Neutral Citation Number: [2025] EWHC 3291 (Admin)

Case No: AC-2025-LON-003788

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 15 December 2025

Before :

MR JUSTICE CONSTABLE

- -

Between :

R (FD)

Claimants

- and -

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Defendants

- -
- -

Manjit S. Gill KC and Tony Muman (instructed by J M Wilson Solicitors) for the Claimant
Joshua Yetman (instructed by the Government Legal Department) for the Defendants

Hearing dates: 10-11 December 2025

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JUDGMENT

Mr Justice Constable:

Introduction

1. The Claimant ('FD') challenges three decisions of the Defendant, the Secretary of State for the Home Department ('SSHD'), arising from events in September and October 2025, which have resulted in FD being unable to return to the United Kingdom from Turkey. SSHD resists the claim, contending that each of the impugned decisions was lawfully made and that the claims are unarguable.

2. FD is a long term resident of the United Kingdom. FD was subject to a deportation order made in 2017. This revoked his prior Indefinite Leave to Remain ('ILR'). In December 2024, FD was provided with a communication from SSHD which FD contends, as a minimum, gave rise to a legitimate expectation that he had ILR, and was invited to apply for a UKVI account through which to obtain an eVisa. The application was successful, and his status recorded on the eVisa as 'settled'. FD travelled to Turkey on holiday in September 2025 believing he would be entitled to return. On 23 September 2025, SSHD refused to grant authority to an airline to carry FD back to the UK, relying on the Authority to Carry Scheme 2023 ("the ATC Scheme"). Shortly thereafter, on 29 September 2025, FD's access to his eVisa was removed. On 2 October 2025, SSHD notified her refusal of FD's outstanding asylum and human rights claim, which had been lodged in 2019 ('the 2019 Claim'). The circumstances in which the various decisions were made are considered further below. FD contends that these decisions, individually and collectively, were unlawful, procedurally unfair, and in breach of his rights under the Immigration Act 1971 and Article 8 ECHR.

3. The matter comes before the Court following the refusal of interim relief by Lieven J on 14 November 2025, and expedited directions for an expedited rolled-up hearing. FD's Turkish visa limit of 90 days continuous stay in Turkey expires on 18 December 2025. FD's fourth witness statement describes in some detail how he is now living on the streets, destitute, in Turkey.

4. Given the urgency of the matter, I gave a limited determination in FD's favour on Grounds 1 and 4 immediately following the hearing on 10-11 December 2025 with brief reasons. In light of the indication on behalf of SSHD of a potential appeal, it was therefore necessary to produce a fully reasoned judgment in short order. This is that judgment. In light of the possible complications leading from a determination of some but not all grounds in the context of a possible appeal, this judgment now deals with all, somewhat interrelated, grounds. In light of my indication on 11 December 2025, and irrespective of any potential appeal, SSHD has been subject to an Order requiring the appropriate preparations be put in place to facilitate the return of FD to the UK.

5. Mr Gill KC and Mr Muman for FD and Mr Yetman for SSHD have provided detailed written and oral submissions, for which I am grateful.

Factual Background

6. FD, a Jamaican national, was born on 22 September 1965. On 15 April 1993, FD arrived in the United Kingdom as a visitor. His leave to remain was subsequently extended, first as a Working Holiday Maker and then as a student. On 26 September 1996, FD married a British citizen, and following this marriage, was granted leave to remain on 27 January 1997. A year later, on 26 August 1998, FD was granted ILR.

7. In 2006, FD became subject to deportation proceedings. However, on 20 December 2006, the Asylum and Immigration Tribunal allowed FD's appeal against deportation, and on 25 September 2007, ILR was restored. FD was re-issued with ILR on 14 August 2012.

8. FD again faced automatic deportation in 2016 following a serious criminal conviction. On 29 July 2016, SSHD issued a Stage 1 deportation decision. On 2 August 2016, SSHD wrote to FD, inviting reasons why he should not be deported. In response, FD submitted a Human Rights claim. Despite this, a deportation order was issued on 12 May 2017. On 16 May 2017, SSHD refused FD's Human Rights claim, stating that it gave rise to an 'out of country right of appeal'. Later, on 8 December 2017, this decision was withdrawn, acknowledging this had been wrongly stated, and issued a new decision refusing the Human Rights claim, this time with an 'in-country right of appeal'. FD's appeal against this decision was dismissed by the First-tier Tribunal (IAC) on 15 June 2018, and the Upper Tribunal (IAC) dismissed a further appeal on 29 April 2019.

9. By 26 November 2019, FD had submitted a Protection (Asylum) and Human Rights claim, which SSHD treated as a Stage 3 application to revoke deportation ('the 2019 Claim'). FD was placed on immigration bail with reporting conditions, and invited for an asylum interview, which took place on 5 December 2019 (screening) and 12 December 2019 (substantive). In 2020, due to the pandemic, SSHD advised FD not to report until further notice.

10. In 2022, FD sought employment and contacted SSHD for an update on the 2019 claim and to request a 'share code' to provide to prospective employers. SSHD's response was to instruct FD to wait for a decision in respect of the 2019 Claim. After further requests for an update, FD says that he was advised to make a No Time Limit ('NTL') application as the quickest way to obtain a decision and a share code. Although Mr Yetman says that there is no record of any of the chasing calls, there is no evidence as to what records there would be, or whether such records have been searched for. There is no reason to doubt FD's evidence on this point, which is inherently credible.

11. FD submitted an NTL application, declaring his criminal convictions, sentence, and immigration status accurately. Biometrics were completed, and criminality and watchlist checks were requested. Over the following months, further checks were conducted and completed. On 13 September 2022, SSHD issued a letter under section 72 of the Nationality, Immigration and Asylum Act 2002.

Internally, SSHD's records indicate that this paused the NTL decision pending the outcome of ongoing deportation proceedings.

12. Although it is not entirely clear, it seems that throughout late 2022 and into 2023, the NTL process remained paused, albeit with the Status Review Unit (SRU) periodically reviewing the case. FD's evidence is that throughout this time he continued to call the Home Office to find out when a decision on the 2019 Claim would be made.

13. On 11 July 2023, the SRU accepted the case. SSHD wrote to FD:

> "Thank you for your application for an NTL BRP. Although we would normally decide your application within six months from the date it was submitted, unfortunately this is not going to be possible in your case. This is because records show that you have criminal convictions and we require further time to consider your case thoroughly and reach a decision. We expect to make a decision on your application by 11/01/2024, but we will write to you again if this is not going to be possible."

14. No decision was provided by 11 January 2024. Little further progress occurred in 2023 and 2024. Various criminal record and watchlist requests were made. Decision-making appeared to await outcome of the deportation proceedings.

15. On 19 December 2024, SSHD emailed FD ('the December 2024 Email'):

> "**Your application for a No Time Limit endorsement has been successful.**
>
> Your No Time Limit endorsement shows you have indefinite leave to remain in the UK.
>
> **Settlement in the UK: what you need to know**
>
> As you have indefinite leave to remain, if you have made the UK your home you are settled in the UK. You can find information on what it means to be settled in the UK
>
> **Working in the UK**
>
> There is no immigration restriction on your ability to work in the UK. This means you may work in any business or profession, as an employee or self-employed…
>
> **Immigration bail**
>
> If you are on immigration bail, once you have a No Time Limit endorsement this will end automatically.
>
> **Travel**
>
> If you stay outside the UK or the Common Travel Area (meaning the UK, Ireland, the Isle of Man, Guernsey and Jersey), for two or more years at a

> time your indefinite leave to remain will automatically end. If this happens you will need to apply for entry clearance as a returning resident before coming back to live in the UK…
>
> **Proving your immigration status**
>
> You can keep this written notice for your personal records.
>
> You should now create a UK Visas and Immigration (UKVI) account to enable you to access your eVisa and prove your UK immigration status (your permission to stay). Information on how to do this is in the 'next steps' section….
>
> **Proving your UK immigration status when travelling**
>
> Always give yourself plenty of time to check both your personal details are up to date and your eVisa information is correct before traveling. You can do this at: https://www.gov.uk/update-uk-visas-immigration-account-details. You may be delayed or denied boarding by carriers if you do not do this. You will still need to carry your current passport with you."

16. The circumstances in which this communication came to be sent are considered further below.

17. The following day, FD opened a UKVI account and received an online eVisa confirming ILR. In the following months, FD successfully used the eVisa and share codes to confirm the right to rent and work, and employers were able to carry out right to work checks.

18. Meanwhile, and unbeknownst to FD, the SSHD's Atlas system states in respect of the 2019 Claim, as at 28 April 2025: 'Decision completed and uploaded to Atlas C&E card for FNORC. Email sent to CET. Proof read by E. Wilkinson'. No communication of the 'Decision completed' was provided to FD.

19. In September 2025, FD applied for and was issued a 6 month Turkish visit visa, with a 90 day continuous visit maximum stay, using the eVisa and share code. Before travelling, FD checked the eVisa online and confirmed his ability to travel. He travelled to Turkey on 18 September 2025, having completed the Advanced Passenger Information in advance. He received no indication that, having provided that information, his eVisa was invalid or that he would not be able to return. On 18 September 2025, FD travelled to Turkey for what had been intended to be a 5 day break with friends.

20. On 21 September 2025, SSHD refused SunExpress Airline authority to carry FD to the UK under the ATC Scheme, sending an email to the airline at 23:35. On 23 September 2025, at the end of the holiday, FD and friends presented themselves at Antalya airport for check-in. FD produced the eVisa, the NTL decision, and a share code, but he was prevented from boarding on the basis that the airline had been refused authority by SSHD to carry FD to the UK. FD was advised by the government's pre-departure helpline to seek legal advice.

21. On 29 September 2025, FD's solicitors notified the government that FD was stranded in Turkey. FD then discovered, checking his account online, that his eVisa had been removed from the UKVI account.

22. On 2 October 2025, SSHD issued a letter refusing the 2019 Claim, posting it to FD's correspondence address in Birmingham and setting a deadline to appeal by 16 October 2025. On 8 October 2025, FD received a photograph of the refusal letter via WhatsApp.

23. FD's solicitors filed a protective appeal at the First-tier Tribunal (IAC) on 15 October 2025. In the absence of a response, on 23 October 2025, FD issued a Judicial Review claim at the Upper Tribunal (IAC). The Upper Tribunal ordered the government to file an Acknowledgement of Service and Summary Grounds of Defence. On 29 October 2025, the matter was transferred to the Administrative Court on jurisdictional grounds.

The Grounds

24. The first 5 grounds relate to the decision/action refusing to give the airline authority to carry FD. The Grounds are as follows:

Ground 1: The challenged decision/action has been unlawfully made by reference to the Authority to Carry Scheme 2023 which was inapplicable to FD, having been made under the Counter-Terrorism and Security Act 2015 ('the 2015 Act'). In any event, the discretion was not lawfully exercised on the facts.

Ground 2: The challenged decision/action unlawfully undermined rights granted under the Immigration Act 1971, under which FD has already been granted ILR, by unlawful reliance on action taken pursuant to the ATC Scheme.

Ground 3: The challenged decision/action was unfairly made, in an unfair procedure, without regard to relevant matters, and amounted to an egregious abuse of power.

Ground 4: The challenged decision/action unlawfully defeated a legitimate or reasonable expectation that FD would be permitted to return to the UK.

Ground 5: The challenged decision/action was an unjustified and disproportionate interference with Art 8 ECHR rights of FD and his family.

25. Ground 6 relates to the withdrawal of the eVisa. FD contends that it was unlawful because:

(i) It was unfairly carried out with no prior opportunity to make representations,

(ii) Relevant factors (namely all the considerations arising under Grounds 1-5) were not taken into account,

(iii) No written notice, decision or reasons of any kind were provided, and certainly nothing containing prescribed information set out in the Immigration (Notices) Regulations 2003, regs 4,5, which would have

enabled C to understand his position and to be able to access justice and to do so on an informed footing.

(iv) It was an unjustified and disproportionate interference with FD's Article 8 rights.

26. Ground 7 relates to the lawfulness of the decision, or purported decision, on 2 October 2025 to refuse FD's 2019 Claim. It is argued, first, that the decision is a nullity in circumstances in which the 2019 Claim had been resolved and concluded by the SSHD's actions on 19 December 2024. Second, in the alternative, it is said that the decision was made deliberately, unfairly and unreasonably, after some 6 years delay, on 2 October 2025, without regard to material facts and when SSHD knew that FD was out of the country and unable to return to appeal against the decision.

Grounds 1 and 2

27. The ATC Scheme 2023 in force in September 2025 is the third authority to carry scheme to be made under the 2015 Act. Section 22 of the 2015 Act provides the power to make Authority-to-Carry schemes. This states:

> "(1) The Secretary of State may make one or more schemes requiring a person (a "carrier") to seek authority from the Secretary of State to carry persons on aircraft, ships or trains which are—
>
> (a) arriving, or expected to arrive, in the United Kingdom, or
>
> (b) leaving, or expected to leave, the United Kingdom.
>
> A scheme made under this section is called an "authority-to-carry scheme".
>
> (2) An authority-to-carry scheme must specify or describe—
>
> …
>
> (c) the classes of passengers or crew in respect of whom authority to carry may be refused.
>
> (3) An authority-to-carry scheme may specify or describe a class of person under subsection (2)(c) only if it is necessary in the public interest.
>
> …
>
> (7) The grant or refusal of authority under an authority-to-carry scheme does not determine whether a person is entitled or permitted to enter the United Kingdom."

28. The section of the ATC scheme relied upon by SSHD when refusing FD authority to travel is paragraph 14(f). This states:

> "14. Authority to carry to the UK may be refused in respect of the following persons:

…

f) Individuals who are the subject of a deportation order or whom the Secretary of State is in the process of making the subject of a deportation order under the Immigration Act 1971 or who were subject to deportation proceedings but left the UK before those proceedings concluded."

29. The power under 14(f) is discretionary.

30. Mr Gill KC argues that the ATC scheme is inapplicable in circumstances where, as is not in dispute, there is no suggestion that FD is in any way a terrorist or poses any terrorism-related threat. Mr Yetman argues that it is unnecessary for the exercise of discretion under paragraph 14(f) of the ATC that the subject of the refusal relate in some way to any terrorist threat. This, it is contended, is because:

(1) Section 22(3) of the 2015 Act limits the specification or description of person under 2(c) (i.e. the classes of passengers or crew in respect of whom authority to carry may be refused) by reference to language: 'only if it is necessary in the public interest' unqualified, within the sub-section, by any reference to terrorism;

(2) similarly, paragraph 14(f) of the ATC Scheme does not limit the class other than by reference to the individual's being the subject of a deportation order or whom the Secretary of State is in the process of making the subject of a deportation order. There is no further qualification relating to terrorism;

(3) it is in the public interest that those subjected to an extant deportation order arising from a serious criminal conviction are or may be refused authority to travel, irrespective of any link to terrorism.

31. This analysis rests fundamentally on construing the words 'only if it is necessary in the public interest' within section 22(3) of the 2015 Act broadly, so as to include anything which may be deemed, in any way, necessary in the public interest.

32. The competing construction is that the words 'only if it is necessary in the public interest' are to be construed within section 22(3) as referring to necessity in the public interest insofar as relates to terrorism-related threats.

33. Contrary to the forceful and eloquent submission of Mr Yetman, it is clear from the 2015 Act itself, the Explanatory Notes and the ATC Scheme as set out further below that the whole object of the introduction of broad and intrusive powers provided to SSHD pursuant to the 2015 Act is the prevention of terrorism-related threats. As a matter of statutory construction, it is in the context of this clear object that the meaning of necessity in the public interest must be viewed.

34. As for the 2015 Act itself, the introductory words are as follows:

> "An Act to make provision in relation to terrorism; to make provision about retention of communications data, about information, authority to carry and security in relation to air, sea and rail transport and about reviews by the Special Immigration Appeals Commission against refusals to issue certificates of naturalisation; and for connected purposes."

35. The 'Summary and Background' within the Explanatory Notes reflects and explains the purpose of the Act, consistent with the introductory words:

> "3. The Government considered that there was a need to legislate in order to reduce the terrorism threat to the UK. On 29 August 2014, the independent Joint Terrorism Analysis Centre (JTAC) raised the UK national terrorist threat level from SUBSTANTIAL to SEVERE. This means that a terrorist attack is "highly likely". Nearly 600 people from the UK who are of interest to the security services are thought to have travelled to Syria and the region since the start of the conflict, and the security services estimate that around half of those have returned. In the context of this heightened threat to our national security, the provisions in this Act will strengthen the legal powers and capabilities of law enforcement and intelligence agencies to disrupt terrorism and prevent individuals from being radicalised in the first instance.
>
> 4. On 1 September 2014, the Prime Minister announced that legislation would be brought forward in a number of areas to stop people travelling overseas to fight for terrorist organisations or engage in terrorism-related activity and subsequently returning to the UK, and to deal with those already in the UK who pose a risk to the public. The provisions in this Act will ensure that the law enforcement and intelligence agencies can disrupt the ability of people to travel abroad to fight, such as in Syria and Iraq, and control their return to the UK. It will enhance operational capabilities to monitor and control the actions of those in the UK who pose a threat, and help to combat the underlying ideology that supports terrorism.
>
> 5. The UK has a strategy for countering terrorism: CONTEST. The aim of CONTEST is to reduce the risk to the UK and its interests overseas from terrorism, so that people can go about their lives freely and with confidence. The strategy continues to be based around four main areas of work:
>
> • Pursue: the investigation and disruption of terrorist attacks;
>
> • Prevent: work to stop people becoming terrorists or supporting terrorism and extremism;
>
> • Protect: improving our protective security to stop a terrorist attack; and

> • Prepare: working to minimise the impact of an attack and to recover from it as quickly as possible.
>
> Provisions in this legislation will strengthen powers and capabilities in the "Pursue", "Prevent", and "Protect" areas of work in particular."

36. The Explanatory Notes also provide an 'Overview of the Structure of the Act'. Section 22, that part that creates the power to make ATC Schemes, is found in Chapter 2 of the Act. This Chapter is described as follows:

> "Chapter 2 provides for the creation of a temporary exclusion order to disrupt and control the return to the UK of a British citizen reasonably suspected of involvement in terrorist activity abroad."

37. The ATC Scheme itself echoes the Act. The paragraph upon which Mr Yetman particularly relies in his submissions, like section 22(3), does not expressly qualify the words 'public interest':

> "Purpose
>
> 6. The purpose of this Scheme is to prevent certain individuals from travelling to or from the UK when that it is necessary in the public interest."

38. However, the context for paragraph 6 is made explicit in the preceding, and opening, paragraphs:

> "Context
>
> 1. The Authority to Carry Scheme 2023 is the third authority to carry scheme to be made under the Counter-Terrorism and Security Act 2015. The primary legislation allows the Secretary of State to make authority to carry schemes requiring a carrier to seek authority from the Secretary of State to carry persons on aircraft, ships or trains which are arriving (or expected to arrive) or leaving (or expected to leave) the UK. The Authority to Carry Scheme 2023 ("This Scheme") replaces the Authority to Carry Scheme 2021.
>
> 2. Operating an authority to carry scheme is an important element of the UK's border security, aviation security and wider transport security arrangements. The threat from terrorism is real and ongoing. There is a need to prevent or disrupt the exit from, entry to or return to the UK of individuals who pose a terrorism-related threat, or other threat to the UK or its interests. This includes mitigating the threat of an attack on aircraft operating to the UK (or onward from the UK) or an attack on a ship or international train operating to the UK."

39. The syntactical high point of Mr Yetman's submissions, in addition to the absence of any specific qualifying words in respect of 'public interest' in section 22(3) of the 2015 Act or paragraph 6 of the ATC, is the sentence in paragraph 2 of the ATC, quoted above, which states: "There is a need to prevent or disrupt

the exit from, entry to or return to the UK of individuals who pose a terrorism-related threat, or other threat to the UK or its interests."

40. Mr Yetman points to the words, "or other threat to the UK or its interests" as being sufficiently broad to include the public interest in refusing entry to a person, whilst in no sense a terrorism-related threat, who has a deportation order on account of serious criminal activity. However, if anything, the words emphasise that the type of threat being considered is what might be described as a state-level threat. This is not consistent with the sort of language that may have been adopted had it been intended that the 'public interest' concern was the prevention or control of what might be referred to as 'domestic' criminal activity. Additionally, the words must be read in the light of the immediately preceding sentence: 'The threat from terrorism is real and ongoing.'

41. It is overwhelmingly clear that the provision of significant powers to the State pursuant to the 2015 Act was very specifically targeted at dealing with the threat of terrorism. The powers are broad. For example, as Mr Yetman rightly pointed out in submissions, paragraph 14(f) of the ATC includes in the class of people who may be refused authorisation to travel include not just people who are actually subject to a deportation order, but those in relation to whom no deportation has in fact even yet been made. Both parliamentarians and the public alike would no doubt have been reassured by the passages referred to above that such broad powers only arose from, were justified by, and would be exercised pursuant to the public interest in meeting the stated 'real and ongoing threat from terrorism'.

42. It is in light of this clear object that the words 'only if it is necessary in the public interest' used section 22(3) of the 2015 Act must be construed.

43. It follows that the decision to invoke the ATC Scheme to prevent FD, a person who poses no terrorism-related threat, from returning to the UK was an unlawful one, and should be quashed.

44. The second element of Ground 1, which is argued in the alternative on the assumption that ATC scheme was applicable, is that the decision was nevertheless an irrational one. Although not necessary in light of my conclusion above, I consider this sub-ground, not least as it contains significant overlap with Ground 3.

45. Ms Braybrook gave evidence for SSHD. She is a Senior Officer for the National Border Targeting Centre (NBTC). Her evidence states that on 21 September 2025 Sun Express Airlines transmitted advance passenger information (API) to the Home Office for flight number XQ0596 from Antalya, Turkey to Birmingham, United Kingdom (UK) on 23 September 2025. The provision of API constituted a request for authority to carry persons to the UK under the ATC Scheme. The API was automatically checked against Home Office information to identify any individuals in scope of the 2023 Scheme in respect of whom authority to carry may be refused. There was a match in the API between FD and Home Office information that FD was an individual who was the subject of a deportation order. The match was analysed by a NBTC Officer to determine whether FD was the subject of the deportation order and whether

the individual fell within the scope of the ATC Scheme. Having made the determination, the officer referred the case to the duty Higer Officer who authorised that Sun Express Airlines be refused authority to carry FD to the UK. In her evidence, Ms Braybrook gave no indication of what specific matters were taken account of in the discretionary decision making process pursuant to the ATC Scheme.

46. However, the documentary evidence appended to Ms Braybrook gives the following insight:

> **Passenger matches subject with extant DO - 4 point match. Complex case - discussed with Duty HO in depth. Stage 1 and stage 2 delivered (both in folder) 2022. Subject claimed Asylum and Refugee status under HR grounds and was given NTL while claim progressed through courts - 2024. Subsequent judge statements found claim without credence. Refusal letter submitted 28 Apr 2025 repeats same, states failure to be considered under HR grounds (goes into a point by point dissmissal) under Immigration Act 399C & D - also states subject does not qualify for DL. No CRS.**
> **Considered auto-deportation.**
>
> **I referred the case to [redacted] who authorised refusal of 'Authority to Carry' in accordance with Paragraph (14f) - DO of the Authority to Carry Scheme 2023** *(View sub sections reminder)*

47. Mr Yetman conceded that some of the information was wrong, but describes the content of this document as a 'clerical error'. That is both an understatement and a mischaracterisation. The content of the document is the best (indeed, only) evidence of the basis why authority was refused. It demonstrates that the decision was made on a wholly misconceived basis.

48. The extant claim at the time of the 2024 NTL decision was the 2019 Claim. This had not (and, indeed, has not) 'progressed through the Courts'. More significantly, no 'subsequent judge' (i.e. subsequent to the NTL) found the 2019 Claim 'without credence'. It had not been considered by a judge at all. Reference to the Refusal letter submitted on 28 April 2025 is also wrong: the 28 April (draft) Decision had not, as at September 2025, been either finalised or 'submitted', or in any way communicated to FD. It was not at the time a legally effective decision.

49. In essence, the discretion appears to have been exercised on the basis that a deportation order was in place and that, following the provision of an NTL, the process of appeal seeking revocation of the deportation order had been resolved against FD by a judge who had found his claim without credence, with no appeal outstanding. On the basis of these alternative facts mistakenly understood by the caseworker and their superior, a decision (assuming applicability of the ATC Scheme to FD), to exercise a discretion to refuse FD entry would have been a rational one. However, the same cannot be said in circumstances where the factual basis for the exercise of discretion was entirely mistaken. As a result, the decision-makers did not put their minds to obviously relevant facts, not least: (1) a decision on the 2019 Claim was yet to be made or communicated; and (2) the effect of refusing to permit re-entry would have the effect of removing FD's entitlement to an in country appeal upon notification of the claim decision; (3) what FD may have been led to believe about his right to return to the UK by SSHD in the December 2024 Email. By ignoring these factors, the decision-making was irrational.

50. Mr Gill KC, in relation to Ground 1, also raised issues around notification of the decision to refuse authorisation. It is not in dispute that the decision was orally notified to FD at the airport, via the airline. It is not necessary, given the two bases upon which the substantive decision may be challenged as set out above, to consider on the facts of this case whether that method of notification was, itself, something which may give rise to a judicial review challenge.

51. Pursuant to Ground 2, it is argued that a notice of refusal of authority fundamentally in the situation where a person had ILR undermined rights granted under the Immigration Act 1971. It is understood that this point is the subject of consideration in a different case. It is not necessary for me to decide this point, and I do not do so.

Grounds 3 and 4

52. Ground 3 is that the notice of refusal of authority was unfair, irrational and an abuse of power. I have considered the most pertinent aspects of Ground 3 already in the context of Ground 1. It also overlaps with Ground 4. It is not necessary for the purposes of any determination in this case to consider Ground 3 further.

53. Ground 4 is that the notice of refusal of authority defeats a legitimate or reasonable expectation that FD would be permitted to return to the UK.

The Law

54. It is sufficient to summarise the relevant principles applicable in this case as follows (see generally Chapter 7 of *DeSmith's Judicial Review* 9th Edn):

(1) A legitimate expectation of a substantive benefit (here, the right to re-enter the UK) may arise where a public authority expressly promises or assures an individual that they will receive or retain a benefit;

(2) To give rise to a legitimate expectation, a representation must be 'clear, unambiguous and devoid of relevant qualification';

(3) Both the meaning of an assurance and the extent to which an assurance meets the requisite standard of clarity is to be assessed by asking how it could reasonably be understood by the person to whom it was communicated;

(4) This is an objective, not subjective, standard;

(5) Detrimental reliance is not a pre-requisite of a finding that a legitimate expectation had arisen, but may be relevant (albeit not determinative) in the context of whether an authority may be permitted to depart from a legitimate expectation;

(6) In departing from the legitimate expectation, the courts have tended to rely upon two standards in assessing the lawfulness of a public authority's justification: (1) a standard of fairness. In R v North and East Devon HA Ex p. Coughlan, the Court of Appeal framed the central question as whether

the public authority acted in a manner which was 'so unfair as to amount to an abuse of power'; (2) a standard of proportionality. There may be circumstances in which departure from a past promise is 'objectively justified as a proportionate measure in the circumstances'.

(7) Where a public authority departs from a statement made to the public at large it may 'encounter a steeper climb'.

55. Additionally, as explained further below, SSHD's claim that the December 2024 E-mail was sent in error. In this context, SSHD refers to the decision of the Upper Tribunal in YC v SSHD JR-2024 LON-000850. In this case the YC received a letter from SSHD which granted ILR. Within 6 weeks a corrected version of the letter was provided purporting to substitute a different outcome, in which YC's asylum application was refused. It was said by SSHD that the first letter was sent by mistake. After an analysis of the relevant authorities, Bourne J concluded:

> "57. Although the public law cases are not on all fours with this one, we agree with the comments of Haddon-Cave J in Chaudhari at [46]-[51] (whether or not they were part of the ratio of his decision). Where a corrective power exists, it can extend to correcting a decision which affects the rights of the parties, even in the important ways emphasized by Mr Symes. That is because, if the power did not exist, there could be serious consequences for the public interest, for example in a case where ILR had been inadvertently granted to a person who was disqualified for such a grant by having serious criminal convictions. Another important negative consequence would be a failure to treat like cases alike. And, on the facts of this case, as in Chaudhari, to deny the power would be "to allow process to triumph over common sense".
>
> 58. Although we have decided that there is an implied power, incidental to the statutory powers under the 1971 Act, to correct an inadvertent error, the situations in which it can be exercised may be rare. It is subject to the caveat expressed by Haddon-Cave J in Chaudhari at [51] (quoted above). In the present case we note in particular that the error was discovered quickly and there was no evidence that anything had been done in reliance on the erroneous decision."

56. The reference to paragraph [51] in R (Chaudhuri) v General Medical Council [2015] EWHC 6621 (Admin) is as follows:

> "51. The principle would naturally operate subject to the ordinary principles of fairness in administrative law (e.g. legitimate expectation and the rights of persons acting to their detriment in reliance upon such decisions)."

57. Notwithstanding the indication that the decision in YC is subject to appeal, I regard it as an appropriate reflection of the law.

Did the December 2024 Email give rise to a legitimate expectation?

58. It is sensible to consider, first, what the position was in law but for the December 2024 Email.

59. In this regard, Mr Yetman's analysis is correct. FD was subject to a deportation order as of 12 May 2017 pursuant to section 32(1) of the UK Borders Act 2007 ('the 2007 Act'), which (but for the potential effect of the December 2024 Email) remained in force as of the date of FD's departure for Turkey, on 18 September 2025. At the time the 2017 deportation order was made, there was no appeal pending and it is not suggested the order was not validly made. At some point in mid 2019, FD submitted the 2019 Claim, which SSHD treated as a Stage 3 application to revoke deportation ('the 2019 Claim'). FD was placed on immigration bail with reporting conditions.

60. Pursuant to section 5(1) of the Immigration Act 1971 ('the 1971 Act), a deportation order against a person invalidates any leave to enter or remain in the United Kingdom.

61. It follows that FD did not have the benefit of ILR at the point of making his NTL Application, nor at the point of receipt of the December 2024 E-mail.

62. Mr Gill KC argues that, of initial relevance to the question of legitimate expectation, is the evidence from FD that, in the course of chasing the outcome of the 2019 Claim, he was told by a representative of the SSHD to apply for NTL. Whilst there is no record of the call or its contents, it is entirely credible that FD was told that he should do this. There is no particular reason why he would have known to do this otherwise. It does not, however, seem likely that FD would have been told in terms that this was the process by which the 2019 Claim would be resolved, and I do not approach matters on the basis that he was told this expressly. I do accept, however, that the context in which the advice to apply for NTL was the lack of resolution, one way or the other, of the 2019 Claim. In any event, this context does not add materially to FD's case.

63. Following receipt of the December 2024 Email, FD's evidence is that,

> '13 …It confirmed I had indefinite leave to remain….I was overjoyed with the decision, as I had been waiting for it since 2019. I understood the Home Office were now issuing decisions by email and that I had to apply for a UKVI account to access my eVisa.
>
> 14. I did this and provided my employers with a copy of my eVisa confirming my right to work. I have managed to find a partial screenshot of my eVisa…'

64. The screenshot of the eVisa shows that FD's immigration status was confirmed as 'settled'.

65. Mr Yetman argues that the December 2024 Email was insufficient to give rise to a legitimate expectation because:

(1) The background of FD, in that he had been the subject of ILR, its revocation by way of deportation order, and immigration appeals, gave FD a better understanding of his legal immigration status and the rules than an ordinary member of the public;

(2) The language was not clear and unambiguous;

(3) FD would or should have known that he had no ILR when be made his NTL application, and that therefore he was in fact not eligible for NTL;

(4) FD ought reasonably have realised the December 2024 Email was (as it is now asserted by SSHD) a mistake;

(5) The December 2024 Email contained no language which suggested that the 2019 Claim had been resolved in his favour (or at all).

66. I do not agree.

67. Reading the text of the December 2024 Email, together with the subsequent grant of an eVisa and the status shown on the eVisa, I conclude that SSHD objectively and unambiguously communicated the following to FD:

(1) FD had or had been conferred ILR;

(2) FD's immigration bail had been brought to an end. As Mr Yetman conceded, the statement relating to FD's immigration bail was wholly inconsistent with FD being subject to an extant deportation order;

(3) FD had an entitlement to travel outside the UK for a period of up to two years without affecting his ILR. Only if travel exceeded this period would it be necessary for FD to apply for entry clearance before coming back to live in the UK. In other words, FD was free to travel in and out of the UK, without more, provided the two year period was not exceeded;

(4) provided FD checked his personal details were up-to-date and his eVisa information was correct before travelling (and carried his current passport with him), FD should not be denied boarding by carriers;

(5) FD was entitled to obtain and use an eVisa;

(6) the eVisa would constitute proof of FD's UK immigration status;

(7) in turn, the 'proof' provided by SSHD to FD by way of the eVisa confirmed that his status was 'settled'. This too, is plainly inconsistent with FD's status as being subject to an extant deportation order.

68. The December 2024 Email is not qualified in any way. It makes no reference to any ongoing claim and nothing within it suggests that FD's status is subject to some further review. Whilst Mr Yetman is correct that the December 2024 Email does not say in terms that the communication reflected the outcome of the 2019 Claim, given that its contents were entirely consistent with the 2019 Claim having been resolved in his favour, and entirely inconsistent with FD still

being subject to a deportation order, it was objectively reasonable for FD to consider that this is what the document meant. The fact of FD's prior involvement, as a lay person, in immigration related matters for a prolonged period does not change this objective meaning of the December 2024 Email.

69. Indeed, for what it is worth, this conclusion is consistent with SSHD's own evidence (in support of its case that the document was sent by mistake) that December 2024 Email was sent by a caseworker who was under the incorrect impression that FD was no longer subject to a deportation order. Mr Joseph Akroyd, the EO Settlement Caseworker who processed the NTL application, states:

> '10. I reviewed the compliance and enforcement details that I had for the Claimant, with the Atlas record showing that "Case Stage: Decision - Deportation, Aborted". The record also referred to the Service Delivery Status on the Deportation card, which also stated "ABORTED" [JA:4].
>
> 11. I assumed that this meant that the Deportation Order had been revoked and was not being pursued by the Defendant against the Claimant; so, I granted the NTL App. Notwithstanding this mistaken assumption, the granting of the NTL App is an administrative decision that cannot itself give rise to permission such as ILR (as referred to in paragraph 4 above).'

70. It is perhaps unsurprising that the December 2024 Email reads like an unqualified communication to FD that his immigration status was settled and that FD was no longer subject to a deportation order when that is precisely what the caseworker sending the communication believed to be the case.

71. I am not persuaded by Mr Yetman's submission that, by comparison with the deportation order itself, the December 2024 Email 'did not look official enough' to constitute a communication which could give rise to a legitimate expectation. In circumstances where much of the government's communications are being brought online (including the eVisa), it would be unreasonable to expect someone to draw such a distinction. Any reasonable recipient was entitled to believe that the document meant what it said.

72. I reject, therefore, the contention that the December 2024 Email was incapable of giving rise to a legitimate expectations that FD would be permitted to return to the UK; and I reject the contention that FD ought reasonably have assumed that the communication was wrong and had been sent in error.

73. In terms of reliance, the evidence of FD is:

> '16. I checked my Home Office online app and showed my friends the eVisa. They confirmed my understanding of the visa that I had ILR and could travel. I then used the eVisa to apply for a Turkish tourist visa. It was accepted and I was issued with a Turkish tourist visa…
>
> 17. I travelled to Antalya in Turkey on 18 September with around 6 friends for my birthday. We flew from Birmingham Airport. When I checked in, I

> showed my Jamaican passport at the counter and was asked to show my UK visa. I showed them the e-Visa and was allowed to check-in to the flight.
>
> 18. If I did not have the e-Visa I would not have travelled. If I thought even for one second that I would end up in this situation I would never have travelled. I relied on what the Home Office decision was and what my eVisa said. I even checked my eVisa status before I left the UK and it was there and available.'

74. It is plain that FD relied upon the legitimate expectation created by the December 2024 Email, the grant of an eVisa and the description within the eVisa of FD's status when deciding to travel to Turkey. He did so under the clear and objectively reasonable expectation that he would be permitted to return to the UK.

75. I do not consider that on the evidence before me FD's detrimental reliance goes further that travelling abroad in the belief of an ability to return.

76. At times in oral argument, Mr Gill KC's submissions elided Ground 4 (which both in the Substituted Grounds (para 18) and Skeleton Argument (para 36) relates to an expectation of entitlement to return to the UK) with a wider claim that, through a legitimate expectation or otherwise, by the December 2024 the ILR had in fact been legally granted, the 2019 Claim had been determined in favour of FD and the deportation order had been consciously revoked. Indeed, this wider case is that which Mr Yetman principally focussed his submissions.

77. I accept SSHD's evidence that in sending the December 2024 Email, Mr Akroyd was mistaken. It is clear that in order to apply for NTL, the applicant must have ILR. It is equally clear, as I have found above, FD did not have at the point of his NTL application ILR. That had been revoked by the 2017 deportation order. The reason Mr Akroyd mistakenly believed that FD was entitled to receive the December 2024 Email was because he thought, looking at the information available to him on the Atlas system, that the deportation order had been revoked. This conclusion was perhaps to be expected when the Atlas system showed, '*Decision – Deportation, Aborted*'. However, whilst it is not entirely clear, I accept at face value the evidence submitted by SSHD from Diedre Bennett, an HEO Senior Caseworker, that this entry arose not to reflect any substantive decision as to FD's status but because a *task* had been aborted – not any decision to abort deportation itself. There was no intention on the part of SSHD to revoke the deportation order extant against FD. It was a mistake. It is not necessary for me to decide whether Mr Yetman is correct that, had she wanted to, the Secretary of State could not have done so.

78. Mistake notwithstanding, on the evidence as I have found it to be, FD was under the reasonable expectation from December 2024 that (1) he had ILR; (2) his deportation order had been revoked and (3) he was free to travel to and from the UK (in accordance with ILR, for a period up to two years) without further clearance.

Should SSHD be permitted to depart from the legitimate expectation(s)?

79. Applying the legal principles set out above, I have no hesitation in concluding that it would be both grossly unfair and disproportionate to permit SSHD to depart from the legitimate expectation on the part of FD that upon exiting the UK for a short period on holiday, he would be permitted to return. Part of the overall evaluation of fairness is the fact that, at the same time as communicating with FD in such a way so as to give rise to the legitimate expectations as set out above, SSHD was sitting on a draft determination of the 2019 Claim. Had that determination been finalised and notified to FD in the same form as it eventually was (when FD was outside the UK, unable to return), he would have (a) had an in country right of appeal; and (b) known that he may not have been able to rely upon the December 2024 Email. He would not have left the country, and would not have ended up stranded in Turkey.

80. Mr Yetman's principal objections to this conclusion are that to permit or require FD's return (1) as a matter of public policy, would undermine the 2007 and 1971 Acts and (2) is unnecessary where FD has, in any event, an out of country appeal against the decision of 2 October 2025.

81. As to the first, it does no such thing: it is merely the appropriate consequence, in the circumstances of this case, of the erroneous communication within the December 2024 email and grant of eVisa in light, in particular, of the detrimental reliance by FD placed on it. As to the second, the distinction between in country and out of country rights in respect of what was the 2 October 2025 decision is plainly capable of amounting to a relevant detriment when considering both fairness and proportionality.

82. Not only therefore was the notification of refusal of authority to carry unlawful pursuant to Ground 1, it was also an act which thwarted the legitimate expectation of FD pursuant to Ground 4.

83. That said, I accept SSHD's case that in circumstances where:

(1) the provision of the December 2024 Email was a mistake:

(2) there is plainly very significant public interest in the revocation of automatic deportation orders imposed by reason of serious criminal conduct being determined, if at all, by way of conscious and substantive administrative (and potentially judicial) decision making rather than by mistake;

(3) there has been no broader reliance on the December 2024 Email (other than in respect of the expectation of an ability to return to the UK)

it is both fair and proportionate for SSHD to be permitted to depart from the mistaken grant of ILR (and implicit revocation of deportation order) in the December 2024 Email.

84. To the extent set out above, Ground 4 succeeds.

85. It follows that, principally on the basis of Grounds 1 and 4, the decision to refuse authority to carry so as to prevent FD's return to the UK was unlawful and should be quashed. However, by reason of my finding at paragraph 86, SSHD would be entitled to re-impose immigration bail upon FD's arrival pending the outcome of the resolution of the 2019 Claim (see Ground 7 below). This was, in any event, something FD was content to agree to as a condition of his return.

Ground 5

86. I have found that SSHD unlawfully prevented FD from returning to the UK. As Mr Yetman fairly indicated, it is difficult in light of this finding to resist the conclusion that having done so, SSHD interfered with FD's Article 8 rights. Mr Yetman points to evidence which suggests that interference may be very limited, but the extent of interference or what, if any, damages are recoverable on account of that interference is not a matter for determination at this stage.

87. It bears emphasis that the only relevance of Article 8 to the outcome of the case is a potential claim for damages. The substantive grounds upon which the SSHDs's actions were unlawful are not dependent upon Article 8.

Ground 6

88. Ground 6 is that FD's withdrawal of the eVisa showing that his ILR was unlawful because (1) it was unfairly carried out with no prior opportunity to make representations; (2) relevant factors (namely the matters under Grounds 1-5) were not considered; (3) no written notice was provided so as to enable FD to understand his position to be able to access justice on an informed footing; and (4) it was an unjustified and disproportionate interference with FD's Article 8 rights.

89. Given the findings I have already made in light of Grounds 1 and 4 (and to the extent relevant Ground 3), it is not necessary to consider this Ground at length. Had SSHD not acted unlawfully by issuing the notice of refusal, FD's eVisa (still in existence at the time) would have enabled FD's travel home. Thus, it was the notification of refusal of authority to carry which, on the relevant day, in fact prevented FD from returning to the UK, not the absence of an eVisa.

90. It follows from my findings above that SSHD would lawfully have been able to revoke the eVisa, in a departure from the legitimate expectations I have found, providing that in so doing she did not thwart FD's legitimate expectation in being able to return to the UK. Its revocation was and remains unlawful insofar as its absence may continue to prevent that return, and should be quashed.

Ground 7

91. This Ground relates to the refusal of FD's 2019 Claim, notice of which refusal was given on 2 October 2025, just days after the refusal of authority to carry, and the removal of the eVisa. Mr Gill KC submits that this was no coincidence, and, on this basis submits that SSHD is guilty of an egregious abuse of power.

92. SSHD, based on the evidence of Mr Marshall (Team Leader of CPT 12 (Foreign National Offender Returns Command), contends that the timing was coincidental. He says:

> "10. Internal records indicated that Sun Express Airlines was refused authority to carry the Claimant from Turkey to the United Kingdom on 23 September 2025. As a result, the Claimant did not board his return flight to the United Kingdom. The refusal of authority to carry was not identified by the decision maker or senior caseworker.
>
> 11. When the Decision was made, there was an oversight by the decision-makers to assess the current circumstances of the case and identify that the Claimant was outside the UK at that time.
>
> 12. The email exchange between Dave Jenkinson and Bethany Ord [GM:10] does not refer to the Claimant being out of the UK. It is evident that they were not aware of the change in circumstances. No reference was made to the Asylum Claim as being treated as withdrawn under paragraph 333C(b)(ii) of the Immigration Rules."

93. It is wholly understandable why the chronology of decision making would give rise to suspicion that the SSHD was engaged in a deliberate plan to prevent FD's return, and whilst outside the UK, to determine the 2019 Claim. The fact that the 2019 Claim had been unresolved for 6 years; and had been largely completed in April 20205 awaiting finalisation and notification, it appears a remarkable coincidence that the determination of the claim followed FD's unlawful exclusion from the UK by a matter of days.

94. However, having considered the emails and the evidence of Mr Marshall, the most unfortunate timing alone is insufficient for me to draw such a conclusion. I accept that, as Mr Marshall points out, had those determining the 2019 Claim in fact been aware that FD had left the country, it is likely that they would, on the SSHD's understanding that the December 2024 Email was a mistake and capable of revocation, have treated the claim as withdrawn pursuant to section 333C(b)(ii) of the Immigration Rules. It is more likely that the concatenation of events which led to the determination of FD's claim whilst he was stranded abroad was not the result of conspiracy, but rather the result of systemic failure within the Home Office. One part of the Home Office was not aware of relevant decisions and actions taken in another part of the Home Office in respect of a particular individual.

95. The fact remains that, as Mr Marshall acknowledges, when the Decision was made, there was an oversight by the decision-makers to assess the current circumstances of the case and identify that the Claimant was outside the UK at that time. On any view, the decision of 2 October 2025 was made at a point when, for the reasons set out above, SSHD had unlawfully prevented FD from returning to the UK. Given that making the decision in those circumstances has had the effect of materially altering FD's rights, the decision, by virtue of its timing rather than substance, was unlawful and should be quashed.

96. It is a matter for SSHD whether, to the extent she re-issues a determination of the 2019 Claim once FD has been permitted to return to the UK, she takes heed of Mr Gill KC's other criticisms of the decision (e.g. the lack of any updated information given the delay of some 6 years since the claim was lodged). Thereafter it will be for the proper process to resolution of the 2019 Claim to take its course, which may or may not lead to the lawful deportation of FD.

97. The parties are invited to draw up a further Order reflecting the determination of this judicial review.