small vehicle"' about four years earlier. He was asked if he had been exploited, and said "No". According to the record of that interview, he was given an explanation of what was meant by that question.

6. He was asked to describe his journey to the United Kingdom. He said that he had walked to Sudan with the help of an agent. He was taken to Libya, where he stayed for a year. He supported himself by working as a porter carrying bricks. He was usually paid for this, but sometimes he was not paid. He went to Italy in a small boat. He stayed with the Red Cross for a month. He then walked over the mountains into France. He stayed for three months, supported by a charity. The trip to the United Kingdom was paid for by his mother. He thought that she had paid 1400 dollars for it (that is, just over £1000). He was asked why he had not claimed asylum elsewhere. He said that he had seen lots of people sleeping in the streets. He said he could not return because "There is no support in them countries".

7. The Secretary of State then took steps to remove him to France. We will briefly describe part of the mechanism for that later in this judgment. On 14 August 2025 the Secretary of State issued CTK with a "notice of intent". This told CTK that he might be removed to France. On 15 August the Secretary of State made a readmission request to France. The French authorities accepted that on 4 September 2025. In the meantime, on 19 and 27 August 2025, CTK attended appointments with two different firms of duty solicitors, TNA Solicitors and Brit Solicitors. Ms Grange told us that they made no representations on his behalf. On 5 September 2025 the Secretary of State served two decisions on CTK. She decided that CTK's asylum claim was inadmissible: she decided that it would have been reasonable for him to have claimed asylum in France. She refused and certified CTK's claim that his removal to France would breach his Convention rights. It appears that she deduced the nature of his claims from what CTK had said in his asylum screening interview. She said that, if he wanted to seek legal advice, he should do so then ("decision 1"). She also served a notice of liability to removal to France ("decision 2").

8. On 8 September 2025 the Secretary of State told CTK that directions had been set for his removal on a flight to France at 9am on 17 September 2025 ("decision 3").

9. The next day CTK went to the duty advice surgery with his current solicitors, Duncan Lewis. He instructed them to represent him on 12 September 2025. They raised a trafficking claim with the Competent Authority on 13 September 2025. They sent further representations to the Secretary of State on 14 September 2025 and sent a pre-action protocol letter the next day. Mr Robinson is a solicitor who works for Duncan Lewis. It appears from emails exhibited to Mr Robinson's witness statement that the Competent Authority interviewed CTK on 14 September. Duncan Lewis asked the Competent Authority to send them a copy of that interview record.

10. The Competent Authority sent Duncan Lewis an email at 13.31 on 15 September. The email was sent to the email address of Ms Abida Begum at Duncan Lewis. It was headed "Request for Further Information". A response was required by "16/09/2025". The email said that "The Immigration Enforcement Competent Authority needs more information to help them reach a Reasonable Grounds decision on the Competent Authority referral for [CTK]". It asked three questions: first, for "more detail of both exploitations in Ethiopia and Libya"; secondly, "Why is [CTK] reporting this now?"; and thirdly, "Are you able to provide additional documents that could support the Competent Authority referral?" Ms Begum replied soon afterwards, at 14.48 on 15 September 2025. She said that CTK "requires an interpreter and we are finding it difficult to source one at such short notice". She added, "In any event, we find your request unreasonable, expecting us to provide information within such a short timescale". On 16 September 2025, under cover of an email timed at 13.37, Ms Begum nevertheless served on the Competent Authority a witness statement from CTK dated 15 September 2025, and gave very brief answers to the three questions in the Competent Authority's email of 15 September 2025.

The Competent Authority's decision

11. During the course of the hearing before the Judge, the Competent Authority sent CTK's solicitors the Competent Authority's decision. The email was timed at 17.39 on 16 September, some 26 hours after the Competent Authority's request for further information, and four hours after Ms Begum's email of 16 September 2025 to the Competent Authority. The Competent Authority's decision recorded that the Competent Authority had received a referral from the Home Office "Immigration Enforcement IE" on 15 September 2025 which stated that CTK "may be a victim of modern slavery". The Competent Authority said that it had assessed CTK's case and had decided that "there are not currently Reasonable Grounds to conclude they are a victim of modern slavery". The Competent Authority listed the documents which it had considered. They included CTK's screening interview, the Competent Authority referral form dated 14 September 2025, Duncan Lewis's further representations dated 14 September 2025, CTK's witness statement dated 15 September 2025, and Home Office records "accessed on 16 September 2015".

12. The Competent Authority's decision said that on 14 September CTK had been "referred into the Competent Authority by a member of the Home Office, Immigration Enforcement (IE). This referral was accepted by the IECA on 15/09/2015". "IECA" stands for the Immigration Enforcement Competent Authority.

13. The Competent Authority's decision added that, on 15 September 2015, the IECA contacted the "First Responder (FR) and Alternative First Responder (ALT FR) by email requesting any further information. They responded on 16/09/2025 with further information that has been taken into consideration but has not altered the decision for the reasons given below".

14. The Competent Authority's decision summarised CTK's account. It is not necessary for us to describe either that summary or the reasoning in the Competent Authority's decision, other than very briefly. The Competent Authority accepted that CTK had been reasonably consistent in his account and that there were no significant credibility

concerns with it. The Competent Authority did not accept, however, that the events described by CTK and referred to by the Competent Authority as "incidents 1 and 3" met the definition of modern slavery. The Competent Authority did not disbelieve CTK's account of the events which it referred to as "incident 2". The Competent Authority considered, rather, that CTK had not given enough details about "incident 2". The Competent Authority said that CTK had not raised his "exploitation concerns" in his screening interview on 13 August 2015. He had first raised this concern "within consultation with" his legal representatives. That led to his referral to the Competent Authority on 14 September 2025. The Competent Authority did not accept that CTK had raised his concerns at the first opportunity. Material which it would have been reasonable to expect, such as medical reports, had not been provided.

15. The Competent Authority's decision continued, "As noted above, the IECA contacted the First Responder and your Legal Representatives on 15/08/2025 [sic; this is certainly meant to be 15/09/2025] to ascertain if there was any further information to be provided in relation to the case. The First Responder and your Legal Representatives responded on 16/09/2025 with further information that has been taken into consideration but has not altered the decision for the reasons outlined in this letter".

16. The Competent Authority's conclusion was that there were "not considered to be reasonable grounds to believe that [CTK] had been trafficked within Ethiopia and Libya", nor that he was a victim of modern slavery. There was a bold heading towards the end of the decision: "What happens next". The heading under that, in smaller bold font, was "Reconsideration routes". The decision then said that CTK could ask for a reconsideration if more information, "in addition to the information already provided becomes available or if there are specific concerns that it is not in line with published guidance. Any such request is encouraged to be made through the first responder or authorised support provider involved in the case, although this is not a requirement. Your client is entitled to seek legal advice to challenge this decision by judicial review. Your client can request one reconsideration of their negative reasonable grounds decision, which has to be made within 30 calendar days of the decision". The Competent Authority's decision then had a link to the relevant statutory guidance.

CTK's challenge to his removal

18. CTK's solicitors issued an urgent application challenging his removal to France and seeking an interim injunction to prevent it. CTK challenged decision 1, decision 2 and decision 3. He challenged them on nine grounds:
    1) The Secretary of State had not made a human rights decision.
    2) Decision 3 breached the principle of non-refoulement.
    3) Decision 2 was unlawful.
    4) The Secretary of State's criteria for choosing CTK for removal were discriminatory, unjustified, and contrary to Articles 3, 5 and 14 of the European Convention on Human Rights ("the ECHR").
    5) Those criteria were "unjustified at common law".
    6) CTK had been chosen for removal arbitrarily or "pursuant to an undisclosed policy".
    7) The Secretary of State had failed to exercise her discretion in accordance with policy guidance.
    8) The Secretary of State had failed to get assurances.

9) CTK had been detained unlawfully.

The hearing and the judgment

19. No transcript of the hearing or of the Judge's judgment was available by the time of the hearing before this Court. We had been provided with two notes about the hearing on 16 September. The first is a note prepared by the Government Legal Department ('GLD'). It is simply a note of the Judge's short judgment. The second note was prepared by CTK's solicitors. It is a note of the whole hearing including the short judgment. Ms Grange KC was asked during the hearing of this application whether she agreed that this note was accurate. She said that her side had not identified any mistakes in it. We therefore rely on that note as an accurate summary of what happened at the hearing, making due allowances for the speed of events at the hearing.

20. The Secretary of State's decision refusing CTK's further representations made by Duncan Lewis on 14 September 2025 was served on them shortly before the hearing on 16 September. CTK's representatives served a proposed further ground for judicial review (ground 10) at the hearing. In essence, this was that the Secretary of State was acting unfairly in removing CTK to France before the Competent Authority had made its decision. Counsel pointed out to the Judge that, if CTK were to get a positive reasonable grounds decision, that would be a statutory bar to removal under section 61(2) of the Nationality Asylum and Borders Act 2022 ("the 2022 Act"). There is no dispute about that.

21. The Secretary of State's counsel accepted early on in the hearing that the Competent Authority had not yet made a decision, but said that such a decision would be made before CTK was removed, and it was premature to say what any such decision would be. If the decision was negative CTK could challenge that decision from France, but if there was a positive reasonable grounds decision he could not be removed. The Judge asked what prejudice would be caused by a short adjournment until the trafficking decision had been made. Counsel's response was that the deterrent effect would be reduced because the Secretary of State would not have a removal. Counsel accepted in answer to a question from the Judge that the wisest course might be to wait for the Competent Authority's decision and to make a decision in the light of that. The Judge's question about whether CTK could challenge a negative decision from France was left hanging at that stage. The Judge was told that the next available flight was on Thursday of the following week.

22. The Competent Authority's decision was then served, and the Judge rose for 30 minutes to consider it. When the hearing resumed, CTK's counsel made some initial points about the Competent Authority's decision. She submitted that, in essence, incident 2 had been accepted, but there was not enough supporting evidence. It would be difficult for CTK to get that evidence, such as medical evidence, if he was in France. The context was that there was a "suspicion" that CTK had been trafficked. It did not help the Secretary of State to say that CTK could do this from France. There was an obligation on each State to investigate. It was hard-edged. The decision-maker had identified evidential gaps but had not investigated having accepted significant parts of CTK's account about incident 2. CTK had not had the opportunity to get that evidence. The decision-maker had invited further representations. The Judge said that "if they have

invited further representations, that might tip the balance". CTK's counsel submitted that the reconsideration process was meant to be "meaningful and effective". CTK's account had been accepted and he now had an opportunity to address the gaps, which he could not do from France.

23. The Judge asked how long was needed. CTK's counsel said that the Secretary of State's counsel had said a week. We asked about this point during the hearing. Neither leading counsel could really remember the context in which that remark was made, so we ignore it. Ms Naik is recorded as having said that her solicitors had asked for 14 days. There were further exchanges. The Secretary of State's counsel then told the Judge that she had just received an email: "The answer is no, they [i.e. the Competent Authority] can't take a reconsideration request from France". The Judge's immediate reaction was, "That forces my hand". The Judge said he would grant a short period of interim relief "so as to give [CTK] an opportunity to make reps to the NRM with respect to the RG decision that has just been provided". CTK's solicitors were to use their best endeavours to provide those within 14 days; there would then be a discussion about further directions.

24. The Judge then gave a short judgment. He summarised some of CTK's submissions. He noted that CTK was not asking for a mandatory order, so the test was whether there was a serious issue to be tried and if so where the balance of convenience lay. There was a serious issue to be tried about the trafficking claim, and whether the Secretary of State had "carried out her investigatory duties in a lawful manner". The Judge held that CTK's nine other grounds (see paragraph 18 above) did not raise a serious issue to be tried. He gave brief reasons for that conclusion. CTK has not cross-appealed against that aspect of the Judge's reasoning.

25. Returning to the trafficking claim, he said that the "NRM" (by that he meant "the Competent Authority") had served a decision during the hearing. The decision was that there were no reasonable grounds, but it referred to the opportunity to make representations so that the decision could be reconsidered. The Secretary of State's counsel had confirmed to him that that reconsideration would not be expected to involve evidence being provided from France. There was a serious issue to be tried about whether the removal decision was lawful when there is still room for further investigation. If CTK were removed now he might be deprived of the opportunity to get a positive reasonable grounds decision. The balance of convenience was evenly poised. He recognised that there was "the public interest in the Secretary of State's process being given full effect". Weighty public interest considerations supported CTK's removal. He described those. In that situation, the precautionary principle applied, and the court should make an order which preserved the status quo. In other words, CTK should stay in the United Kingdom until his trafficking claim had been reconsidered by the Competent Authority.

The grounds of appeal

26. There are four grounds of appeal:

1) The Judge failed to take into account that, regardless of any reconsideration of the negative reasonable grounds decision in the United Kingdom, CTK was to be returned to a "Tier 1" ECAT signatory State where his rights as a potential

victim of trafficking would be protected. "ECAT" is an acronym for the Council of Europe Convention on Action Against Trafficking in Human Beings. There was therefore no serious issue to be tried about CTK's rights under Article 4 of the ECHR.

2) The Judge failed to take into account that a judicial review claim challenging the trafficking decision could be brought from France. That was an "effective remedy" even if a reconsideration application would not be considered.

3) The Judge erred in concluding that the balance of convenience was even. He failed to give "appropriate weight" to the public interest in a "timely" removal of CTK and the impact of any deferral on the deterrent effect of the policy. He should have given decisive weight to the public interest in deterring unsafe crossings.

4) The Judge's conclusion that interim relief should be given for more than 14 days was irrational.

The legal background

27. There is no dispute about the relevant legal background and we need say little about it, particularly as there is no cross-appeal against the Judge's decision that none of the nine original grounds for judicial review raised a serious issue to be tried. The background which is material to this application consists of the domestic provisions about trafficking and two international treaties.

The relevant domestic provisions about trafficking

28. There are two relevant statutes: the Modern Slavery Act 2015 ("the 2015 Act") and the 2022 Act. ECAT was not, at first, reflected in any domestic statutory provisions. When first enacted, the 2015 Act created relevant criminal offences, established an Independent Anti-Slavery Commissioner, and made provision, in Part 5, for the protection of victims. The 2015 Act was amended by the 2022 Act, which gave statutory effect to some of provisions of ECAT, and as we have already mentioned, conferred (for the first time) a statutory immunity from removal on a person in whose favour a positive reasonable grounds decision has been made. Section 65 of the 2022 Act provides, in short, that, if a person is given a positive conclusive grounds decision, he must be granted limited leave if the criteria at s. 65(2) are met.

29. Section 49(1) of the 2015 Act imposes a duty on the Secretary of State to issue guidance "to such public authorities and other persons as the Secretary of State considers appropriate about" four different topics. Those are (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 are victims of slavery or human trafficking or who are such victims", (c) "arrangements for determining whether there are reasonable grounds to believe that a person is a victim of slavery or human trafficking" and (d) "arrangements for determining whether a person is a victim of slavery or human trafficking". Section 49(3) obliges the Secretary of State to publish the statutory guidance.

30. Version 4.1 was the version of the statutory guidance which was in force until 17 September 2025, when version 4.2 came into force. Annex E of the guidance is headed "Guidance for all Competent Authority staff on the NRM decision-making process

(please note this annex applies for both the SCA & IECA and cases referred UK-wide)". Paragraphs 14.216-218 of version 4.1 are headed "Reconsideration of Reasonable Grounds or Conclusive Grounds decision". Paragraph 14.216 provides: "An individual or someone acting on their behalf, may request reconsideration of a negative Reasonable Grounds or Conclusive Grounds decision by the relevant competent authority. A reconsideration request may be made within 30 days of the negative … decision on the following grounds". Those grounds are "Where additional evidence can be provided which, taken with all the available evidence already considered, could demonstrate that the individual is a victim of modern slavery" and "There are specific concerns that a decision is not in line with this guidance". Paragraphs 14.217 and 14.218 give further explanations.

31. It is common ground that, if a decision-maker proposes to make a decision or to act in a way which departs from a published policy, he must have a good reason for doing so. It follows that he cannot lawfully depart from the policy unless he has considered what that good reason is, whether it justifies the departure in the particular case, and he has articulated that reason at the same time as he has decided to depart from the policy.

32. The effect of paragraph 14.216 of version 4.2 is that the reconsideration provisions do not apply to a person if the Secretary of State proposes to remove him to a country which is a signatory to ECAT. We infer that this amendment was a response to the Judge's decision in this case.

The two treaties

33. The first treaty is ECAT. The second is entitled "Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the French Republic on the Prevention of Dangerous Journeys" ("the Treaty").

34. The background of the Treaty, as Ms Grange explained, is that the numbers of people crossing the English Channel in boats have gone up significantly this year. About 44,000 crossed between 5 July 2024 and 4 July 2025. Some of those trying to cross the Channel die; 78 in 2024. The Treaty's purpose is to prevent unauthorised crossings of the Channel. At the risk of over-simplification, the way the Treaty works is that it enables the United Kingdom, if certain conditions are met, to send back a person who has illegally crossed the Channel in a boat, and, in exchange, obliges the United Kingdom to accept into the United Kingdom from France, one other person, who has made an application from France under the Immigration Rules (HC 395 as amended) and has been accepted by Her Majesty's Government for reciprocal admmission into the United Kingdom. Ms Grange accepted that the Treaty binds the two relevant states in international law, but that in England and Wales it has no effect in domestic law except to the extent that its provisions have been incorporated into domestic law. That had not been done. She told us on instructions that the French legal system, unlike that in England and Wales, has a monist approach to international law, but was unable to say whether, were he returned to France, CTK could enforce the provisions of ECAT against the French authorities if they did not abide by those provisions in his case.

Introduction to our consideration of the grounds of appeal

35. The Secretary of State does not dispute that the decision of the Judge was a discretionary decision and that the grounds on which this court can interfere with it are

therefore limited. It does not matter whether or not we would have made this order, or whether another judge would have done. The narrow question for us is whether the Judge made an error of law or of principle or made a decision which no reasonable judge could have made in the circumstances. See the speech of Lord Diplock in *Hadmor Productions v Hamilton* [1983] AC 191 at p 229A-F, with which the other members of the Appellate Committee agreed. We must also give considerable leeway to the Judge, not only because this was a discretionary decision, but also because of the circumstances in which he made it. He had had no time, before the hearing started, to read the decision which is at the heart of the case, and had to rise during the hearing to read it. He had very limited time to absorb and reflect on the materials and submissions, and the Secretary of State's position changed during the hearing. We should, for those reasons, give the Judge the benefit of any doubt. Having analysed the grounds of appeal, however, there is no relevant doubt. We have no hesitation in deciding that none of them is arguable with a realistic prospect of success.

36. The approach to questions of interim relief is set out in *American Cyanamid Co v Ethicon Limited* [1975] AC 396 ("*American Cyanamid*").

37. Lord Diplock gave the leading speech in *American Cyanamid*. The other members of the Committee agreed with it. That appeal, in a patent dispute, concerned the test for the grant of what was then called an interlocutory injunction. The judge and this Court had held that the Appellant had to show a "prima facie" case that its patent had been infringed. Applying that test, the judge and this Court had reached opposite conclusions. As Lord Diplock explained, this Court had effectively tried the action, but on the basis of written evidence only, and with no cross-examination. He considered that the same principles applied to patent claims as to other actions (p 406B).

38. Lord Diplock referred to the practice that the grant of an interlocutory injunction was made subject to the plaintiff's cross-undertaking in damages (p 406D-E). He explained that the purpose of an interlocutory injunction is to protect a claimant "against injury by violation of his legal right for which he could not be adequately compensated in damages" if his claim were to succeed at trial; but his need "for such protection must be weighed against the corresponding need of the defendant to be protected against injustice resulting from his having been prevented from exercising his own *legal rights* for which he could not be adequately compensated under the plaintiff's undertaking in damages if" the defendant succeeded at trial (emphasis added). "The court must weigh one need against another and determine where 'the balance of convenience' lies".

39. Lord Diplock invited the Appellate Committee to decide that in such cases a court need only be satisfied that "the claim is not frivolous or vexatious; in other words, that there is a serious question to be tried" (p 407G). The court should not at the interim stage "try to resolve conflicts of evidence on affidavits as to facts on which the claims of either party may ultimately depend nor to decide difficult questions of law which call for detailed argument and mature considerations". Those were for the trial. "Unless the material available to the court at the hearing of injunction fails to disclose that the plaintiff has any real prospect of succeeding in his claim for a permission injunction at trial, the court should go on to consider whether the balance of convenience" favoured the grant or refusal of an injunction (p 408B).

40. If the claimant could be compensated in damages for any loss he would suffer between the date of the application and trial if the injunction were not granted, and the defendant could pay them, then "however strong the plaintiff's case appeared at that stage", an injunction should not normally be granted. If the damages would not compensate the claimant for those losses in the event that the claim succeeded at trial, the court should then consider whether, if the defendant were to succeed, he would be adequately compensated by resort to the claimant's cross-undertaking in damages. If the defendant could be compensated and the claimant could pay, there would be "no good reason on this ground to refuse the injunction" (p 408C-E).

41. If there was doubt about the adequacy of damages as a remedy for either party or both, "the question of balance of convenience arises". It was "unwise" to try to list the relevant factors, "let alone to suggest the relative weight to be attached to them. These will vary from case" (p 408F). Where other factors seem to be evenly balanced, "it is a counsel of prudence to take such measures as are calculated to preserve the status quo". If the defendant is injuncted temporarily from doing something which he has not done before, the only effect of the interlocutory injunction, if he succeeds at trial, is to postpone "the date at which he is able to embark upon a course of action which he has not previously found it necessary to undertake" whereas to interrupt an "established enterprise" would cause much more inconvenience (p 408G-H).

42. If the extent of uncompensatable disadvantage to each party would not differ widely, "it may not be improper to take into account in tipping the balance the relative strength of each party's case" as revealed by the evidence at the hearing of the application. "This, however, should be done only where it is apparent upon the facts disclosed by the evidence as to which there is no credible dispute that the strength of one party's case is disproportionate to that of the other party" (p 409B-C).

43. The application of that decision in the context of public law claims was considered in detail by this Court in *R (Public and Commercial Services Union) v Secretary of State for the Home Department* [2022] EWCA Civ 842.

Discussion

44. This is a public law case. The first question, therefore, is whether there is a serious issue to be tried as to whether or not the Secretary of State would be acting lawfully in seeking to remove CTK on the facts of this case.

45. We were told that the Competent Authority is a part of the Home Office, staffed by people who are specialists in making decisions about claims of human trafficking. The Competent Authority did not, in the decision, purport to depart from the statutory guidance; still less did it articulate a good reason for doing that. The Competent Authority faithfully followed the statutory guidance by offering CTK the opportunity to apply for a reconsideration within 30 days.

46. So the decision by the Secretary of State's own specialist staff, the Competent Authority, was, in this respect, in accordance with the guidance. Yet before the Judge, the Secretary of State, in effect, repudiated that aspect of the decision and insisted to the Judge that CTK must be removed, in breach of her own published policy, and in

breach of an unambiguous indication by the Competent Authority that CTK could request reconsideration of the Competent Authority's decision within 30 days. It is strongly arguable both that the Secretary of State has no power to repudiate a lawful decision made by her own specialist civil servants, and made in accordance with her own published statutory guidance, and that, by doing so, she acted unlawfully.

47. Against that background, the first question for us is whether there is any error of law or of principle in the Judge's understandably short judgment, or in the order which he made. The judgment and the order reflect two of his responses to this case, as it evolved during the hearing, which he expressed during oral argument (see paragraphs 21 and 23 above). Those were, first, that the Competent Authority's own invitation in the decision to CTK to make further representations "might tip the balance"; and secondly, his response, when he was told that the Competent Authority could not consider any such representations if CTK was in France, that that "forced [his] hand". In our judgment there is no error of principle in the Judge's approach. If anything he could have gone further than he did. There was no relevant factual dispute. The Judge, in the circumstances of this case, could not have been criticised for deciding that there was "no credible dispute that the strength of one party's case" and that it was "disproportionate to that of the other party", and to take that into account as indicating that he should grant the injunction. As things stand, there is no error of law or of principle in the approach which he did take.

The grounds of appeal

Ground 1

48. There is a short answer to ground 1. This case is not about CTK's rights under Article 4 of the ECHR, or about ECAT. It concerns the Secretary of State's duty at common law to comply with her own statutory guidance, the provisions of which she has voluntarily adopted in order, among other things, to ensure that she complies with her obligations to investigate suspicions of trafficking. The Secretary of State was not, at the end of the hearing of this application, in a position to assert that CTK could, himself, enforce the provisions of ECAT against the French authorities in France. Her submission, at most, was that she wants to remove CTK to a State which is bound by ECAT in international law. That is no answer to CTK's claim that he has a right, conferred on him by domestic law, to request, in the United Kingdom, a reconsideration of the Competent Authority's negative reasonable grounds decision, and not to be removed from the United Kingdom until that reconsideration has taken place.

Ground 2

49. There is an equally short answer to ground 2. On an application for judicial review, the court will assess the lawfulness of the decision which is challenged on the basis of the materials which were before the decision-maker at the time of the decision. The court cannot substitute its view of the merits of the decision for that of the decision-maker. In the decision, the Competent Authority invited CTK to put in new evidence, if he wished, in short to plug the gaps which the Competent Authority identified in the decision. It is obvious that request for reconsideration made from inside the United Kingdom, with access to help from his current solicitors, is considerably more valuable to CTK than the possibility of applying for judicial review from France, even if the likely practical difficulties of making such an application from France are ignored, for

two reasons: he can rely on new evidence, and he will get a fresh decision about the merits of his claim. The potential availability of an application for judicial review from France is no substitute for a request for reconsideration which the Competent Authority told him, in its decision, he was entitled to make.

Ground 3

50. As we have already said, the Judge's analysis was, if anything, favourable to the Secretary of State. The Judge would have been entitled to give the policy articulated in the Treaty no weight at all. For the reasons which we have already given, it did not entitle the Secretary of State to repudiate the lawful offer of an opportunity to request a reconsideration of the decision which, by issuing the statutory guidance in the terms in which it then was, she had authorised her own expert officials to make, and which, acting in accordance with the statutory guidance, they had duly made.

Ground 4

51. The premise of ground 4 is that the Judge was entitled, in the order, to suspend CTK's removal until CTK had, within a specified period, made a request for reconsideration. The period for that which is allowed both in the statutory guidance and in the decision was 30 days. The Judge significantly shortened that period (in the first instance, to 14 days). The argument that the Judge was irrational to require CTK to use his best endeavours to make that application within that significantly shorter period is hopeless. We need say no more about it.

Is there another compelling reason for giving permission to appeal?

52. The Secretary of State amended the relevant part of the statutory guidance on 17 September 2025, immediately after the Judge's decision. We have described the effect of that change already. We asked Ms Grange whether there are any pending cases to which the earlier version of the guidance applies and/or in which a negative reasonable grounds decision has been made which said that the claimant can request a reconsideration within 30 days of the decision. She did not know the answer to that question, but accepted that the numbers of such cases, if there are any, were likely to be small. Such cases would have to be cases with the same facts as this one, and not, for example, cases like the case which the Judge heard two days later, in which the claimant had already had one reconsideration decision by the Competent Authority (see paragraph 7 of GLD's note of a judgment of the Judge in a different case, SKG, which was in GLD's supplementary bundle for this hearing). The Judge refused interim relief in that case, and his decision was not appealed.

Conclusion

53. It was for these reasons that we dismissed the Secretary of State's application for permission to appeal.