

Neutral Citation Number: [2025] EWHC 2333 (Admin)

Case No: AC-2024-BHM-000046

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

Birmingham District Registry
Bull St, Birmingham

Date: 15 September 25

Before:

HIS HONOUR JUDGE SIMON
SITTING AS A JUDGE OF THE HIGH COURT

Between:

MAMUN AHMED

Claimant

- and -

**SECRETARY OF STATE FOR THE HOME
DEPARTMENT**

Defendant

Mr G Ó Ceallaigh KC (instructed by **Zyba Law**) for the **Claimant**
Ms J Gray (instructed by **Government Legal Department**) for the **Defendant**

Hearing dates: 24 April 25
Draft circulated: 22 August 25

JUDGMENT

His Honour Judge Simon:

Factual background

1. The Claimant is a national of Bangladesh, born 30 September 2003 and now aged almost 22. On 30 October 23 he applied in advance for leave to enter the United Kingdom as a Tier 2 Skilled Migrant Worker. That application was granted on 31 October 23 with the named sponsor employer being Global M'ckarm International Care Services Limited (GMICS). The visa was valid

from 1 December 23 to 14 January 28. The expectation from the details of the application was that the Claimant would commence his employment on 1 January 24 at the sponsor's care home premises in Aylesbury (although as long as the Claimant was working for his sponsor and in the role for which the visa was granted, the specific location may have been immaterial).

2. The visa included a condition that the Claimant only work in the business area for which the visa had been granted.
3. The Claimant entered the UK on 12 December 23 pursuant to the visa.
4. On 11 January 24 the Claimant was spoken to by Immigration Enforcement Officers (IEOs) during a routine enforcement operation being conducted at Birmingham New Street Station, in the presence of police officers. The Defendant's position is that the Claimant was encountered by the IEOs and, as a result of how he appeared to conduct himself on seeing them, they had cause to speak to him. The Defendant also asserts that the Claimant confirmed his ability to conduct the conversation in English. The specific officer who engaged directly with the Claimant, Officer Kelly, has not provided evidence, as it is understood that she no longer works in the same post. A colleague who was present at the time – Oliver Smith, acting Chief Immigration Officer – has provided a statement supporting the agreement of the Claimant to answering questions in English. Notes of the questions and answers – the accuracy of which is challenged by the Claimant – have been disclosed within the hearing bundle. They are taken from a system called Pronto, used by IEOs for recording various matters, including interviews. In challenging the accuracy, the Claimant also points to the absence of evidence from the sole person who interacted directly with him. The notes provide that the Claimant, upon questioning, said:
 - (a) During initial questioning, that since his arrival, he had not started working for the care home, he had not contacted the care home and his intention was to start working at the care home in 3 months' time.
 - (b) When asked how he had been financially supporting himself, he stated to officers that he had been working part time at his uncle's restaurant, Ali Shan Takeaway in Birmingham, saying that he started

working there when he arrived in the UK, that he worked 3 days a week for 3 hours as a kitchen porter and he received £40 cash in hand for his work.

5. The notes also record that as the job described by the Claimant was neither in the same occupation code nor on the shortage occupation list, the IEO determined that he was specifically considered a person who had failed to observe a condition of their stay and his permission to stay in the UK was curtailed with immediate effect under paragraph 9.8.8 of the Immigration Rules. The IEO also determined that this discretionary power to curtail should be exercised because the Claimant had knowingly breached his conditions of stay and had provided no extenuating circumstances for doing so.
6. Following the interview, the specific matters of concern to the IEOs were the Claimant's apparent admissions (again denied by him as accurately recorded and contrasted by his own evidence of what he says were his answers and the evidence from his uncle):
 - (a) of working at his uncle's takeaway establishment since his arrival in the UK;
 - (b) of not commencing employment with GMICS on the agreed start date; and
 - (c) of not contacting GMICS since arriving in the UK.
7. On the basis of the Claimant's responses to questions as recorded, the IEOs took the view that he had breached his visa conditions by working in his uncle's takeaway restaurant and being paid for it. As a result, the Claimant was arrested and detained. These actions were communicated to him through the use of an interpreter on a telephone. The detention lasted for a number of days, with the Claimant then released when it became clear that removal from the UK was not imminent.
8. The Claimant's position as to what had actually happened since his arrival in the UK and what he told the IEOs at interview, in brief, is that:

- (a) Though he may have assisted his uncle at his takeaway on occasion, this was not regular and not for payment, his uncle merely giving him some money on a weekly basis, unconnected with any assistance at the takeaway, but by way of ‘maintenance’ to allow the Claimant to do things to keep himself occupied and entertained while waiting for his work for GMICS to begin;
- (b) He had contacted GMICS on arrival but was told that they were not ready for him to start and so had asked him to wait before commencing work; and
- (c) The IEOs had inaccurately recorded the Claimant’s answers during a fundamentally important interview, given the potential consequences, without his having the aid of an interpreter (save once the decision to detain had to be communicated) or the advice of a legal representative.

Preliminary issue

- 9. There was a preliminary issue at the substantive hearing in that the Claimant sought permission to rely on a second, more detailed, statement, from himself, responding to matters raised in the Defendant’s evidence from Officer Smith. C also sought permission to rely on a statement from his uncle. Mr Ó Ceallaigh KC, on the Claimant’s behalf, explained that those instructed by the Claimant had taken the view that the detail in the Defendant’s evidence ought to be met with a response so as to assist the Court on key issues.
- 10. Ms Gray objected, noting that there was rather a lot of detail in the Claimant’s second statement that could and should have been in the first statement, the latter being rather sparse. On the uncle’s statement, there was no good reason for it being filed late.
- 11. Though recognising the factual accuracy of the Defendant’s submissions on these documents, I concluded in the interests of justice that they should nonetheless be admitted into evidence.

Legislation, guidance & case law

12. The relevant legislation is the Immigration Act 1971. The power to interview is contained in paragraph 2 of Schedule 2:

2.—

(1) An immigration officer may examine any persons [within subparagraph (1A)] for the purpose of determining—

...

(d) whether, if he has been given leave which is still in force, his leave should be curtailed.

13. Paragraph 16 of Schedule 2 provides the power to detain, by reference to paragraph 17A, inserted by the Illegal Migration Act 2023. It is unnecessary to set out the provisions in detail, because the parties sensibly agree that the Claimant's detention stands or falls with the Court's decision on the challenge to the Defendant's curtailment of the Claimant's leave.

14. The Defendant's Department publishes a guidance document on the topic of Enforcement Interviews. The relevant version is Version 2.0 which was published on 22 December 2020 (the Guidance). The Guidance applies to investigative interviews in connection with administrative – that is as opposed to criminal – enquiries. The Guidance states in its introduction:

Immigration enforcement officers may choose to try and engage any person they encounter in normal conversation but, where the purpose of the conversation is to gather information for a law enforcement purpose it is a formal interview and must be conducted in accordance with this guidance. An enforcement interview is distinct from a normal conversation in that its purpose is to seek out and evaluate information for a specific purpose.

The different types of enquiry or investigation commonly conducted by Immigration Enforcement officers are:

Administrative enquiries - interview(s) that follow 3 distinct stages:

- *exploratory questioning*

- *initial examination under paragraphs 2 or 2A of schedule 2 to the Immigration Act 1971*
- *further examination – usually away from the scene*

15. The type of interview attempted by an IEO depends on the nature of the operation or visit. The instant case does not engage provisions relating to arrest warrants and/or intelligence. The Guidance continues:

Where you have information (including from observations) that leads you reasonably [to] suspect that the person is in breach of immigration law, the judgement of the court in Singh v Hammond supports the exercise of your power to conduct an in-country examination of the person to establish their immigration status.

Section 46 of the Immigration Act 2016 amended paragraph 2(1) of schedule 2 to the Immigration Act 1971 so that you may curtail any outstanding leave if the person no longer qualifies for that leave.

16. Under the heading “*Establishing whether a person is liable to be examined under schedule 2 of the Immigration Act 1971*”, the Guidance states this:

Before seeking information from a member of the public at any premises or other location, there must be an intelligence basis for conducting the enquiry that, in itself, provides reasonable grounds to suspect that a person who may be removed from the United Kingdom may be discovered at the premises or location of the operation.

...

On arrival at any premises or location, you may seek the voluntary cooperation of members of the public to explore provisionally whether they are related to the enquiry you are conducting. As in any other form of official discourse with a member of the public, you should identify yourself and your purpose at the outset.

As a result of this exploratory questioning, you may form a view of whether they are potentially related to the intelligence basis for the operation or that they are people who are subject to immigration control and whose status may warrant examination in accordance with paragraphs 2 and 2A of schedule 2 to the Immigration Act 1971 described above.

The general purpose of inviting people to cooperate with exploratory questioning is to eliminate them from enquiries. In some instances, questioning will be unnecessary where it is obvious they are not a person who falls within the intelligence basis for the visit, for example by their age, appearance or gender. The following may be instances where it is justifiable to submit someone to an immigration examination who does not obviously meet the intelligence basis for the visit: • where a person gives reasonable cause for suspicion that they are someone who requires leave but does not have it or that they may be removed from the United Kingdom by their behaviour (for example an attempt to conceal themselves or leave hurriedly).

17. The Guidance has a section on “Exploratory questioning”, which sets out, among other things:

An Immigration Enforcement investigation will usually entail visiting places or premises where there is an intelligence basis to reasonably suspect that people in breach of immigration law are present or a criminal offence related to immigration law is taking place. During the course of such visits and encounters it is usual to attempt to talk to those present and conduct exploratory questioning. In the context of immigration law enforcement the purpose of the exploratory interview is to:

- identify initially whether those encountered may be related to the intelligence or information that caused the operation to take place*
- establish with the cooperation and consent of those present, general facts concerning identity, relationships, ownership or control of property, or potential exploitation*

- *consider whether on the basis of known information there are reasonable grounds to conduct an examination under the terms of paragraphs 2 and 2A of schedule 2 to the Immigration Act 1971 on the basis that:*

there are reasonable grounds to suspect the person is someone who may be removed from the UK

In asking exploratory questions, your first priority is to establish whether the person can be linked to the intelligence basis of the operation and/or whether there is other information that gives you a reasonable grounds to suspect that they are liable to examination under paragraph 2 and 2A of Schedule 2 to the Immigration Act 1971.

18. The reference in bullet-point 2 above to ‘cooperation’ is expanded on in the Guidance:

Officers are entitled to carry out intelligence led operations designed to intercept persons who should not be in the country and seek to make enquiries with cooperation from the general public. However, individuals are under no legal obligation to answer exploratory questions from immigration officers and a refusal to answer questions or provide proof of their status does not, of itself constitute a reasonable suspicion that the person is an immigration offender. There is no compulsion on the person to comply with exploratory questioning and no power to compel them to do so should be implied.

...

If, as a result of your exploratory questioning, you form reasonable grounds to suspect that the person may be in breach of immigration law you may lawfully question that person about their identity and status by means of an initial examination interview under Paragraph 2 of Schedule 2 to the Immigration Act 1971.

19. The Guidance then deals with ‘Initial administrative interviews’, noting:

An initial examination interview takes place where, as a result of exploratory questioning or other information, you have established reasonable grounds to suspect that the person is subject to immigration control, may be in breach of the immigration rules or have committed an offence under immigration law.

...

The purpose of an initial administrative interview is formally to:

- establish whether a person has committed a breach of immigration law and/or*
- gather evidence or supporting information in relation to (1) from a third party ...*
- identify whether a person is liable to be detained and removed under administrative powers*

An administrative interview of a person suspected to be removable from the UK will be an examination under paragraphs 2 or 2A of Schedule 2 to the Immigration Act 1971. ...

The following principles must be observed or considered during initial administrative interviews:

- a caution should not be given for an initial administrative interview where questioning is intended to establish basic facts such as identity, relationships or ownership of property - but you must identify yourself and your purpose*
- where initial examination leads to reasonable suspicion that an administrative breach or criminal offence may have been committed by the person, they must be arrested and immediately given the administrative explanation or criminal caution as appropriate and as per instructions given within 'Arrest and Restraint' guidance.*

20. The Guidance goes on to state that administrative interviews may be conducted ‘in the field’ or in an office. It then sets out mandatory expectations of IEOs upon first encounter with someone they wish to question as well as principles of good practice for the structuring of what is called a “conversation”. It may be a moot point as to whether the interview after arrest in the instant case amounted only to an initial interview or, potentially, to a further interview, as these terms are used in the Guidance quoted in paragraph 14 above.
21. Each case is always likely to be relatively fact-specific, however, the parties drew the Court’s attention to three first instance decisions on curtailment to assist in assessing the fairness of the procedure adopted in the instant case. It is worth observing that none of the case law cited provides any comparable factual scenario and the starker differences are set out in detail later in this judgment.
22. In *R (Kanwal) v Secretary of State for the Home Department* [2022] EWHC 110 (Admin), the Claimant had applied recurrently for leave to remain pursuant to different categories, attaining Tier 1 (Entrepreneur) Migrant status. When this was extended, the decision noted that she was not permitted to undertake employment other than working for the business(es) she was establishing, joining or taking over. Officials carried out an immigration enforcement visit at a hotel at which the Claimant was said to be working in breach of this condition. She was arrested, questioned and detained, although she said initially she was visiting a friend at the hotel. When a search was done of a room in which the Claimant was found, it contained many items clearly belonging to her, indicating that she was living there.
23. The Claimant’s declared business for her immigration status involved a company that provided consultancy and training services to staff, including those at the hotel, and she claimed that this was the purpose of her visit to it. The Claimant was considered to be in breach of her conditions of leave to remain, which was then curtailed. On judicial review (on conventional grounds), it was argued among other things that there had been procedural unfairness in the taking of decisions.

24. In determining the application for judicial review, Freedman J set out at [48] of the judgment the principles to be applied when considering procedural fairness as follows:

“(1) the Defendant was under a duty to act procedurally fairly in respect of the decisions challenged in this case: see *R (Mohibullah) v. SSHD (TOEIC – ETS - judicial review principles)* [2016] UKUT 561 (IAC) at (78) (general duty on Secretary of State to act procedurally fairly in immigration cases); and

(2) The question of whether there has been procedural fairness or not is an objective question for the Court to decide for itself. The question is not whether the decision-maker has acted reasonably, still less whether there was some fault on the part of the public authority concerned: see *R (Balajigari) and Ors. v SSHD* [2019] EWCA Civ 673, [2019] 1 WLR 4647 (“*Balajigari*”) at [46] and *R (Osborn) v. Parole Board* [2013] UKSC 61, [2014] AC 1115 at [65]).

(3) “... [3] *The principles of fairness are not to be applied by rote identically in every situation. What fairness demands is dependent on the context of the decision, and this is to be taken into account in all its aspects. (4) An essential feature of the context is the statute which creates the discretion, as regards both its language and the shape of the legal and administrative system within which the decision is taken.*

...

[5] Fairness will very often require that a person who may be adversely affected by the decision will have an opportunity to make representations on his own behalf either before the decision is taken with a view to producing a favourable result; or after it is taken, with a view to procuring its modification; or both.

[6] Since the person affected usually cannot make worthwhile representations without knowing what factors may weigh against his interests, fairness will very often require that he is informed of the gist of the case which he has to answer.” per Lord Mustill in R v Home Secretary ex p. Doody [1994] 1 AC 531 at 570.

- (4) *“Although the courts cannot and have not purported to lay down rules of general application, there is a broad consensus in the decisions of appellate courts as to the factors that affect what is required in a given context. That consensus runs from Lord Upjohn's important statement in Durayappah v. Fernando [1967] 2 AC 337 at 349 to the refinements in more recent cases such as Lloyd v. McMahon [1987] AC 625 at 702, and Doody and Osborn's cases. The factors include the nature of the function under consideration, the statutory or other framework in which the decision-maker operates, the circumstances in which he or she is entitled to act and the range of decisions open to him or her, the interest of the person affected, the effect of the decision on that person's rights or interests, that is, the seriousness of the consequences for that person. The nature of the function may involve fact-finding, assessments of matters such as character and present mental state, predictions as to future mental state and risk, or policymaking. The decision-maker may have a broad discretion as to what to do or may be required to take into account certain matters, or to give them particular or even dispositive weight. The decision may affect the individual's rights and interests, and its effect can vary from a minor inconvenience to a significant detriment.” per Beatson LJ in R (Howard League for Penal Reform & Anor) v. The Lord Chancellor [2017] EWCA Civ 244, [2017] 4 WLR 92 at [38].*

- (5) In *Re HK (An Infant)* [1967] 2 QB 617, an immigration officer suspected that HK, a Pakistani national seeking to enter the UK as the son of a Pakistani national ordinarily resident in the UK was older than the date stated on the passport presented. Lord Parker C.J observed at p.630:

*“I doubt whether it can be said that the immigration authorities are acting in a judicial or quasi-judicial capacity as those terms are generally understood. But at the same time, I myself think that even if an immigration officer is not in a judicial or quasi-judicial capacity, he must at any rate give the immigrant an opportunity of satisfying him of the matters in the subsection, and for that purpose let the immigrant know what his immediate impression is so that the immigrant can disabuse him. That is not, as I see it, a question of acting or being required to act judicially, but of being required to act fairly. **Good administration and an honest or bona fide decision must, as it seems to me, require not merely impartiality, nor merely bringing one's mind to bear on the problem, but acting fairly; and to the limited extent that the circumstances of any particular case allow, and within the legislative framework under which the administrator is working, only to that limited extent do the so-called rules of natural justice apply, which in a case such as this is merely a duty to act fairly. [emphasis added]**”*

(6) The requirement of procedural fairness applies in respect of an entitlement to address an immigration officer in other contexts: *R (Humnyntskiy & Ors) v. SSHD* [2020] EWHC 1912 at [270] (entitlement of foreign national offenders inter alia, to make representations in advance of a decision as to whether to provide bail accommodation, and to know what factors will be considered significant by the decision maker); *Gaima v. SSHD* [1989] Imm AR 205 (an overstayer who claimed asylum where the issue in that case was that the SSHD had not put to an asylum seeker the matters taken into account in assessing their sincerity and credibility.)

(7) In *Balajigari* in the judgment of the Court (Underhill, Hickinbottom and Singh LJ), it was said as follows:

*“[55] ...where the Secretary of State is minded to refuse ILR on the basis of paragraph 322 (5) on the basis of the applicant's dishonesty, or other reprehensible conduct, **he is required as a matter of procedural fairness to indicate clearly to the applicant that he has***

that suspicion; to give the applicant an opportunity to respond, both as regards the conduct itself and as regards any other reasons relied on as regards “undesirability” and the exercise of the second-stage assessment; and then to take that response into account before drawing the conclusion that there has been such conduct.

[56] *We do not consider that an interview is necessary in all cases. The Secretary of State’s own rules give a discretion to him to hold such an interview. However, the duty to act fairly does not, in our view, require that discretion to be exercised in all cases. A written procedure may well suffice in most cases.”*

[60] *...unless the circumstances of a particular case make this impracticable, the ability to make representations only after a decision has been taken will usually be insufficient to satisfy the demands of common law procedural fairness. The rationale for this proposition lies in the underlying reasons for having procedural fairness in the first place. It is conducive to better decision-making because it ensures that the decision-maker is fully informed at a point when a decision is still at a formative stage. It also shows respect for the individual whose interests are affected, who will know that they have had the opportunity to influence a decision before it is made. Another rationale is no doubt that, if a decision has already been made, human nature being what it is, the decision-maker may unconsciously and in good faith tend to be defensive over the decision to which he or she has previously come. [emphasis added]”*

(8) *R. v. Hackney London Borough Council, ex p Decordova* (1995) 27 HLR 108 at p.113 where Laws J observed: “... where an authority lock, stock and barrel is minded to disbelieve an account given by an applicant for housing where the circumstances described in the account are critical to the issue whether the authority ought to offer accommodation in a particular area, they are bound to put to the applicant in interview, or by some appropriate means, the matters that concern them. This must now surely be elementary law in relation to the function of decision-makers in

relation to subject matter of this kind. It applies in the law of immigration, and generally where public authorities have to make decisions which affect the rights of individual persons. If the authority is minded to make an adverse decision because it does not believe the account given by the applicant, it has to give the applicant an opportunity to deal with it.”

(9) The fairness of the procedure used by the defendant falls to be evaluated at the date of the impugned procedure and decision, not in retrospect. What was unfair then remains unfair now: see *R (Pathan) v. SSHD* [2020] UKSC 41, [2020] 1 WLR 4506 at [131]-[135].

25. Applying these principles to the facts of *Kanyal*, Freedman J concluded that a fair procedure had been in place. The nature of the enquiries was obvious and there was nothing complex involved. The Claimant failed to give a credible account in answer to questions, providing what the judge described as “contradictory explanations”. The claim for judicial review was dismissed.
26. In *R (Kumar) v Secretary of State for the Home Department* [2023] EWHC 1741 (Admin), the Claimant was detained for further questioning at border control on arrival in the UK on a student visa. He instructed a solicitor who requested to be present at the interview by telephone, which was refused on the basis that there was no absolute right to this and as an interpreter was assisting by telephone, no one else could dial in. The Claimant refused to be interviewed without the solicitor and his leave was cancelled. He sought judicial review on the grounds that his right of access to justice was breached and that the decision was procedurally unfair.
27. His Honour Judge Dight determined that once detained for further questioning, this would involve the ascertaining of information to which would be applied a set of complex rules, as well as potentially a discretion, in deciding whether to cancel the Claimant’s leave to enter. The decision would only be appealable by way of judicial review and the Claimant was at a point of jeopardy with the outcome dependent on the information provided at interview, without the benefit of legal advice. The Claimant had to be made aware of the true nature of the challenge that he was facing and enabled to obtain the involvement of a

legal representative. Access to justice and procedural fairness required these steps. The judge also found that the immigration officer had acted contrary to the Defendant's interview policy. The judge cited with approval the resume of applicable principles from *Kanwal*.

28. Judge Dight said this:

“59 *In my judgment a distinction is to be drawn between the type of short interview conducted at the first point of contact (at the preliminary control point) as an applicant seeks to enter the UK and a subsequent more searching or in-depth interview away from the pressure of the queue of arriving passengers. This case is concerned with that later stage. I do not need to consider what if any rights of access to justice and procedural fairness are engaged at the first point of contact.*

60 *At the first point of contact the officers in this case had already formed the view that there was a need for further investigation and that the claimant should be interviewed in greater depth. Of crucial importance to what followed were, in my view, the facts that, first, the claimant was from that point being detained without his consent, secondly, that his right to enter the UK was suspended, thirdly, he was to be interviewed to ascertain information which would enable a decision-maker to apply a complex set of rules and potentially exercise a discretion to determine whether the claimant should be allowed into the UK in accordance with his pre-existing visa to study at a UK university for the next few years or whether his leave to enter should be cancelled and he be returned to his country of origin, and fourth, there is, as I understand it, no way of appealing or challenging the decision made following interview other than by the route used in this case, namely an application for judicial review. In other words, as Mr Biggs correctly submitted, the claimant was at that point in jeopardy. Which route the decision maker would then take depended in very great part on the information which the claimant would be asked to provide in interview in the absence of an understanding of the complex rules in play and in the absence of legal advice.”*

29. The judge found the process adopted by the Defendant in this case to be unfair and fundamentally flawed.
30. Finally, in *Bahadur Khan v The Secretary of State for the Home Department* [2025] EWHC 513 (Admin), His Honour Judge Dunne was dealing with a claim for judicial review, challenging (among other things) the procedural fairness of the decision to cancel the Claimant's leave to remain as a skilled worker. Immigration enforcement received information that the Claimant had arrived in the UK a year earlier and was working in his brother's mobile telephone store in breach of his visa conditions. This was observed to be the case by officers on an occasion two days before an enforcement visit. He was arrested, taken to a police station and interviewed. The following day, his leave was cancelled.
31. The procedural unfairness argument attached primarily to the decision that the Claimant had never worked in the role for which he had been granted leave, rather than that he worked in breach of the conditions in his brother's store, the evidence for the latter being "compelling". Moreover, the Claimant denied other pieces of compelling evidence that the judge found established his having worked in breach of the leave conditions and, objectively, that he lied to the officers about, for example, having the keys to the store. All of this evidence was put to the Claimant in the course of four interviews and he had the opportunity to respond.
32. The judge reminded himself that what fairness requires in administrative decision making is context specific and he concluded that the instant case was similar to *Kanwal*. The judge found no procedural unfairness in the decision to terminate the Claimant's leave for working in breach. The judge went on to find no procedural unfairness at all and, overall, the claim failed.

Grounds

33. Permission to apply for judicial review was granted on two grounds only, in relation to the challenge to the decision (i) to curtail the Claimant's visa and (ii) to detain him. These were respectively Ground 1 and Ground 3 of the Claimant's original grounds and I have kept the same numbering below for consistency. There is a factual dispute as to the exact contents of the interview,

both initial and post-arrest. The Claimant argues that the conduct of the interview that gave rise to the decision to curtail was procedurally unfair, thereby vitiating the decision to detain.

Submissions

34. There was, Mr Ó Ceallaigh KC submitted, no need to resolve any issues of fact in the case, because it was simply the fairness of the interview that was the focus. That could be determined from what he called the ‘key facts’, namely: the Defendant not suggesting that the Claimant was apprised of the precise purpose of the questions; there being no explanation of what ‘reasons for engagement’ means; nothing in the Pronto notes to suggest the Claimant was warned, nor that he was told the purpose of the interview prior to it; the Claimant was not told the jeopardy he was in; and he was not told that he may wish to take legal advice. Mr Ó Ceallaigh invited acceptance of the Claimant’s account that he had no idea why he was being asked questions.
35. By reference to the contents of Officer Smith’s statement, Mr Ó Ceallaigh made various observations criticisms of what occurred, in particular a lack of clarity as to exactly what the Claimant was told about the identity of the officers and the purpose of the questions being asked. He emphasised the very public nature of the venue for this interview – being on a seat in the middle of Birmingham New Street Station, in the full view of everyone passing by. He suggested from the Pronto documents, generated by Officer Kelly broadly contemporaneously, that the Claimant was arrested and cautioned only after the interview. In addition, there was no contemporaneous evidence that the Claimant was made aware of the jeopardy that he was in prior to being interviewed. Mr Ó Ceallaigh pointed out that the recorded questions and answers were not verbatim. He relied on the evidence of the Claimant’s uncle about his nephew’s only helping out at the takeaway, not working there.
36. The decision to interview the Claimant was not under challenge, but the circumstances of such interview were relevant to the minimum requirements necessary to ensure procedural fairness. Those circumstances were said to include an absence of evidence that the Claimant understood the precise purpose

of the questions and the reasons for the engagement with him by the officers. I was invited to accept the Claimant's account on this specific point. In addition, it was submitted that it was significant that he was not told that he may wish to take legal advice (there is no factual dispute that he was not so advised). This scenario was to be contrasted with travellers arriving at a border and expecting to be asked questions about their status.

37. Mr Ó Ceallaigh acknowledged that the main cases relied on, *Kanwal*, *Kumar* and *Bahadur Khan*, all turned on their own facts. However, this case was, he said, more serious than *Kumar*. The involvement of a legal representative in the instant case would have led to more accurate and precise answers, when the Claimant does not know that he needs to be really precise. The circumstances were "wholly out of the ordinary" and only the very highest standards would suffice, which were clearly not met in this case.
38. Mr Ó Ceallaigh cautioned against the Defendant's submission that relief should be refused pursuant to s31(2A) Senior Courts Act 1981, arguing that if the Claim for procedural unfairness were to be established the answers in the Pronto notes would be rendered unreliable. Furthermore, it could not be said that, on the basis of the Claimant's evidence in the Claim, the Defendant would have been highly likely to have reached the same conclusion.
39. Ms Gray contended that the Claimant had freely admitted his position under caution and that the interview was procedurally fair by reference to the criteria, in particular from *Kanwal*. The Claimant's details were lawfully taken when he knew he had been working outside his visa. He freely engaged and admitted what he had been doing and he understood the questions that were being put to him and their purpose. Ms Gray worked through the relevant parts of Officer Smith's statement and corresponding entries on Pronto. Contrary to the Claimant's submissions, she explained how the Pronto notes demonstrate that arrest and caution was before the interview, rather than after. This demonstrated that the Claimant was aware of the jeopardy of the situation. The IEOs had authority to act as they did. A further, more detailed interview was not required due to the Claimant's early answers which justified arrest and caution.

40. Ms Gray highlighted how the Claimant's original statement made no mention of asking for legal advice or that he did not understand the purpose of the questions. She submitted they were no more than straightforward questions answered in a straightforward way. There was no obligation on the IEOs to suggest legal advice and no contemporaneous evidence that the Claimant asked to speak to his uncle. The admission of working illegally was made when interviewed under caution and no further interview was required.
41. Ms Gray distinguished *Kumar* as being factually completely dissimilar. She added that even if there had been a further office-based interview with a legal representative, and the Claimant had said the things he did in his witness statement of 19 January 25, the Defendant would have reached the same conclusion having regard to the clear evidence of the Pronto notes. She thus invited the Court to consider and apply section 31(2A) Senior Courts Act 1981 even if procedural unfairness were established.

Discussion

42. The starting point is that, whilst there are general principles to be applied to the Court's assessment of what is or is not procedurally fair, the individual context and factual matrix are key. Although cases may be similar in some respects, each must turn on its own facts, when the Court is engaged in a retrospective, objective assessment of fairness. The three first-instance cases produced by the parties in the authorities' bundle can each be distinguished significantly on their facts, such that their outcomes provide little direct assistance to this Court. Nevertheless, the general principles adopted in those cases are important.
43. It is also notable that the Defendant's evidence in this case does not come from the officer who engaged directly with the Claimant, Officer Kelly. The evidence is instead a relatively brief statement from the "cover officer" working alongside Officer Kelly as part of the enforcement team. With two notable exceptions, Officer Smith does not state that he has any independent recollection of the questions and answers given by the Claimant, which occurred more than 14 months prior to the making of the statement. He indicates that he created his statement after reviewing "documents contained in Home Office

files and records” and from information he himself recorded on his digital pocket notebook. The first exception, as regards his independent recollection, is that Officer Smith can recall – though no explanation is provided as to why this is or any other contextual information – the Claimant saying he was working for his uncle and had had no contact with GMICS since he arrived in the UK. The second is dealt with below.

44. Officer Smith refers to the dates of the Claimant’s visa, but makes no mention of the date the Claimant actually entered the UK, nor the date that his application indicated would be the commencement date for his work for GMICS. Officer Smith makes plain that he cannot recall the full questions posed and answers given, but relies on Officer Kelly’s record, which he says was confirmed as correct by the Claimant. In this regard, nothing is said about enquiries made to establish the Claimant’s facility in written English, including the version of English that appears in Officer Kelly’s Pronto notes (this is an observation merely about the obvious typographical errors on the face of the documents). The Pronto records are entered on a mobile telephone, but there is no evidence as to the ease or otherwise with which one is able to view the notes. Although it is said that the Claimant was invited to review the notes before signing, the evidence is unclear as to how much time the Claimant in fact spent reviewing or appearing to review the notes before signing them. Again, without explanation as to how he comes by his specific recollection, Officer Smith states that at no point in his “observations or interactions” with the Claimant, did he ask for legal advice or to be able to speak to a family member. It is not clear whether this is intended to rule out any suggestion that the Claimant did, or just to suggest that the Claimant did not to Officer Smith’s knowledge as it was not within an observation or interaction.
45. Given the centrality of the relevant, factual context in a case involving an assessment of procedural fairness, I set out what those appear to me to be:
- (a) The IEOs were conducting a ‘random’ operation within Birmingham New Street Train Station (with British Transport Police);

- (b) There is no evidence advanced that this was an intelligence-led operation at all, or that it was aimed at catching people with any particular characteristics or immigration status;
- (c) The IEOs were certainly not acting on any intelligence in respect of the Claimant specifically, or in respect of any address or place of work potentially connected with the Claimant;
- (d) The IEO's attention was only drawn to the Claimant as a result of what Officer Kelly is supposed to have described as his reaction to seeing the group of IEOs and police officers (appearing nervous and to walk away from the officers);
- (e) The Claimant was not engaged in any activity that was obviously questionable (such as in *Kanyal* or in *Badhur Khan*); he was simply going about his business;
- (f) Moreover, the encounter took place in as public a place as one might envisage – not just a train station but one of the substantial size and bustling busyness of New Street;
- (g) There is no evidence from the Defendant as to the exact physical circumstances in which the preliminary or more detailed interviews took place and no outline of the measures taken to ensure that the Claimant's dignity was preserved, that he was enabled to concentrate on listening to and answering questions in a second language;
- (h) There is also no evidence about any measures taken to reduce or remove the impact of the obvious distractions, in particular the impact of surrounding noise, in facilitating procedural fairness;
- (i) There is no evidence that the fact that the Claimant's sponsor was GMICS caused any concern, for example as to compliance with requirements for sponsors or the like;
- (j) The Claimant appears to have been cautioned and arrested very quickly after the beginning of the encounter on suspicion of being in breach,

with no evidence of any changes to the environment made before embarking on the more detailed interview with its potentially serious and life-changing consequences;

- (k) The maker of what is contained in the Defendant's Pronto notes is not available and has not provided any evidence; the contents remain the subject of challenge both as to completeness and as to accuracy of what is recorded;
- (l) The Defendant's position relies heavily on the accuracy and reliability of the Pronto notes and that they refute the Claimant's position that his actual answers have been misunderstood and/or mis-recorded;
- (m) There is in fact no first-hand evidence of exactly what Officer Kelly said initially to the Claimant, though I accept it is likely that there would have been some form of introduction and some explanation for why she wished to speak to him;
- (n) The Claimant was encountered only ten days after the date on which his employment was due to have begun (again, in significant contrast to *Kanyal* and *Bahadur Khan*) and states that he provided a reason why he had not yet started his employment, an explanation which on the face of it is in no way implausible;
- (o) Although the Claimant does not challenge the conducting of questions and answers orally in English without an interpreter, there remains a lack of clarity as to the extent of his knowledge and understanding of exactly what was being put to him, why and what the potential consequences were, as well as his facility in written English when the notes were offered to him to confirm;
- (p) beyond the disputed answers given by the Claimant, there was no evidence, let alone compelling evidence, that he had in fact breached a condition of his leave (in contrast with *Kanwal* and *Bahadur Khan*, and even with *Kumar's* lack of facility in English for someone entering on a visa to study);

- (q) no additional investigation was undertaken by the IEOs, whether of the Claimant's uncle or of his sponsor – whilst it is not suggested in submissions that this was a requirement, it is part of the factual matrix in what is a somewhat unusual case.

46. Addressing Ground 1, I accept that there is no automatic requirement that legal advice will be suggested or advised. However, if it is intended to conduct, in such public view and circumstances, an interview of such significance, sufficient safeguards are necessary to ensure procedural fairness. In this case, Officer Kelly seems to have formed the view from very early on in the engagement with the Claimant that he was in breach and ripe for curtailment and removal. Indeed, the limited available evidence suggests that, whatever action she is said to have observed (beyond the threshold as taught in training) that caused her to approach the Claimant, even before the preliminary interview, Officer Kelly had him marked as someone likely to be of considerable interest to Immigration Enforcement. The caution and administrative arrest occurs at an early stage thereafter, according to Officer Smith.
47. At this point, with the knowledge and experience of procedure, process, applicable legislation and available powers that one must evidently attach to those acting in the role of IEO, being at the very least superior and likely to be considerably superior to that of the Claimant, Officer Kelly and/or Officer Smith should have paused and considered how to proceed to ensure fairness. There was clearly a decision that the initial exchange was adequate to justify arrest, but that further questioning was required – not desirable, but required. To conduct questioning of the centrality and importance to the Claimant's immediate and long-term future without any regard to the physical surroundings and their impact on the process created, in my judgment, procedural unfairness.
48. Although the IEOs may have been influenced in their conduct of the second interview by what they perceived to be an admission of 'guilt' freely made, that very perception should have heightened their appreciation of the need for great care in how they proceeded to ensure procedural fairness. Either the further questioning would confirm their perception, in which case, the details could be very important to the exercise of discretion and the assessment of extenuating

circumstances or it would undermine their perception and cause them to re-evaluate their initial understanding against the further information. In either scenario, how the next interview session was conducted was crucial. The heightened appreciation for care in approach applies particularly to the Claimant's unequivocal appreciation of what the IEOs would have understood as the substantial jeopardy then in play (both curtailment and detention) and by extension to the physical circumstances in which the next stage was conducted. Following his early administrative arrest, the Claimant could have been moved to a quiet, less public and more conducive setting with ease. No thought was given to this according to the evidence.

49. In the very specific circumstances of this case, only with sufficient knowledge and understanding of the gravity of the situation, and the opportunity to reflect on, and communicate clearly, whether he wished someone to be informed and to request this (whether legal advice and/or a responsible individual such as his uncle) could procedural fairness be assured. This did not happen and I have concluded that Ground 1 on procedural fairness succeeds.

Ground 3

50. It is unnecessary to deal with Ground 3 in any detail, as the parties agree that it stands or falls with Ground 1. As the Claimant succeeds on Ground 1, he does so on Ground 3 as well.

Refusal of relief

51. I have considered the Defendant's submission that even if the claim succeeds I should refuse relief on the basis that the outcome would have been highly likely to have been the same, even if the Claimant's answers were as he maintains. I am not persuaded that this submission is correct. Had the matters been investigated, as prompted by the Claimant's version of his answers, especially with the sponsor, it may well be that the Defendant might have exercised her discretion differently. The decision letter makes clear that discretion was applied and there was an absence of extenuating circumstances. I cannot say that that determination is likely to have been the outcome without the procedural unfairness. I therefore reject the Defendant's submission on the s31(2)(a) point.

The Court will therefore order relief, the form of which will need to be the subject of agreement or judicial ruling in default, following the handing down of this judgment.

Conclusion

52. This judgment is about the very specific circumstances engaged in this claim. This judgment is not intended to extend to all non-intelligence led, routine enforcement operations in public places and there is nothing intrinsically unlawful or unfair about such planned operations. Nevertheless, there is scope in such operations, as in any comparable situation, for procedural unfairness to vitiate the process. In my judgment, that is what occurred in the case of the interview of the Claimant on 11 January 24. The claim therefore succeeds on Ground 1 and, as a result, on Ground 3 and the decision to curtail the Claimant's leave will be quashed.