



Neutral Citation Number: [2026] EWHC 705 (Admin)

Case No: AC-2025-CDF-000066
AC-2025-CDF-000085

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

Bristol Family and Civil Justice Centre
2 Redcliff Street, Bristol, BS1 6GR

Date: 30/03/2026

Before:

MR JUSTICE EYRE

Between :

THE KING
on the application of
(1) BSC
(2) JANICE CABAUG SUAREZ
- and -

Claimants

THE SECRETARY OF STATE FOR THE HOME
DEPARTMENT

Defendant

**Tom Hickman KC, Christopher Knight, and Donnchadh Greene (instructed by Deighton
Pierce Glynn) for the Claimants**
Zane Malik KC and Georgina Pressdee (instructed by The Government Legal Department)
for the Defendant

Hearing dates: 3rd–4th March 2026

Approved Judgment

This judgment was handed down remotely at 10.00am on 30th March 2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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MR JUSTICE EYRE

Mr Justice Eyre:

Introduction.

1. Since 2014 successive governments have maintained a regime (described variously as the “hostile environment” and the “compliant environment”) the purpose of which is to make life in the United Kingdom more difficult for those who are here illegally. An important aspect of that regime is the maintenance of measures to prevent those who are in the country illegally from obtaining accommodation or work and from accessing various benefits and services. Those measures include requiring that those who are subject to immigration control and who are seeking to work; to rent accommodation; or to obtain benefits or services should produce confirmation of their entitlement to do those things or obtain those benefits or services. Typically (and subject to the further methods I will outline below) that confirmation is to take the form of the production of a biometric immigration document (“a BID”) provided by the Defendant pursuant to the Immigration (Biometric Registration) Regulations 2008 (“the 2008 Regulations”).
2. Formerly, the BIDs issued by the Defendant were physical documents. The Defendant has adopted a policy of moving from issuing BIDs in physical form to a fully digital system. In this system the BID takes the form of an eVisa. The eVisa operates by way of a share code which the holder of the BID can provide to others and which enables them, and the entitled person, to access a website on which the person’s immigration status appears.
3. The Defendant accepts that she has a residual discretion which would enable her to provide BIDs in a physical form. However, her position is that she will not do so in current circumstances and will, instead, maintain the approach of moving to a digital only system.
4. The Claimants accept that there are considerable benefits in having a primarily digital system. However, they say that there should be provision for a different approach in exceptional circumstances. They contend that the Defendant should be prepared to provide confirmation of status by way of either a physical document or an alternative means of electronic proof of status in circumstances where there are difficulties in doing so through the eVisa system.
5. The division between the parties is a narrow but important one. Both of the Claimants had difficulties in obtaining confirmation of their status through the eVisa system. Those difficulties were not the fault of either claimant; they persisted for some time in each case; and in each case the absence of the confirmation caused real hardship to the particular claimant. The difficulties have been resolved and each claimant now has access to an eVisa correctly recording her status. It is, however, common ground that their claims raise matters of general importance.
6. Pursuant to permission given by HH Judge Jarman KC the Claimants challenge the Defendant’s policy of not providing an alternative form of confirmation of immigration status on two grounds.
7. The first ground questions the lawfulness of the policy. The Claimants say that under the 2008 Regulations the Defendant has a discretion to issue BIDs in forms other than by way of the eVisa system. They contend that the policy of declining to issue BIDs in a physical form or in an alternative electronic form even in exceptional circumstances

is an unlawful fettering of that discretion. The Defendant accepts that she would be entitled to issue BIDs other than by way of an eVisa but denies that her decision not to do so amounts to an unlawful fettering of discretion. Resolution of that dispute will require consideration of the nature of the Defendant's discretion under the 2008 Regulations and of the operation of the rule against the fettering of discretion in these circumstances. If the Defendant's policy is an impermissible fettering of discretion then it will fall to be struck down as unlawful regardless of the desirability or otherwise of a fully digital system.

8. The second ground is a challenge to the rationality of the policy. The Claimants point to the hardship which can flow from an inability to access the eVisa system and to the difficulties which will inevitably arise in any digital system. In light of those matters they say that the policy which does not permit any exceptions is irrational in the classic *Wednesbury* sense. The Defendant accepts that there will be glitches in any digital system and accepts that the absence of an eVisa can cause real difficulties to a person who is subject to immigration control. She says that her policy is nonetheless rational in light of the benefits of a fully digital system; of the difficulties which would be involved in providing alternatives even in exceptional cases; and of the measures which she has put in place to improve the system and to assist those facing difficulties in its operation.

The Legislative Framework.

9. Section 4(1) of the Immigration Act 1971 provides that the powers to grant or refuse leave to enter the United Kingdom and to grant or cancel leave to remain are to be exercised by a notice in writing given to the person in question. This is unaffected by the Defendant's move to a fully digital system for BIDs and it follows that any person granted leave to remain will have a written notice to that effect. However, possession and production of that notice will not satisfy the conditions which the hostile environment regime require to be met for the obtaining of work, accommodation, and benefits.
10. The relevant parts of section 5 of the UK Borders Act 2007 empower the Defendant to make regulations requiring those subject to immigration control to apply for a BID as follows:
 - “(1) The Secretary of State may make regulations—
 - (a) requiring a person subject to immigration control to apply for the issue of a document recording biometric information (a ‘biometric immigration document’);
 - (b) requiring a biometric immigration document to be used—
 - (i) for specified immigration purposes,
 - (ii) in connection with specified immigration procedures, or
 - (iii) in specified circumstances, where a question arises about a person's status in relation to nationality or immigration...
 - (2) Regulations under subsection 1(a) may, in particular
...
 - (c) make provision about the issue of biometric immigration documents;

- ...
- (f) make provision for biometric immigration documents to begin to have effect, and cease to have effect, in accordance with the regulations;
- ...
- (3) Regulations under subsection 1(a) may permit the Secretary of State to cancel a biometric immigration document—
- ...
- (b) if the Secretary of State thinks that the document has been lost or stolen”.
11. By section 6(6) the power to make regulations can only be exercised after a draft has been approved by both Houses of Parliament under the positive resolution procedure.
12. Section 15 defines “document” and “biometric information” thus:
- “(1) ...
- ‘d) *‘document’* includes a card or sticker and any other method of recording information (whether in writing or by the use of electronic or other technology or by a combination of methods),
- ...
- (1A) For the purposes of section 5, *‘biometric information’* means—
- (a) information about a person’s external physical characteristics (including in particular fingerprints and features of the iris), and
- (b) any other information about a person’s physical characteristics specified in an order made by the Secretary of State.”
13. The 2008 Regulations were made pursuant to the power in section 5 of the 2007 Act.
14. Regulation 2 defines “biometric card”, “biometric information” and “eVisa” thus:
- “‘biometric card’ means a card which forms part of a biometric immigration document and which is issued to a person who has made an application under regulation 3 or 3A recording the holder’s immigration status;
- ‘biometric information’ means photographs or fingerprints provided under regulation 5;
- ...
- ‘eVisa’ means an online record of an individual’s immigration status and conditions of leave to enter or remain in the United Kingdom”.
15. The relevant parts of regulation 3 impose an obligation on a person subject to immigration control to apply for a BID in these terms:
- “(1) A person subject to immigration control must apply for the issue of a biometric immigration document where he—
- (a) satisfies the condition in paragraph (2); or
- (b) is a person falling within paragraph (3).
- (2) The condition is that whilst in the United Kingdom the person makes an application—
- (a) for leave to enter or remain;

...

- (d) to replace a letter which indicated that he had been granted limited or indefinite leave to enter or remain in the United Kingdom;
- (e) to be recognised as a refugee or a person in need of humanitarian protection;
- ...
- (g) for a Convention Travel Document, Stateless Person's Travel Document or a Certificate of Travel and does not already hold a valid biometric immigration document;

...

- (3) Subject to paragraph (4), a person falls within this paragraph if that person has been notified on or after 1st December 2012 that the Secretary of State has decided to grant the person leave to enter or remain in the United Kingdom”.

16. The issue of a BID is addressed in regulation 13 thus:

“(1) The Secretary of State may issue a biometric immigration document to a person who has applied in accordance with regulation 3, provided the Secretary of State has decided to—

- (a) grant leave to enter or remain to the person or;

...

- (c) issue or replace a document to the person following an application mentioned in regulation 3(2)(g).

- (1A) The reference to the issue of a biometric immigration document in paragraph (1) includes allowing the person to view their biometric immigration document electronically.”

17. Regulation 13A makes similar provision for those persons for whom the grant of entry clearance operates as leave to enter.

18. Regulation 13 is the source of the discretion which the Claimants contend has been unlawfully fettered by the Defendant's current policy.

19. Regulations 13(1A) and 13A(1A) were inserted in the 2008 Regulations by the Immigration (Collection, Use and Retention of Biometric Information and Related Amendments) Regulations 2021. At [2.3] the Explanatory Memorandum identified one of the purposes of those regulations as being to provide that the Defendant “can issue biometric immigration documents in physical and/or digital form”. At section 7 the Explanatory Memorandum set out the relevant policy background and said, at [7.12]:

“These Regulations are intended to support the development of a border and immigration system which is digital by default for all applicants, which over time means we will increasingly replace physical and paper-based products with accessible, easy to use online and digital services.”

20. Regulation 15 of the 2008 Regulations sets out a list of information and provides that a BID “may contain some or all of” that information.

21. Regulation 16 empowers the Defendant to require the surrender of a biometric card in certain circumstances and regulation 16A (also introduced by the 2021 amending regulations) provides that:

“16A. The Secretary of State may cancel access to a person’s biometric immigration document electronically if the Secretary of State thinks that—

...

(b) another person has gained access to the biometric immigration document without the consent of the holder or of the Secretary of State.”

22. The Claimants point out that the circumstances envisaged in 16A(b) can arise without any fault on the part of the holder of the BID and have the consequence that an eVisa can be cancelled even if the person to whom it relates has done nothing wrong.
23. Regulation 17 empowers the Defendant to cancel a BID in a range of circumstances and regulation 18 requires the holder of a BID to notify the Defendant of a range of matters largely mirroring those which could lead to cancellation under regulation 17.
24. Finally, regulation 21 provides for a number of circumstances in which the holder of a BID is required to “provide his document” to the Defendant or to other identified categories of person.

The Factual and Policy Background.

25. The hostile environment regime was introduced in 2014. As Sir Nicholas Underhill explained in *R (RAMFEL) v Secretary of State for the Home Department* [2025] EWCA Civ 1843 at footnote 5 its purpose is “perfectly properly, to make life difficult for people who are in the UK illegally”. As noted above there are two aspects to the regime. One is making it difficult for those who are in this country illegally to live, work, or access services. The other is to provide a mechanism whereby those who are subject to immigration control but who are here legally can demonstrate their status.
26. At first instance in *RAMFEL*, [2024] EWHC 1374 (Admin), Cavanagh J set out at [48] – [81] the measures comprising the regime and explained how the operated. Sir Nicholas Underhill summarized the position thus on appeal at [27]:
 - “- *Employment*. It is a criminal offence for an employer to employ a person who is disqualified from employment by reason of their immigration status, and such an employer is also liable to a civil penalty. Liability can be avoided if the employer has either seen a document provided by the employee which demonstrates that they have leave to remain (and that there are no relevant restrictions on their right to work) or has obtained confirmation of the necessary status from the Home Office.
 - *Rented accommodation*. There are likewise both criminal and civil penalties for landlords who rent property to persons who require but do not have leave to remain in the UK or whose grant of leave prevents them from renting property. Again, liability can only be avoided if the landlord has either seen a document provided by the tenant which demonstrates that they have leave to remain or obtained confirmation from the Home Office.
 - *Access to welfare benefits*. There is a wide range of welfare benefits to which a person with LLR will only be entitled if access to those benefits has been granted as a condition of leave: the Department of Work and Pensions (“the DWP”) will need to be satisfied that they are the beneficiary of such a condition.
 - *Entitlement to NHS care*. Entitlement to free care under the NHS is dependent on immigration status, which Trusts are under an obligation to check.

- *Other services.* The right to hold a driving licence, to open a bank account and to benefit from the student finance regime operated by the Student Loans Company (“the SLC”) are all dependent on immigration status, in respect of which, again, the relevant providers are obliged to check.”

27. Formerly, BIDs were issued in hard copy and took the form of Biometric Residence Permits or Biometric Residence Cards.

28. eVisas were introduced in 2018 and the Defendant has sought to move to a fully digital system.

29. In May 2021 the Defendant presented to Parliament a command paper entitled New Plan for Immigration: Legal Migration and Border Control Strategy Statement (“the 2021 Command Paper”).

30. In the introduction that document said:

“This document provides details of our delivery priorities for 2021/2022 and sets out our vision for the UK’s border and immigration system in subsequent years. These include:

- New and reformed immigration routes that support Global Britain and our economic recovery.
- Simplifying our systems and processes to improve the operation for our users, our staff and our wider stakeholder community.
- Implementing digital systems that transform the customer experience for all those who use them, including at the border.
- Overhauling the operation of the UK border by introducing a universal permission to travel requirement, for all coming into the UK (except for British and Irish citizens) and adopting increasing automation.

Building on the success of the fully digital EU Settlement Scheme (EUSS) and the UK’s point-based immigration system, we will transform the immigration system into one which is world-leading with a comprehensive offer to people looking to come to the UK, businesses and educational establishments, accompanied by an enhanced customer experience.”

31. At [37] and [39] under the heading “Delivering a fully digital system – online evidence of immigration status” it said:

“37. In addition to reforming the immigration routes we are continuing to deliver a digital system by removing the use of physical documents to demonstrate status. We will make further improvements to how applicants access and prove their immigration status to others.

...

39. We will be taking a phased approach as we move to a fully digital system. As part of this we are looking at further ways to remove physical documents from the process and streamline the system, such as potentially removing the need for separate vignettes and Biometric Residence Permits, taking out the cost and time for the user and the Home Office and improving security. This would be supported by increased use of online services to prove right to work and rent, simplifying the process for employers, landlords and individuals and reducing the number of documents relied on to prove status.”

32. Under the heading “Simplified systems and processes” there was a sub-heading “online evidence of immigration status: long-term vision” which included:
- “77. For an individual granted immigration status, we are in the process of moving away from providing physical documents that evidence immigration status, such as vignettes and Biometric Residence Permits and replacing these with a fully digital system. This will deliver on commitments to provide e-visas for people migrating to the UK alongside ETAs for visitors.
 - 78. Moving to a fully digital system will replace different physical documents with a single digital product, accessible to the individual via a secure online service at any point in their journey. It will give the individual control of their own status information and who sees it and removes the inconvenience of having to travel to a Post Office or other location to collect a physical card after arrival in the UK.
 - ...
 - 81. It is our goal to phase out physical documents and move to a fully digital system by the end of 2024. The majority of physical documents currently held by individuals to evidence their status will expire by the end of 2024, by which time we plan to have a fully digital system in place. However, because of the wide range of instances where physical documents are used to prove eligibility we will transition from physical to digital over a series of phases.”
33. In July 2022 the Defendant presented a further command paper to Parliament (“the 2022 Command Paper”) entitled New Plan for Immigration: Legal Migration and Border Control.
34. Under the heading “Applying to come to the UK” this had a section entitled “Digital by Default” which said:
- “39. In the 21st-century, people increasingly rely on digital services from banking apps rather than physical cards, to paying their taxes online and we want our customers to have access to immigration services in the same way as for other government transactions.
 - 40. The immigration system is no exception with application for all new routes taking place online, increasingly replacing physical and paper-based products with accessible, easy to use online and digital services. This includes enabling many people to use a smartphone to provide facial biometrics to establish or verify their identity and enabling reuse of fingerprint biometrics that have previously been captured. This, along with the introduction of eVisas, has reduced the need for people to go to a Visa Application Centres (VACs) to give biometrics or collect a physical visa. Applications can now be successfully completed from the customer’s own home.
 - 41. We have successfully demonstrated the benefit and ease of a digital immigration system having processed over six million applications online for the EU Settlement Scheme. We built on these foundations with the introduction of the streamlined Hong Kong BN(O) route, enabling applicants to apply without attending a VAC to enrol their biometrics and receiving an immediately accessible eVisa, rather than having to wait for a vignette to be issued before they could travel.
 - 42. The digitisation of how we capture, verify and assure the identity of a customer, including their biometric information, is a key part of our border of the future. In 2022 and 2023, this will include extending re-use of biometric data already held by the Home Office to more routes, so that customers will not need to provide

their fingerprints again. This means we maintain the security of our systems, as well as improving customer experience.”

35. At [44] the 2022 Command Paper said:

“For customers with existing immigration status, we will provide guidance and support to help them convert to an eVisa which will give them access to the full range of online account features and services. By the end of 2024 they will be able to interact with a digital immigration system removing the need to obtain a replacement physical document.”

36. The section entitled “eVisas” said:

“45. Millions of our customers already have an eVisa - digital evidence of their immigration status - and use it to enter and live in the UK. Their up-to-date immigration status information can be viewed and checked online as soon as their permission is granted. These eVisas will remove the need for customers to go in person to a VAC and collect a physical visa, reducing the physical touchpoints with the immigration system and the burden on individuals.

46. This digital approach will result in physical evidence of immigration status, in the form of vignettes and Biometric Residence Permits (BRPs)/Cards, gradually being phased out by December 2024. We are conscious of the lessons learnt from Windrush and are committed to ensuring that all customers, including the most vulnerable, are properly supported as we transform our immigration system. Nobody should be left behind as a result of our digital transformation. Should customers have difficulty accessing their eVisa online or experience any technical issues, our dedicated Resolution Centre will be on hand to support them. Customers will also continue to receive written notification of immigration status alongside an eVisa, which they can retain for their own records.

47. To ensure customers with historic and paper-based evidence of their immigration status can take advantage of the benefits digital status brings, we will provide guidance on how to register for a digital customer account and convert to an eVisa. We are planning further communications activity aimed at this group to advise them what they need to do, by when. We will also endeavour to reach vulnerable people who are less digitally confident through collaboration with other Government departments and stakeholders.”

37. The3million is an organisation which seeks to promote the interest of EU citizens and their families who were in the United Kingdom at the time of the 2016 EU referendum. Monique Hawkins is Head of Policy and Advocacy for the3million and in March 2022 she wrote to the then Minister for Safe and Legal Migration proposing that individuals should be provided with a permanent QR code with which to prove that status.

38. Simon Tomlinson is the Policy Lead for eVisas in the Migration, Borders and International Policy and Programmes directorate of the Home Office. Dr Tomlinson replied to Miss Hawkins on 7th June 2023. In his letter Dr Tomlinson explained that the Defendant was moving to an immigration system which was “digital by default in which applications, grants, and immigration status checks are all done digitally. eVisas will be issued in a digital format (without physical documentation)”. Dr Tomlinson set out the benefits of the eVisa system for those entitled to BIDs and said that the Defendant did not believe that when the system had been fully rolled out “there [would] be many scenarios in which possession of a printed proof of immigration status would provide particular benefit to an individual.” However, Dr Tomlinson did say:

“Based on our own user research, stakeholder engagement, and feedback received, we acknowledge there remain some limited scenarios where people could benefit from a secure, printed document or other ‘offline token’ that enables them to prove their immigration status. The first of these is in the context of travel, and the second is for those who are digitally excluded and do not have additional support or help. We believe that these are the only two scenarios in the ‘digital by default’ immigration system in which a fallback to our online services would have value.”

39. Dr Tomlinson concluded the letter by saying:

“You will appreciate from the information about our plans above that we have a significant amount of work to do between now and the end of 2024. We agree with you that we must ensure digitally disadvantaged individuals are not penalised or locked out of the immigration system, and accept that secure printed tokens may offer value to such individuals, whilst also having some significant drawbacks. However, our capacity to deliver a complex solution to the problem (e.g. the apparatus with which to generate and scan 2D barcodes) is limited over the next 12-18 months. We are focusing our resources and efforts on the things that will most benefit users, as set out above, and we believe there are already adequate support systems in place for those less able to use digital products.

We propose that:

- We continue to maintain open lines of communication with the 3million and other key stakeholders, in particular through the advisory groups which you have recently been invited to attend;
- We will continue to monitor use of RC and monitor and evaluate user needs in this area
- You provide us with any feedback or further amendments on your QR code proposal, including your feedback on the ‘long life share code’ idea posed above;
- In late 2023 or early 2024, when there is capacity, we will look again at whether alternative solutions could be deployed, and whether there are further solutions for providing disadvantaged users with a means to give third parties access to their eVisa without the need to interact with our online services. We will take your proposal, and any other evidence or suggestions you have, into account.”

40. For the Claimants Mr Hickman KC placed some emphasis on this letter. He said that it indicated that in June 2023 the Defendant both acknowledged that there would be some circumstances in which a hard-copy BID or an alternative to an eVisa would be of benefit and indicated that she was prepared to contemplate an alternative running alongside the eVisa system.

41. However, that position changed and in December 2023 the Defendant wrote to the 3million saying that the Defendant would not:

“compromise on the real-time aspect of our digital services. Any check of an individual’s immigration status must be done in real-time to reflect the current immigration status held on our system. For this reason, we are unable to accept the suggestion to use a token (a printed QR code or otherwise) that can be used offline as proof of immigration status, regardless of any validity time limit built in.”

42. The Defendant stopped issuing new Biometric Residence Permits and Biometric Residence Cards on 31st October 2024 and since then eVisas have been the only form in which BIDs are issued for new grants of immigration permission over six months in

duration. The only circumstance in which the Defendant now provides physical evidence of immigration status is when entry clearance application is successful. In such cases a vignette sticker is placed in the passport or on the form for affixing a visa of the person to whom entry clearance has been granted. The issuing of vignettes is being phased out and Dr Tomlinson explained in his witness statement at [18]:

“The UK is now in the final phase of the transition to eVisas. By the end of 2026, the SSHD aims to have phased out the issue of any physical evidence of immigration status and all people who apply for and are granted immigration permission will receive an eVisa as evidence of their status.”

43. In his witness statement Dr Tomlinson set out the disadvantages of a system of physical proof of immigration status and the benefits of the eVisa system. Those include a cost saving of £20.38m as between year 2024/25 and 2025/26. In addition, there are a number of benefits both for those subject to immigration control and for the Defendant in the control of illegal immigration. It is unnecessary to set those out in detail because the Claimants accept that there are real benefits in a digital system. Their case is that there should be an alternative running alongside the eVisa system to address cases where that system falls down.

44. Dr Tomlinson explained the structure underlying the eVisa system and the way the provision of a share code works thus at [14] and [33] respectively:

“The eVisa system forms part of the SSHD’s Status Service. For the purposes of eVisas, the Status Service obtains its data from the Person Centric Data Platform (which is the centralised and consolidated repository of immigration data, derived from casework systems such as Atlas and other Home Office case working systems which are not relevant in this case). Atlas is the system into which caseworkers add information about in-country applications for leave to remain in the UK, the SSHD’s decisions on such applications and any subsequent case events, such as an appeal. This information is then automatically fed through from Atlas to the Status Service and reflected on the eVisa system.”

“Customers can prove their status by generating a share code using the online View and Prove service. This can be printed out if needed and will remain valid for 90 days. The share code, when checked, shows the individual’s status at the time the check is made, not when the share code was generated, so it will always provide up-to-date information about the individual’s status throughout the 90-day period, provided that individual’s status has not changed since the share code was generated. If the person’s status has changed since the share code was created, it will cease to work, and they will have to generate a new one. This is by design, to ensure that the status holder always knows what status is going to be shared.”

45. Dr Tomlinson also explained that where a share code cannot be provided there are, in some situations, alternative ways in which a person’s immigration status can be established. Thus employers and prospective employers can use the Defendant’s Employer Checking Service; landlords can use the Landlord Checking Service; some (but not all) government departments and a limited number of local authorities can access a person’s immigration status automatically without using a share code although others are expected to use the share code.

46. The Defendant has put in place a number of mechanisms to assist those who need to use the eVisa system. Those who need assistance in creating an eVisa account can nominate a helper or proxy to assist or to act for them. The UKVI Resolution Centre

operates a telephone help line and an online virtual agent. By way of transitional support to address the introduction of a fully digital system the Defendant provided funding to four national organisations and a number of community-based organisations to enable them to provide support to those affected. This funding will end on 31st March 2026 but Dr. Tomlinson says, at [59]:

“The SSHD recognises that there will be a need for ongoing support beyond March 2026. Preparations are underway to revert to a regular support model which assists customers with (amongst other things) updating their details, proving their status, reporting errors, recovering their account, resolving technical issues and (if required in exceptional cases) generating a share code on the customer’s behalf. This support model will include the continued operation of UKVI RC.”

47. Dr Tomlinson summarizes the steps which the Defendant has put in place to provide a way of correcting errors in eVisas. He also sets out the improvements which are being made to the eVisa system by way of a 12-month stabilisation plan; the introduction of a new case system and of new digital tools; and further training for staff.
48. Ian Marson, the Deputy Director Lead of the Defendant’s Digital Status Service, provided further information about the operation of the eVisa system and the support being provided to those using it (both those subject to immigration control and the staff working in the Digital Status Service).
49. It is common ground that despite the measures which the Defendant has put in place problems can occur in the operation the eVisa system. There was, however, disagreement about the scale and frequency of those problems.
50. Dr Tomlinson and Mr Marson pointed out the scale of the eVisa operation with there now being between 11 – 12 million eVisa holders. At [53] Dr Tomlinson explained the scale of the UKVI Resolution Centre operation by reference to the volume of calls dealt with in November 2025 saying:

“In November 2025, there were approximately 41,000 calls to the UKVI RC. The answer rate was 99%, with an average wait time of 23 seconds. In the same month, there were approximately –

 - a. 11,000 agent enabled webchats, with an average wait time of 30 seconds.
 - b. 60,000 self-service interactions. These are SMS Auto Responses for those calling and choosing a self-service link and Virtual Agent / Search. These self-service interactions share links to relevant GOV.UK pages, support, and YouTube videos etc, allowing customers to access the relevant support 24/7.”
51. Dr Tomlinson said that in the period April to October 2025 116,011 enquiries were submitted in relation to issues with an eVisa (it is not clear whether this is the number submitted to the UKVI Resolution Centre or to the Home Office more widely). Of these there was in fact no error in 34,550 cases (29.7%) but the remaining 81,461 (70.2%) did relate to errors which had to be addressed.
52. For their part the Claimants put forward evidence from Miss Hawkins and from Wendy Tarpley-Naylor.
53. Miss Hawkins exhibited the3millions’ report of October 2025 “The Digital Status Crisis”. This was based on 1,877 reports made to the3million’s “ReportIt!” online

portal. The report makes the points that the portal would only be used by those who were aware of it and prepared to provide their data to it and that it would not be used by those unable or unwilling to use a digital system. The report suggests that the number of reports it received would have identified only a small proportion of the problems encountered by those needing eVisas. The report identified four “main ways” in which problems were encountered: errors in the eVisa information and/or the connected documents; inability to access the eVisa; lack of support; and occasions when even those with eVisas are unable to prove their status (because third parties decline to accept eVisas or those with eVisas have difficulty in accessing the internet).

54. Miss Tarpley-Naylor is an Immigration Specialist Caseworker at Citizens Advice Bournemouth, Christchurch and Poole. She gives evidence based on the cases which she has dealt with in that role. The systemic issues to which Miss Tarpley-Naylor refers are similar to those identified in the 3million’s report: errors in the personal information recorded on the eVisa; delays in setting up a UKVI account and in obtaining an eVisa; errors in the information about a person’s immigration status recorded on the eVisa; and technical issues.
55. It is right to note that the evidence of Miss Hawkins and of Miss Tarpley-Naylor was based on extrapolation from comparatively small samples and also right to note the volume of cases handled in the eVisa system. It is nonetheless clear that difficulties can occur without any fault on the part of the person subject to immigration control and seeking an eVisa; that those difficulties can persist for significant periods of time; and that they can have a real impact on the lives of the persons affected. The Claimants’ cases illustrate that position as follows.
56. BSC was trafficked to the United Kingdom. She had been given a false passport with a false name and date of birth by her traffickers. She told the Home Office officials her correct name in the course of her asylum interviews. Despite that the letter granting her refugee status and the Biometric Residence Permit which was issued to her were in the false name which had been given to her by the traffickers. In order to address this BSC ultimately changed her name by deed poll to her correct name. With assistance from Citizens Advice BSC contacted the Defendant in December 2024 to ask how to correct her details on the Defendant’s system so as to obtain an eVisa in the correct name and she then provided the correct information to the Defendant. On 15th January 2025 BSC was told that she could then access her eVisa but when she did so she found that it was in a name which was a combination of her false trafficked name and her real name and had an incorrect date of birth. There then followed repeated attempts by BSC and her solicitors to resolve the matter. The Defendant’s pre-action protocol response of 28th March 2025 was still in the wrong name and date of birth. It accepted that there was an error in that BSC’s leave status was not shown correctly on the eVisa but said that no timeframe could be given for when this would be resolved. It was not until 4th September 2025 that matters were finally resolved and BSC was able to access an eVisa bearing the correct name and date of birth and correctly recording her immigration status.
57. BSC is the single parent of a five-year old child. During this period BSC and her daughter were dependent on Universal Credit and were living in temporary council accommodation. BSC had made an application for Personal Independence Payments. She was concerned that the Universal Credit payments would be stopped and the PIP application rejected because the errors in the eVisa meant that she could not show that

she was entitled to receive public funds. The absence of a correct eVisa in BSC's correct name also meant that BSC could not apply to rent accommodation from private landlords and that she was concerned that if her job applications were successful she would not be able to demonstrate that she was entitled to work in the United Kingdom.

58. For the Defendant Mr Marson explained how the difficulties had come about. He said that BSC's name and status had been correctly recorded on the digital systems underlying the eVisa but it had not been possible to reflect those on her eVisa or at least for her to access a correct eVisa. Mr Marson explained that the Defendant's Asylum Operations team had been attempting to resolve the problem without success. Mr Marson is responsible for the Defendant's Level 3 IT Support Team but that team only intervenes when alerted to problems needing their attention. Mr Marson's team was alerted to the problems which BSC was facing in late August and resolved the difficulties by creating a wholly new account for BSC.
59. It is to be noted that BSC was not to blame for the errors in her eVisa and that she and her solicitors were proactive in seeking to remedy the situation. As Mr Hickman pointed out the effect of Mr Marson's evidence was to show that the information in relation to BSC was correct on the Defendant's underlying systems but despite this BSC could not access a correct eVisa.
60. Janice Suarez is the single parent of a son who is now aged four. She was granted leave to remain on 18th December 2024 and was entitled to access public funds. However, her eVisa incorrectly stated that her leave was subject to a No Recourse to Public Funds condition being she was not entitled to access state benefits. The Second Claimant applied for Universal Credit and Child Benefit. However, her Universal Credit application was refused by reference to the incorrect information on the eVisa. Miss Suarez withdrew the Child Benefit application because she believed that the record on the eVisa was correct and that she was not entitled to apply for public funds. The Unity Project corresponded with the Defendant on the Second Claimant's behalf and on 14th May 2025 the Defendant confirmed that Miss Suarez was entitled to public funds and that reference on the eVisa to the No Recourse condition was incorrect. However, it was not until 16th June 2025 that the correct position was shown on the Second Claimant's eVisa.
61. The error in the eVisa meant that until 16th June 2025 Miss Suarez was not able to access the benefits to which she was entitled. Moreover, during this period she was threatened with the cessation of her asylum support accommodation and funding and subjected to considerable concern and stress as a consequence.
62. Mr Marson explained that the problem had arisen because the caseworker who entered the grant of leave to remain to Miss Suarez on the Defendant's systems entered the information incorrectly and failed to record the Second Claimant's entitlement to seek public funds. The correspondence from The Unity Project caused the Defendant's Asylum Operations team to apply for a change of conditions on the system. However, because of a bug in the eVisa system the application was rejected electronically and Miss Suarez's status was not updated. The bug was identified and remedied but the solution was only put in place the day after the change of conditions application was made in the Second Claimant's case. The Defendant had not taken any steps to identify those whose cases had been affected by this bug. It was not until 16th June 2025 that the

Digital Status IT Support team were alerted to this case and the problem was remedied on that day.

63. A further illustration is the case of *R (ASF) v Secretary of State for the Home Department*. This came before HH Judge Carmel Wall sitting as a judge of the High Court in February 2025. The judge granted interim relief directing that:

“The Defendant shall provide the Claimant with adequate proof of his lawful immigration status within 4 days of service of this Order, either electronically or in some other form that will be sufficient for the Claimant to open a bank account and obtain payment of social security benefits to which he has entitlement.”

64. Judge Carmel Wall explained the circumstances which had caused her to make that order thus:

- “1. The Claimant has been granted a limited right to remain in the United Kingdom on the grounds he is entitled to humanitarian protection. Proof of his lawful immigration status was provided to him by the Defendant by means of an e-Visa. Since 20 December 2024 the Claimant has been unable to obtain access to this evidence. He notified the Defendant that the e-Visa contained errors in his personal information and although he has been told that the e-Visa has been corrected, he has been completely unable to access it.
2. The consequence for the Claimant is extremely serious and justifies urgent relief. He is unable to open a bank account and cannot therefore obtain payment of social security benefit payments to which he is entitled. He is unable to discharge the rent due on his accommodation and risks eviction as the rent arrears increase. He is unable to pay for his everyday expenses.
3. I am satisfied that the Claimant has shown a strong prima facie case that depriving him of access to proof of his immigration status in a form that would enable him to access a bank account and social security benefits is unlawful.”

65. It was apparent in some instances the problems which individuals encountered with the eVisa system were not remedied until legal proceedings were threatened or actually underway. It is also apparent that in such cases the Defendant was able to resolve the problems relatively quickly. This evidence cuts both ways. It shows that there are problems with the eVisa system some of which are not resolved by the various procedures which the Defendant has put in place. However, it also shows that those problems are capable of being resolved once proper attention is focused on them.

66. Dr Tomlinson pointed out that there would be an inherent risk that problems would also occur in any system which was running alongside the eVisa system. In that regard he points out that errors occurred in the operation of the previous hard copy Biometric Residence Permit system.

67. Dr Tomlinson said that the Defendant’s reasons for not providing physical proof of immigration status to anyone are that this “would undermine the benefits of a digital system, incur disproportionate costs, present a range of practical difficulties and require legislative change [a point which is not accepted by the Claimants] without necessarily resolving the underlying issue.” On the latter point Dr Tomlinson explained, at [75]:

“The information that would be used to populate the physical document would be drawn from the same data. Therefore, if the data underpinning the eVisa was incorrect, that error would be present on the physical document or simply not visible due to the more

limited information a physical document can display. Furthermore, that physical document would not reflect any corrections subsequently made to that underlying data to ensure accuracy.”

68. It will be noted that some but not all of the Defendant’s concerns in that regard apply to the Claimants’ suggestion that there could be an alternative digital means, such as a QR code, whereby those unable to use the eVisa system could prove their status.

Ground 1: The Lawfulness of the Defendant’s Policy.

69. The Claimants’ argument was that by regulations 13 and 13A the 2008 Regulations gave the Defendant a discretion to issue BIDs in physical or electronic form. That was a discretion which, the Claimants said, the Defendant was required to exercise. They then contended that her policy of only issuing eVisas and of leaving no scope for providing a BID in a different form, even in exceptional circumstances, is an unlawful failure to exercise that discretion.

70. The first issue is the nature of the Defendant’s policy. Mr Malik KC submitted that there has not been any fettering of any discretion because the Defendant has not closed her mind and is prepared to envisage circumstances in which a different approach might be warranted. That argument was based on the first two sentences of [75] of Dr Tomlinson’s witness statement where Dr Tomlinson said:

“It is acknowledged that the SSHD has a residual discretion to issue alternative proof of immigration status to an eVisa with a share code, including to issue physical proof of status. Although the SSHD has not closed her mind and will not refuse to listen at all, on the circumstances pertaining at the current time, the SSHD will not issue physical proof to anyone.”

71. I am satisfied that the correct interpretation of that passage and of the evidence as a whole is that the Defendant has adopted a fixed rule. I must look to the reality of the position and a mere assertion that the Defendant “has not closed her mind” does not preclude the conclusion that there is a fixed rule. That is particularly so when those words are immediately followed by the explanation that at the current time the Defendant “will not issue physical proof to anyone”. What Dr Tomlinson is saying is that in the current circumstances there is a fixed rule that a BID will only be provided electronically (and in practice only by way of an eVisa). The Defendant will not currently change that approach no matter how exceptional the circumstances of a particular applicant nor how severe the hardship caused to that person by the refusal to provide a BID in a different form. The indication that if the overall and underlying factual circumstances change then the Defendant might change her policy does not alter the position. In the current circumstances the Defendant has a fixed rule namely that proof of immigration status will only be provided by way of an eVisa and that rule will be maintained in the absence of some unforeseen change in the general circumstances.

72. Two further arguments advanced by the Defendant can be disposed of shortly.

73. Mr Malik submitted that the rule that a discretion cannot be fettered does not apply where the discretion in question is contained in secondary legislation made pursuant to primary legislation which gives a power to make rules or regulations. Here, the 2008 Regulations were made pursuant to the power in section 5 of the 2007 Act to “make regulations”. Mr Malik contended that as a consequence the rule against the fettering

of discretion did not apply to any discretion which the Defendant has by reason of the 2008 Regulations. Mr Malik said that this analysis was supported by the approach of Kenneth Parker QC, as he then was, sitting as a deputy High Court judge in *R (Nicholds) v Security Industry Authority* [2006] EWHC 1792 (Admin), [2007] 1 WLR 2067 and by that of the Court of Appeal in *R (Sayaniya) v Upper Tribunal* [2016] EWCA Civ 85, [2016] 4 WLR 58. For the following reasons that contention is untenable both as a matter of principle and by reference to those authorities.

74. As I will explain further below, the basis of the rule that a discretion cannot be fettered is that a person or body entrusted with a discretion by legislation is required to exercise the discretion when making a decision of the kind to which the discretion relates. Such a person or body cannot renounce the obligation to exercise the discretion and say that he will only exercise the underlying power on a particular fixed basis. As a matter of principle that rule must apply whether the discretionary power in question derives from primary or secondary legislation. In each case the holder of the power has been given a power on a particular and limited basis. However, although granted on a limited basis the power cannot be renounced. The holder of the power cannot decline to exercise it but must exercise it, doing so in accordance with such limitations as are contained in its source. It is immaterial whether the source of the power is primary or secondary legislation. The fact that the secondary legislation in question gives a discretionary power to the person who has made the secondary legislation pursuant to powers given by statute does not affect that principle. Certainly it does not do so where, as here, the power to make the secondary legislation is dependent on the relevant regulations being approved by positive resolution. Where the body with the discretionary power is not the maker of the secondary legislation the principle clearly applies to powers given by secondary legislation. Thus, as one example among many, in *R (West Coast Railway Co) v Office of Road and Rail* [2023] EWHC 3338 (Admin), [2024] 4 WLR 12 the Rail Safety Regulations 1999 had been made by the relevant Secretary of State but gave a discretionary power to the defendant and that power was subject to the rule against the fettering of discretion. There is no reason of principle for a different approach to be taken where the secondary legislation gives a discretionary power to the maker of the legislation. If a minister exercises a power to make secondary legislation which gives him or herself a discretionary power that power must be exercised in accordance with the secondary legislation from which it is derived.
75. Moreover, neither *Sayaniya* nor *Nicholds* are authority for a different approach. In both cases the court was concerned with rules made by a person or body to whom Parliament had given a power to make rules. In *Nicholds* the power was to set out criteria governing the grant of licences to work as a door supervisor. In *Sayaniya* the power was to make rules regulating the entry into and stay in the United Kingdom of those who did not have a right of abode. In such circumstances the power to make rules included a power to make rules or to set out criteria which were fixed with no provision for discretion and which operated without exceptions. That was a wholly different position from that with which I am concerned. It may well be that the Defendant could have exercised the power under section 5 of the 2007 Act to make regulations which did not give any discretion and which contemplated no exceptions. Whether the power could be exercised in that way would depend on an analysis of section 5 and approval would have been needed by way of positive resolution. However, the prospect that such regulations could have been made using that power is irrelevant because I am concerned

with the regulations which were in fact made and with the interpretation of regulation 13 of those regulations.

76. The next argument to be addressed is that which Mr Malik derived from the second ground for the decision in *Nicholds*. At [61] and [62] the judge said:

“[61] It seems to me that there is also a further reason why Mr Cragg’s third ground of challenge is misconceived. His argument rests upon the premise that the ‘no fetter’ principle applies *invariably* wherever a discretionary power is conferred, whatever the statutory context. This argument not only infringes the prescription of the ‘no fetter’ principle itself (as he reads it), which assumes that there is an exception to every case, but, more importantly, it is not, in my view, supported by authority or legal policy. Lord Reid was careful, in the passage cited from the *British Oxygen* case [1971] AC 610, to refer to “the general rule”. In most instances where a discretionary power is conferred it would be wrong for the decision-maker to frame a rule in absolute terms because to do so would defeat the statutory purpose. However, it seems to me that there are certain exceptional statutory contexts where a policy may lawfully exclude exceptions to the rule *because to allow exceptions would substantially undermine an important legislative aim which underpins the grant of discretionary power to the authority*. There is, for example, a well-known line of cases concerning ‘taxi’ licensing where licensing rules, which admitted of no exceptions for any ‘special’ circumstances, were held lawful: see, for example, *R v Manchester City Justices, Ex p McHugh* [1989] RTR 285 and *R v Wirral Metropolitan Borough Council, Ex p Wirral Licensed Taxi Owners Association* [1983] 3 CMLR 150.

[62] In my view, the statutory context must be examined with great care. In this case, for the reasons already given, the statutory context empowers the authority to make the commission of certain serious criminal offences an absolute bar to obtaining a licence to work as a door supervisor. The rule is *intra vires* and rational. *Not* to have such a rule in respect of offences of such great gravity would tend to undermine a fundamental aim of the 2001 Act, and such a failure would be truly vulnerable to challenge on grounds both of *ultra vires* and *Wednesbury* irrationality.”

77. Mr Malik said that this approach was applicable here and that to make provision for a BID to be provided other than by way of an eVisa even in exceptional circumstances would undermine an important aim of the legislation.
78. I do not accept that analysis. Having a digital only system is not an aim (let alone an important or fundamental aim) of the legislation. To have a system which combined digital and physical BIDs (and even more so one which combined eVisas with some other digital form) would not undermine the aim of the legislation. This is so whether one regards the relevant legislation as being the 2008 Regulations standing alone or as being those regulations together with the 2007 Act and the surrounding legislation in respect of immigration control. The aim of the 2008 Regulations is to require those who are subject to immigration control to have a BID and for those persons to be obliged to prove their status by production of the BID in certain circumstances. In order to achieve that aim it is not necessary for the BID to be provided solely in a digital form (let alone solely by way of an eVisa). This is apparent from the language of the 2008 Regulations. Thus regulation 2 refers to a “biometric card” in terms which clearly envisage a physical card. There are a number of other aspects of the 2008 Regulations and the legislative scheme of which they are part which are entirely consistent with a BID taking a physical form – not least the definition of “document” in the 2007 Act. Thus, regulation 15(2) addresses the scope for information to be on a microchip “embedded in the document”

and is clearly contemplating a physical document. Moreover, regulation 13(1A) and 13A(1A) refer to the issue of a BID as including allowing a person to view their BID electronically but do not indicate that is the sole way in which a BID is to be interpreted (regulation 13(1A) provides that the reference to the issue of a BID “includes” the viewing of the BID electronically but does not say that it shall “consist of” such viewing). It is of note that the Defendant has continued since the amendment of the 2008 Regulations, which introduced regulations 13(1A) and 13A(1A), to issue physical BIDs and, even now, the move to a fully digital system is not complete because vignettes are still being issued physically. It follows that it cannot be said that an aim of the legislation would be undermined if there were to be exceptions to the provision of a BID by way of an eVisa.

79. Having disposed of those arguments, it is necessary to return to the terms of regulation 13 and to first principles to see whether the Defendant’s approach amounts to an unlawful fettering of discretion.
80. The Claimants said that regulation 13(1A) gives the Defendant a discretion to issue a BID electronically and, by implication from that, a discretion to issue one in a physical format or in a digital format which is not an eVisa. They contended that this discretion cannot be fettered and that the Defendant’s refusal to contemplate exceptions to the eVisa system is just such a fettering of her discretion.
81. It is important to have regard to the nature of the rule against the fettering of discretion. It is not appropriate to adopt a mechanistic process in which, first, a particular power is characterized as a discretion; then it is said that a discretion cannot be fettered; then a particular course is characterized as a fettering of the discretion in question; and then from those steps the conclusion that the course in question is unlawful is reached. Instead, it is necessary to determine whether the relevant power is one which cannot be abandoned such that the court will intervene to compel its exercise and whether in reality there has been an abandonment of the power. In *Nicholds* at [53] the judge approved the submission which Miss Nathalie Lieven, as she then was, had made in these terms:

“She submitted that the authorities in which the ‘no fetter’ principle was invoked concerned circumstances where Parliament had conferred a broad discretion upon a public authority to take decisions conferring benefits or imposing burdens, and did not expressly empower the public authority to make rules or to establish a policy for exercising the discretion. A question has then arisen in such cases whether, and to what extent, the authority may make such rules or establish such a policy.”
82. That explanation of the principle is confirmed by an analysis of its origins and application. In *R v Port of London Authority ex p Kynoch* [1919] 1 KB 176 the relevant power was the power to grant a licence to create a wharf. The redress for the defendant’s failure there to exercise its discretion would have been the issue of the prerogative writ of *mandamus* commanding the defendant to act in a particular way. That was because the refusal to address the prosecutors’ application would, if the claim had succeeded, have amounted to a failure to exercise the jurisdiction which Parliament had required the Port of London Authority to exercise (see per Bankes LJ at 183). The remedy for that failure would be the issue of the writ of *mandamus* to compel the exercise of the power.

83. The authorities in which the principle has been enunciated are principally concerned with cases in which a person or body has been given a power to confer benefits or to impose burdens of various kinds. The issue has been the extent to which the adoption of a policy or rule as to how the power was to be exercised amounted to a failure to exercise the power. In those cases the fettering of discretion by adopting a policy or rule which did not provide for exceptions was objectionable because it amounted to a refusal to exercise the relevant power. It was a refusal to exercise a power in circumstances where Parliament had required that the relevant decision-maker should, at the least, consider whether to exercise the power.
84. Thus, in *British Oxygen Co v Minister of Technology* [1971] AC 620 the Board of Trade had a power to make grants. The House of Lords explained that the Board was entitled to have a policy as to the circumstances in which a grant would be made provided it was willing to address particular cases on their merits.
85. In *R v Secretary of State for the Home Department ex p Venables* [1998] AC 407 the Secretary of State had the power to impose a burden by setting the tariff of the sentence. The House of Lords held that the approach adopted was unlawful because it fettered the future exercise of the discretion (see per Lord Browne-Wilkinson at 496H – 497B). Such an approach amounted to a decision now not to exercise the discretion at a time in the future (exercising the power now “nunc” rather than at the time when it fell to be used “tunc”). The decision made was unlawful because it was an indication that the power would not be exercised in the future.
86. The decision in *R v Secretary of State for the Home Department ex p Fire Brigades Union* [1995] 2 AC 513 demonstrates the basis of the rule against the fettering of discretion. The relevant power in that case was the power to cause the statutory scheme for criminal injuries compensation to come into force. The defendant’s decision not to do so was unlawful because it amounted to a “surrender or release” of the power given by the applicable statute in circumstances where the defendant could not lawfully “abandon or release the power conferred on him” (see per Lord Browne-Wilkinson at 551E and F).
87. It is, therefore, necessary to identify the power in question and then to assess whether the relevant legislation requires the holder of the power to exercise it with the consequence that it is impermissible for that person or body to surrender, abandon, or release the power. The creation of an inflexible policy or rule can be an impermissible abdication of the discretionary power because it amounts to a failure to exercise the relevant discretion. However, as the *Fire Brigades Union* case shows, the mischief lies in the abdication of the power and the making of an inflexible rule is an illustration of one form of abdication. In this regard the judgment of Kenneth Parker QC in *Nicholds* is again of note. As the judge explained “the statutory context must be examined with great care” [62] and account must be taken of “the importance of context” [63]. It does not follow that because a person or body is empowered to discharge a statutory function in a number of ways the choice between those ways will always amount to the exercise of a discretionary power which it is unlawful for the person or body to abandon.
88. Against that background, I turn to identify the discretionary power which the Defendant is required to exercise by the relevant part of the 2008 Regulations and which it is impermissible for her to renounce or abdicate. In my judgement that is the power given by regulations 13(1) and 13A(1) to issue a BID. Provided that the preconditions set out

in those regulations are satisfied the Defendant must consider issuing a BID to a person who has applied in accordance with regulation 3 or 3A as the case may be. The Defendant cannot abandon that power or fetter that discretion by saying that in all circumstances she will only issue a BID to such persons as satisfy an additional criterion which is not set out in those regulations. Any person who satisfies the preconditions in those regulations is entitled to require the Defendant to consider issuing a BID to him or her. Such a person does not have a right to a BID and the Defendant can adopt a policy as to the circumstances in which she will or will not grant a BID (provided the policy is not inflexible) but the Defendant must consider issuing a BID.

89. That is the relevant discretionary power given by regulation 13. There is no suggestion that it is that power which is fettered by the Defendant's approach of only issuing BIDs in the form of eVisas.
90. The provisions in regulations 13(1A) and 13A(1A) empowering the Defendant to issue BIDs in an electronic format involve the grant of a power of a different kind. Those provisions give the Defendant a choice as to the way in which she decides to give effect to the issue of a BID. The Defendant's decision as to how she exercises that choice is open to a public law challenge. However, such a challenge would be to the rationality of such a decision. The decision by the Defendant to exercise her power in relation to the format of a BID in a particular way is not the abandonment of a discretionary power which she was required by legislation to exercise. Instead, the provisions in 13(1A) and 13A(1A) are references to a mechanism which the Defendant is entitled to employ to discharge her obligation in relation to the issuing of a BID. I repeat that the decision to employ a particular mechanism out of those which is available to the Defendant is not immune from challenge. It is not, however, the unlawful fettering of a power which the Defendant had to exercise. This conclusion flows from an analysis of the language and context of regulation 13(1) and (1A). The relevant discretionary power is that which is given in 13(1): "may issue a biometric immigration document". It is the issuing of the BID which is the power which the Defendant is required to exercise. The fact that (1A) explains that the issuing of a BID "includes" allowing a person to view it electronically does not give rise to a separate discretionary power which cannot be abandoned. It simply has the effect that, having decided that a BID is to be issued to a particular person, the Defendant can then discharge the obligation to issue a BID in a number of ways.
91. I am reinforced in that analysis of the provisions by the terms of regulation 15. Regulation 15(1) sets out a list of 21 items of information and categories of information (some of which are themselves expressed in broad terms) which a BID "may contain". Regulation 15(2) provides for some of that information and other matters to be contained in a microchip embedded in the BID. The decision as to which of the information should in fact be put in the BID is clearly left to the Defendant. It would be possible to describe this as a discretion which the Defendant is required to exercise but that would be a mischaracterization of the provision. It would not be appropriate either as a matter of principle or as a reading of the 2008 Regulations to see the non-fettering principle as applying to the Defendant's choice in relation to the information to be contained in the BID. Properly considered, regulations 13(1A) and 13A(1A) are provisions of a similar nature to regulation 15.
92. That this is the proper interpretation can also be seen by considering the converse position. If the Defendant chose to issue all BIDs in physical form the fact that she

could have relied on regulation 13(1A) to issue some electronically would not make the decision to continue to use hard copies an abandonment of a statutory discretion such that the Defendant could, for that reason, be compelled to consider issuing a BID in an electronic form. It is of note that in *RAMFEL* there was no dispute that the Defendant would have power to issue eVisas (or hard copy documents) to those whose leave had been extended under section 3C of the 1971 Act (although there was no duty to do so). It was not suggested that the failure to do so amounted a fettering of discretion. Instead the challenge was to the rationality of the decision which was combined with an invocation of the *Padfield* principle and of the Defendant's duties under the Borders, Citizenship and Immigration Act 2009 and the Equality Act 2010.

93. Here, the position is that the Defendant is not renouncing or abandoning the relevant power, which is the power to issue BIDs. She was choosing to exercise that power in a particular way which was permitted by the 2008 Regulations. It is not appropriate to characterize that choice as the abandonment or fettering of a discretionary power which Parliament has required to be exercised. The Claimants' approach of seeing this choice as the impermissible fettering of a discretion runs the risk of creating some form of continual regression. The Defendant has a choice as to the form in which a BID is to be issued. That involves not just a choice between a wholly physical and a wholly digital system but also choices between the form of a physical BID and the form of an electronic BID and between the balance of physical and digital forms if the decision were to be made to have a mixed system. It also involves choices as to the information to be contained in a BID. Those choices are potentially susceptible to challenges on the basis of rationality but it is not a proper reading of the 2008 Regulations nor a proper application of principle to see each choice as the exercise of a discretion which cannot be fettered and in respect of which the Defendant would have to be prepared to take a different approach in exceptional circumstances.
94. It follows that the challenge on ground 1 fails.

Ground 2: The Rationality of the Defendant's Policy.

The Competing Contentions.

95. The Claimants accept that there are benefits from having a scheme in which BIDs are issued and maintained in a digital form. However, they said that account has to be taken of the difficulties inherent in the operation of the eVisa scheme and of the context of the hostile environment regime. The Claimants contended that the former have the consequence that a person who has leave to remain and to whom a BID has been issued can be placed in a situation where he or she is unable to access his or her eVisa or where the eVisa which can be accessed does not contain the correct information. Those difficulties can arise without any fault on the part of the person in question and can persist for some time (in the cases of the Claimants they persisted for a number of months). The hostile environment regime has the effect that such difficulties can cause real hardship to those who need to be able to demonstrate their status and can do so in cases where such persons will often already be vulnerable in various respects. The Claimants said that such a situation could be ameliorated by making provision for an alternative form of BID to be issued in exceptional cases: an alternative which could either be a physical document or some form of electronic confirmation other than an eVisa. In those circumstances, they submitted that it is not rational for the Defendant to adopt a policy of providing BIDs only in the form of eVisas.

96. The Claimants supported that primary argument with a number of subsidiary points.
97. First, they said that there was no clear indication of when or by whom the decision to provide BIDs solely by way of eVisas was made. Still less, was there any indication that the decision had been the result of a reasoned process in which the harmful effects of that course had been considered. There was, for example, no submission to a minister setting out the relevant considerations and inviting a decision to be made on the basis of a balanced assessment of the benefits and disadvantages of the proposed course. The Claimants said that this should cause the court to infer that there was no such reasoned assessment and also that the policy was not the result of a ministerial decision. As a consequence, they submitted, the degree of deference accorded to the decision should be reduced and the intensity of the review by the court heightened.
98. Second, the Claimants said that references to a scheme which is “digital by default” should not be interpreted as relating to a scheme which was solely digital (let alone solely by way of eVisas). They pointed to the use of the phrase “digital by default” in the Explanatory Memorandum to the 2021 Regulations and in the 2022 Command Paper. They said that the use of the phrase indicated that there would be alternatives to the digital default position. This, in turn, indicates that there was no parliamentary approval of the current policy of a solely digital system and that the current policy goes beyond that which was contemplated in those documents.
99. Finally, the Claimants asserted that there would be a harmful practical consequence if the court were to hold that the Defendant’s current policy was rational. They said that such a conclusion would mean that judges would not be able thereafter to grant interim relief in the way in which HH Judge Carmel Wall did in the *ASF* case. Judges would not be able to order the Secretary of State to provide an applicant with “adequate proof of lawful immigration status ... either electronically or in some other form that will be sufficient ...”. The Claimants contended that this adverse consequence is to be seen as an indication that the current policy is not rational.
100. The Defendant emphasized the benefits of having a fully digital system. She accepted that the current system was not perfect and that in individual cases it could cause hardship to those who were not able to access an accurate eVisa through no fault of their own. However, she contended that the extent and frequency of the problems in the eVisa system had been overstated by the Claimants. She pointed to the measures which have been put in place to improve the system and to the alternative routes which can be used, in particular by potential employers and landlords. Finally, the Defendant pointed to the cost and difficulties which would be involved in the creation of an alternative means of demonstrating status and said that when matters were considered in the round the current policy was rational.

The Approach to be taken.

101. The challenge on this ground is to the rationality of the Defendant’s approach. The classic *Wednesbury* formulation, derived from *Associated Picture Houses Ltd v Wednesbury Corpn* [1948] 1 KB 223 at 233- 234, describes an irrational decision as one which is “so unreasonable that no reasonable authority could ever have come to it”. In *Council of Civil Service Unions v Minister for the Civil Service* [1985] 1 AC 374 at 410 G Lord Diplock described it as being “a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied

his mind to the question to be decided could have arrived at it”. Lord Steyn expressed the same test in less heightened language as being whether the decision was outside the range of reasonable decisions open to the decision-maker (*Boddington v British Transport Police* [1998] 2 AC 143 at 175).

102. I have taken account of the guidance as to how that test is to be applied which was contained in *RAMFEL* and in the decisions cited there but in doing so I am mindful of Sir Nicholas Underhill’s cautionary note at [44] that “the reasoning in cases of this kind is typically conditioned by the facts and circumstances of the particular case, and they cannot readily be transposed”. The following points are of note:
- i) The burden of showing irrationality lies on the Claimants and the Defendant does not bear the burden of showing that her policy is rational ([64])¹.
 - ii) The outcome is unlikely to turn on questions of detailed analysis: “if the unreasonableness of the impugned policy is not obvious without detailed evidential support a rationality challenge is unlikely to prosper” (*ibid*). That does not mean that the factual background to a decision can be ignored. The rationality of a decision will often depend on its context and the scale of the problems resulting from a decision can be an important consideration ([67]).
 - iii) The requirement is one of rationality and not perfection. “Courts should not intervene simply because it appears that better solutions could have been devised” ([43]) or “because [a system’s] design or its day-to-day operation is capable of improvement in some respects” ([67]).
 - iv) In order to be workable administrative systems dealing with many individual cases may have to incorporate bright-line rules and such a system or a feature of such a system is not to be characterized as being irrational “merely because it produces hard, even very hard, results in some individual cases” (per Underhill LJ in *R (Johnson) v Secretary of State for Work and Pensions* [2020] EWCA Civ 778, [2020] PTSR 1872 at [113]). However, it is clear that the degree of hardship caused and the number of cases in which hardship is caused can be a potent factor in assessing the rationality of a particular decision or policy (see (i) above) as will be the existence and extent of measures to reduce the risk and/or mitigate the extent of the hardship in question ([67]).
 - v) The test remains one of rationality but “the degree of intensity with which the court will review the reasonableness of a public law act or decision... varies according to the nature of the decision in question” (per Underhill LJ in *R (Pantellerisco v Secretary of State for Work and Pensions* [2021] EWCA Civ 1454, [2021] PTSR 1922 at [56]). This point is closely related to those I have summarized at (iii) and (iv) above and regard is to be had to the nature of the exercise in which the decision-maker was engaged and to the scope for a range of judgements to be made as to the appropriate course ([43]).
103. Mr Malik sought to go further than the last point. He contended that the decision here was of the kind which Lord Reed had in mind in *R (SC) v Secretary of State for Work and Pensions* [2021] UKSC 26, [2022] AC 223 at [146] where he said that the courts

¹ The references are to the judgment of Sir Nicholas Underhill save where otherwise indicated.

are to accord “a high level of respect to the judgment of public authorities in the field of economic or social policy”. Mr Malik contended that the decision under challenge here was to be seen as a matter of social policy and, as such, accorded that high level of respect. I do not accept that analysis. The decision the rationality of which is in question here is not a decision of the kind which Lord Reed was considering. I am not concerned with the decision to create a hostile environment for those in the United Kingdom illegally nor even with the decision which requires those seeking work, accommodation, or benefits to be in possession of a BID. The issue here is as to the form of the BID. Indeed, it is the even narrower issue of whether it is rational to have a system in which the only way in which a BID is provided is the single digital form of an eVisa. The deference on constitutional grounds with which Lord Reed was concerned is not relevant here. However, I do accept that the decision is part of an administrative scheme and that I must have regard to the complexities inherent in any such scheme and to the fact that the court is not well-equipped to make an assessment of the merits of different practical courses. I am also conscious that consideration of where the balance lies between the general benefit from a wholly digital system and the resulting hardship to individuals is primarily a matter of political judgement.

Assessment of the Factual Circumstances.

104. There is a considerable measure of agreement. The Claimants and the Defendant are agreed that the move to a digital system brings real benefits not only for the public generally but also for those to whom BIDs are issued. They are also agreed that difficulties and glitches are inevitable (or very nearly so) in any digital system which is dealing with a large number of cases and which requires the inputting of information about the different circumstances of large numbers of individuals. It is clear that the eVisa system has to process information about a very large number of individuals and that the information is sometimes complex in nature (and subject to change). It is also common ground that the Defendant has put in place measures which seek to address those difficulties. Finally, it is also agreed that where difficulties arise in the digital system which mean someone cannot access their eVisa or that the eVisa is not accurate then real hardship can be caused to such a person.
105. The differences between the parties relate to the frequency of the problems (and consequently of the number of people at risk of hardship) and the effectiveness of the measures being taken to address those problems. In part those differences are a contrast between the material on which the parties base their differing assessments and between the viewpoints from which they are making those assessments. The Defendant’s assessment is based on a statistical analysis looking at the operation of the system as a whole. The material to which the Claimants refer is rather more anecdotal and in the case of the report by the3million is based on a relatively small sample. That material does, however, show both that the Claimants were very far from being the only persons affected by problems in the operation of the eVisa system and that the problems when they arose caused real difficulties for those affected.
106. For the purpose of considering the rationality of the Defendant’s approach it suffices to proceed on the basis that real problems can and do arise in the operation of the system. Those problems affect only a small proportion (arguably a very small proportion) of those to whom eVisas should be issued but even that small proportion consists of a not insignificant number of people and for those affected the absence of an eVisa and/or of an eVisa in correct terms can lead to very real hardship. The remedial measures which

the Defendant has put in hand have not been successful in wholly preventing such problems nor have they wholly prevented such hardship. In addition, as the Claimants' cases show, when problems arise they are not always resolved speedily. However, I accept that the Defendant's efforts to improve the system and to address the hardship caused by the glitches in its operation are genuine and that the Defendant is continuing to work on addressing those matters. In this regard it is also relevant to note that there is force in the Defendant's point that there would almost inevitably be problems from time to time in the operation of any stand-by or alternative arrangement for the provision of BIDs to those affected by problems in the eVisa system. It follows that while such an alternative system would assist some of those adversely affected by deficiencies in the eVisa system there would remain some for whom the harmful consequences would persist.

Disposal of the Subsidiary Arguments.

107. The Claimants were correct to point out that the court had not been provided with any copy of a submission to ministers and, still less, of a ministerial decision approving the move to a solely digital system. The Defendant's arguments would clearly have been enhanced if there had been such an exercise. However, when matters are seen in context it cannot be said that this is to be seen as a policy which does not have ministerial approval. The 2021 and 2022 Command Papers were presented to Parliament by the Defendant and that of 2022 has a "Ministerial Foreword" in the name of the Defendant. Those documents clearly explain and envisage the move to a fully digital system. The White Paper of May 2025 followed the move to a fully digital system and is primarily concerned with other matters. However, it does refer to the eVisa system and at [199] – [208] it does so in terms which clearly contemplate a fully digital system. Thus in a passage printed in bold at [208] there is reference to the "effective roll-out of eVisas to all foreign nationals resident in the UK". That document had two forewords one bearing the name, photograph, and signature of the Prime Minister and the other the name, photograph, and signature of the Home Secretary. The Claimant is right that, by virtue of the *Carltona* principle, the acts of civil servants are to be taken to be the acts of the relevant minister. Nonetheless, in light of that material it is unrealistic to suggest that the policy does not have high-level ministerial approval.
108. Next, the Claimants are right to say that standing alone the words "digital by default" do not necessarily indicate a digital only system. However, they can be read as indicating a digital only system and when they are seen in the context of the relevant documents it is artificial to say that the use of that phrase indicates that something other than a digital only system is being contemplated. Thus the reference at [7.12] of the Explanatory Memorandum is to a system "which is digital by default for all applicants" and "which over time means we will increasingly replace physical and paper-based products with ... digital services" (emphasis added in both cases). The 2022 Command Paper has a section entitled "Digital by Default" but the following sections make it clear that a digital only system is contemplated. Thus, at [44] there is a reference to removing the need for a physical document and the section addressing eVisas makes it clear that difficulties in accessing eVisas will be addressed through the Resolution Centre rather than through an alternative to an eVisa. Moreover, the 2022 Command Paper expressly said it was building on the 2021 Command Paper (see at [3]) and that document made repeated references to a "fully digital system" (see [37], [77], [78], and [81]).

109. There is similarly no force in the argument that a finding that the Defendant's policy is rational will prevent future judges giving relief of the kind given by Judge Carmel Wall in the *ASF* case. The Claimants are probably correct to say that it will not be open to a judge to order the provision of a BID in a physical form though I make it clear that issue is not before me and I am not ruling on whether in an appropriate case it would or would not be open to a judge to make such an order. It will, however, be open to a judge to order (a) that the Defendant provide a claimant with proper access to an accurate and correct eVisa and/or to provide other confirmation of such a claimant's status through the channels referred to in [45] above and (b) that this be done in a very short time from the order. Difficulties in the operation of the eVisa system would not be an answer to such an order and so those adversely affected by the system would not be left without redress through the courts. In that regard it is relevant to note that the cases of the current Claimants and of others referred to in the Claimants' evidence indicate that when faced with court proceedings the Defendant's officials have been able to expedite the resolution of difficulties with eVisas.
110. However, the Defendant's subsidiary argument as to the difficulty and expense which would be involved in operating a system of physical BIDs alongside the eVisa system is nowhere near as powerful a point as the Defendant suggested. There would doubtless be expense and difficulty involved in running a physical system in parallel with the eVisa system. However, that is not what the Claimants are seeking. Instead, their case is that there should be an alternative to the eVisa system which can come into effect in exceptional circumstances where it is not possible to provide an accurate eVisa within a reasonable time. The Claimants are agnostic as to the form which such an alternative should take and invited the court and the Defendant to contemplate an alternative electronic arrangement for use in such exceptional cases. I accept that there would be some difficulties in operating an alternative electronic arrangement alongside the eVisa system but those would not be of the scale which would be involved in having an alternative physical arrangement and the Defendant's arguments based on the difficulties of the latter are of limited weight.

Consideration of the Core Dispute as to Rationality.

111. Against that background I come back to the core question. That is whether it is rational for the Defendant to adopt a policy under which she will not issue BIDs in any form other than that of an eVisa in circumstances where the eVisa system faces the difficulties inherent in a digital only system based on the inputting of large quantities of data and where such difficulties can cause real hardship lasting significant periods of time to persons dependent on being able to produce a BID.
112. In my judgement it is highly significant that the Defendant acknowledges that there are imperfections in the eVisa system and that those cause hardship and that she is actively seeking to eliminate the imperfections and to ameliorate the hardship flowing from them. The Defendant is not simply saying that the general benefit of a fully digital system outweighs the hardship in individual cases and that such hardship is the price to be paid for that general benefit. There might be considerable force in the argument that the adoption of the latter approach would be irrational although that would depend on the scale of the imperfections in the system and the extent of the hardship caused though both are real here. Instead, the position is that the Defendant has put in measures to improve the system and to ameliorate the hardship caused by its failings. The extent of the measures to be implemented is a question of the allocation of resources and of

judgement as to which measures are most likely to be effective by way of amelioration. Those are the type of practical and political assessments in respect of which the court should exercise caution before concluding that the approach being taken is irrational. Decisions on such matters are not immune from a rationality challenge. The court must, however, be conscious of the extent to which they are matters on which a wide range of differing conclusions can be reached rationally and where, to adopt the language of Lord Steyn, the range of reasonable decisions open to the decision-maker is greater than might otherwise be the position.

113. The Defendant's policy is one of moving to a fully digital system but of accompanying that move by a number of measures intended to address failings in the system and/or to assist those affected by such failings. There is doubtless scope for it to be said that more could be done or that different measures could be adopted but that does not, without more, render the decision irrational. In the particular circumstances of this case there can legitimately be different views as to whether there should be an additional back-up arrangement operating alongside the eVisa system. It cannot be said that such is the only rational approach and nor can it be said that the Defendant's decision against implementing such an arrangement is outside the range of decisions rationally open to her. It follows that this ground also fails.

Conclusion.

114. As a consequence the claim is to be dismissed.