

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

The Queen on the application of

1. MK
2. AH

*Claimants*

And

The Secretary of State for the Home Department

*Defendant*

And

Refugee Action

*Intervener*

**DRAFT ORDER**

Upon hearing leading and junior counsel for the Claimant and counsel for the Defendant, and upon receiving written submissions on behalf of the Intervener, Refugee Action.

IT IS ORDERED THAT:

1. It is hereby declared that the following instruction, more fully described in paragraphs 132 -8 of the judgment herein handed down on 10 July 2012 is unlawful:

*The Defendant's instruction that where an application for support under section 4 of the Immigration and Asylum Act 1999 is made on the basis of further representations then the further representations are to be considered first and if this is not possible within 15 working days then the s. 4 application is to be considered.*

2. It is hereby declared that the failure to consider his application for support under s. 4 of the Immigration and Asylum Act 1999 in the case of MK resulted in a breach of his Convention Rights under Article 3 ECHR.
3. It is hereby declared that the delay in determining his application for support under s. 4 of the Immigration and Asylum Act 1999 in the case of AH resulted in a breach of his Convention Rights under Article 3 ECHR.
4. The Defendant shall pay the Claimants' costs of these proceedings to be subject to detailed assessment if not agreed.
5. There shall be detailed assessment of the Claimants' publicly funded costs.
6. There shall be no order for costs in respect of the Intervener's costs.

7. Any application by the Defendant for permission to appeal shall be determined on the papers in accordance with the following directions:
  - a. The Defendant shall file and serve any application by 4.00pm on 24<sup>th</sup> July 2012.
  - b. The Claimants (and the Intervener if so advised) shall file and serve any submissions in reply by 4.00pm on 31<sup>st</sup> July 2012.
8. In the event that the Defendant makes an application for permission to appeal as set out above then the time for appealing, or applying for permission to appeal to the Court of Appeal shall be extended until 21 days after service of the decision granting or refusing permission as the case may be.