

## Press Summary

### **AYA, EXR, HRE, GIP and KAG v Secretary of State for the Home Department**

Neutral Citation Number: [2026] EWHC 1742 (Admin)

Friday 10 July 2026

Note: This summary is provided to assist in understanding the decision of the Court. It does not form part of the decision or the reasons for the decision. The only authoritative document is the full judgment of the Court, which will be published on the National Archives (<https://caselaw.nationalarchives.gov.uk/>).

#### Introduction

1. Mr Justice Sheldon has today handed down judgment allowing a claim for judicial review brought against the Secretary of State for the Home Office by five individuals who were either removed, or faced removal, to France pursuant to the *UK–France Treaty on the Prevention of Dangerous Journeys* (“the Treaty”). Each of the claimants alleged that they had previously been victims of human trafficking before they arrived in the United Kingdom.
  - (i) Reconsideration of negative trafficking decisions
2. Where individuals claim that they have been a victim of human trafficking, the statutory scheme under the Modern Slavery Act 2015 (“the 2015 Act”) calls for two decisions to be made: (i) are there reasonable grounds to believe that an individual is a victim of human trafficking; and (ii) if so, are there conclusive grounds to believe that an individual is a victim of human trafficking. Where the answer to these questions is positive, the individual is entitled to certain support and assistance. If question (i) is answered affirmatively, for instance, then the individual is entitled to a recovery period of at least 30 days and cannot be removed from the United Kingdom during that period.
3. The central common issue in the judicial review against the Secretary of State concerned the lawfulness of the amendment that was made to the Modern Slavery Statutory Guidance (made under section 49 of the 2015 Act) on 17 September 2025. The amendment removed the right to request reconsideration of negative trafficking decisions from individuals who the Home Office intended to remove to a signatory state of the European Convention Against Trafficking (ECAT) and the European Convention

of Human Rights (the Convention). This would include removals to France under the Treaty.

### Background

4. Prior to 17 September 2025, any individual who received a negative reasonable grounds or conclusive grounds trafficking decision could request reconsideration of that decision. The request could be made where new evidence emerged or where there were concerns that the original decision was inconsistent with the guidance. On 17 September 2025, the Secretary of State amended the guidance by introducing paragraph 14.216: this removed the right to request reconsideration of negative trafficking decisions for those individuals being removed to an ECAT and Convention country, including France (see **paragraphs 34-8**).
5. The amendment to the guidance was introduced rapidly following litigation arising from removals under the Treaty. Internal submissions to Ministers recognised that a successful reconsideration request would defer removal and therefore operate as a practical obstacle to the implementation of removals to France under the Treaty. Officials advised Ministers on alternative approaches, including allowing reconsideration from abroad, but the Secretary of State chose the option that removed the right to request reconsideration altogether for the cohort of individuals being removed to an ECAT and Convention country (see **paragraphs 41-48**).

### The Arguments

6. The Claimants argued that removing the right to request reconsideration undermined the effectiveness of the United Kingdom's trafficking identification system, and was incompatible with ECAT, the Convention and section 49 of the 2015 Act. They also argued that the amendment to the guidance was unlawful at common law: that the amendment unlawfully fettered the Secretary of State's discretion, was made in contravention of the *Tameside* duty of inquiry, conflicted with the *Padfield* principle that powers should be exercised for the lawful purpose of the relevant legislation, and produced a policy that directed officials to act unlawfully.
7. The Secretary of State contended that neither ECAT, the Convention, nor domestic legislation required a reconsideration process. According to the Secretary of State, the National Referral Mechanism for trafficking decisions remained an effective system even without the right to request reconsideration for this particular cohort and, in any event, judicial review remained available to challenge unlawful decisions. The Secretary of State also argued that, in fact, her officials retained an implied discretion to revisit decisions where necessary.

### The Court's Analysis

8. The Court explained that the statutory scheme under the 2015 Act required the Secretary of State to have a robust and effective set of arrangements for identifying trafficking victims (**see paragraphs 109-113**).
9. The Court observed that many individuals who arrive in the United Kingdom by small boat, and therefore fall within the ambit of the Treaty, have endured a very difficult journey across the English Channel. They will frequently be malnourished and sleep-deprived, and may experience difficulties in explaining their experiences at interviews with officials which occur very shortly after their arrival, or may be impeded in making disclosures due to language barriers. As a result, critical evidence frequently emerges only later, and yet the reasonable grounds decision is taken at considerable pace: normally within 5 days of referral (**see paragraphs 121-122**).
10. The Court found that the amendment to the guidance meant that potentially decisive material—such as medico-legal reports and Rule 35 reports from doctors examining individuals in detention, which were consistent with an individual's claim that they had been trafficked, or provided explanations for earlier inconsistencies in comments made by putative victims of trafficking -- could be disregarded merely because the material arrived after the original decision (**see paragraph 123**).
11. The Court stated that arrangements which deprive the decision-maker of material evidence means that there are bound to be many cases where a victim of human trafficking will not be identified. This was supported by the evidence that 79% of reasonable grounds decisions that were reconsidered in 2025 resulted in a positive trafficking determination (**see paragraph 124**).
12. Against this background, the Court decided that the amendment to the guidance was unlawful, as a decision-making process which was not robust and effective could not have been within Parliament's contemplation when giving the Secretary of State power to make "arrangements" for identifying trafficking victims under section 49 of the 2015 Act (**see paragraph 125**).
13. The Court explained that this analysis was supported by the decision in R (DS) v Secretary of State for the Home Department [2019] EWHC 3046, where an earlier iteration of the guidance had been found to be unlawful as it limited the category of individuals who could make a request for reconsideration on an individual's behalf (**see paragraphs 125-132**).
14. The Court noted that the unlawfulness was not saved by the fact that the amendment to the guidance only applied to cases where an individual was being removed to a country that was a signatory to ECAT and the Convention, including France. This was not indicated by the domestic legislation and was not consistent with ECAT (**see paragraph 133**).

15. The Court also noted that the unlawfulness was not saved by the fact that the amendment was designed to advance the objectives of the Treaty. The Treaty had not been incorporated into domestic law and did not inform the content of the Secretary of State's duties under the 2015 Act (**see paragraph 139**).
16. The Court explained that its conclusion was arrived at without considering the territorial scope of ECAT or Article 4 of the Convention (which has been held to apply to modern slavery and human trafficking). The Court found that the 2015 Act applied to human trafficking wherever it had occurred, so long as the putative victim was present in the United Kingdom (**see paragraph 140**).
17. The Court also found that even though officials did, in fact, reconsider some cases this was not done in all cases. There was, therefore, an unlawful fetter on the Secretary of State's discretion to look again at her officials' decisions (**see paragraphs 144-146**). The Court also found that the amendment to the guidance was unlawful as it conflicted with the *Padfield* principle as it did not further the objectives of the 2015 Act, and the amendment also produced a policy that directed officials to act unlawfully (**see paragraphs 163-166**). The Court found that there was no breach of the *Tameside* duty of inquiry (**see paragraphs 147-161**).

(ii) Territorial Scope of ECAT and Article 4 of the Convention

18. In the course of the judgment, the Court acknowledged that there was a legitimate and plausible view that ECAT applied even where the trafficking took place outside of the territory of the Contracting State, and without any connection to the Contracting State for the purposes of criminal jurisdiction (**see paragraphs 167-174**).
19. The Court decided that there can be no breach of Article 4 of the Convention if the United Kingdom Government fails to identify someone as a victim of human trafficking where all of the alleged trafficking took place abroad. The only exception to this would be if there was a credible suspicion that the individual would be at real risk of being trafficked in the country to which they were returned (**see paragraphs 175-196**).

(iii) Treatment of human trafficking victims in France

20. The Court found that in France, human trafficking victims will only be officially recognised if they were the victim of trafficking on French territory, if the victim is a French national or if the perpetrator of the trafficking is a French national. This did not mean, however, that they would not receive appropriate support in France if they claimed asylum there, which was a reasonable assumption for the Secretary of State to make. Individuals who claim asylum in France will be entitled to accommodation and healthcare, including psychiatric healthcare, during the asylum determination process (**see paragraph 217**).

(iv) Decisions on the individual facts of the Claimants' cases

21. The Court found that the decision to amend the guidance to remove the right to request reconsideration had a negative impact on some of the Claimants.

22. With respect to other aspects of the Claimants' cases, the Court made various findings. Most of the decisions that had been made in individual cases – including certifying their asylum claims as clearly unfounded and declaring protection claims as inadmissible – were found to have been lawfully made.

(v) Remedies

23. The judge will consider remedies at a later date.

*References in square brackets are to paragraphs in the judgment.*