



Neutral Citation Number: [2016] EWHC 1912 (Admin)

Case No: CO/5432/2015

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

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 29/07/2016

**Before:**

**MRS JUSTICE MCGOWAN**

**Between:**

**R. (on the application of  
TDT, by his litigation friend, Tara Topteagarden)  
- and -**

**Claimant**

**SECRETARY OF STATE FOR THE HOME  
DEPARTMENT  
- and -**

**Defendant**

**EQUALITY AND HUMAN RIGHTS  
COMMISSION  
- and -**

**Intervener**

**WEST SUSSEX COUNTY COUNCIL (1)  
KENT POLICE (2)**

**Interested  
Parties**

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**Mr Chris Buttler (instructed by Simpson Millar LLP) for the Claimant**  
**Mr Gwion Lewis (instructed by The Government Legal Department) for the Defendant**  
**Helen Mountfield QC and Nick Armstrong (Instructed by the Equality and Human Rights Commission) for the Intervener**

Hearing dates: 20/04/2016 and 28/04/2016

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**Approved Judgment**

**Mrs Justice McGowan:**

1. The Claimant, (“TDT”), is a national of Vietnam. His age is in dispute. This challenge is brought on his behalf by his litigation friend, Tara Topteagarden, (“TT”). She is the Trafficked Boys’ Advisor at the Refugee Council. The decision under challenge was taken on 6 November 2015 in which the Defendant (“SSHD”) released him from administrative detention without first putting safeguarding measures in place. It is said that the Defendant is in breach of her positive duty under Article 4 of the European Convention on Human Rights and the Convention on Action against Trafficking in Human Beings; that she was or ought to have been aware of credible grounds to suspect that the Claimant was the victim of trafficking and she was wrong to dispute his age. The Equality and Human Rights Commission (“EHRC”) has been given permission to intervene, its concerns are with the wider issues of the State’s positive obligations to putative victims of trafficking and, in particular, the treatment of children who may be the victims of trafficking. It supports the claim for declaratory relief. The Defendant resists the claim, arguing that there were not circumstances giving rise to a credible suspicion of trafficking in the specific case of the Claimant; that the claim is academic and, in any event premature, as the Claimant is still missing and no ‘conclusive grounds’ decision has yet been made. West Sussex County Council (“**the Local Authority**”) and Kent Police (“**the Police**”) were joined as the First and Second Interested Parties respectively but ceased to be Interested Parties on 30 November 2015.
2. A very large number of issues have been raised in the case. I have not determined every point. Whilst I have considered all points canvassed and argued, I have only made findings on those matters necessary to determine the claim.

*The Background*

3. On 8 September 2015 the Claimant was found by Police officers in the back of a lorry in Kent. A number of other males were found at the same time. In total there were 16; 4 from Syria, 4 from Iran, 1 from Iraq and 7 from Vietnam. He was detained at Dover Immigration Removal Centre under paragraph 16 of schedule 2 Immigration Act 1971 on the stated grounds, “*There is insufficient reliable information to decide whether to grant you temporary admission or release*” and “*You have not produced satisfactory evidence of your identity, nationality or lawful basis to be in the UK.*” On 10 September Form IS97M was completed and it was determined that he would be treated as an adult because it was said, “*Your physical appearance/demeanour very strongly suggest that you are significantly over 18 years of age.*” He had claimed that his date of birth was 5 December 1999.
4. Three of the Vietnamese males who had been found in the same lorry and detained had gone missing by 28 October, two remained missing as at 6 November; one had left his foster placement but had returned there.
5. The Claimant was, at that time, represented by the previous firm of solicitors. They sought his temporary admission into the UK on two occasions and challenged the assessment of him as being over 18. The question of his being the victim of

trafficking was not raised until 23 October. His current solicitors were instructed on or by 23 October.

6. On 28 October TT, who has expertise in the trafficking of children, made a formal referral to the UK Human Trafficking Centre stating that, in her opinion, there was reason to believe that he was a victim of child trafficking. She was certified as his litigation friend on 3 November.

#### *History of the Proceedings*

7. On 29 October a pre-action protocol letter was sent to the Defendant asking for release of the Claimant but not before stringent safeguarding measures had been put in place. The letter set out a number of concerns relating to the high incidence of trafficking amongst Vietnamese teenaged children and young adults. It proposed a meeting to include the Local Authority and the Police and that a plan to prevent trafficking or re-trafficking should be drawn up before his release. There was no reply.
8. On 6 November a claim for Judicial Review and urgent relief was issued. That claim sought the release of the Claimant from detention “*but only on terms that will minimise the risk of him being re-trafficked*”. It was claimed that there was strong evidence that the Claimant was a child victim of trafficking. Urgency was sought because he was detained and therefore not receiving the care and support he needs. The claim set out that the Local Authority was willing to assist. In particular, the application said, “*Immediate release is inappropriate because of the very high risk that the Claimant will be re-trafficked*”. In addition, the application sought an order requiring, amongst other points, that by 9 November the Defendant;
  - i) File and serve a “reasonable grounds” decision under the National Referral Mechanism as to whether it agrees that there are reasonable grounds to believe that the Claimant may be a victim of trafficking,
  - ii) State whether it agrees to release the Claimant,
  - iii) In consultation with the Local Authority and the Police, shall set out any proposals for the production of a risk assessment and a protection plan to minimise the risk or re-trafficking if the Claimant was to be released on a voluntary basis or by court order.

#### *Events of 6 November*

9. The claim was delivered to the Government Legal Department on 6 November at 12.25pm. The Defendant takes issue that that amounted to service under the Crown Proceedings Act 1947. That is not an issue which has to be determined. What is not in dispute is that notice of resistance to immediate and unconditional release was communicated to the Defendant before the time of release.
10. At 1.30 pm the Claimant was told by an immigration official that he might be released and was asked if he had an address he could go to if he was. That message was passed on to his solicitors by him in a telephone call lasting from 2.33pm to 2.48pm. At 3.18pm the solicitors acting emailed the Defendant and the Government Legal

Department stating that the Claimant should not be released without at least 6 hours' notice so that, if necessary, an emergency injunction could be sought. At some point during the afternoon, after the telephone call at 2.48pm, the Defendant released the Claimant from detention. He disappeared and has not been traced. There is no evidence as to his whereabouts but those who act for him believe that he has been re-trafficked.

11. Coincidentally on 6 November Nicol J ordered that the time for an Acknowledgment of Service be abridged to 7 days and that the papers should be put before a Judge for urgent consideration of the application and interim relief.
12. On 10 November an application for a hearing was issued on behalf of the Claimant. It was submitted that the Defendant was in breach of her duty to protect him as a victim of trafficking under Article 4 and she should explain her action and what steps would be taken to recover him. It was also said that the Claimant would be seeking that the original claim be amended to seek a declaration of the breach and damages.
13. On 13 November the Defendant served her Summary Grounds of Defence. It was contended that as the original claim for Judicial Review sought the Claimant's release that the claim was now academic as he had indeed been released on 6 November. It went on to submit that any decisions about there being reasonable grounds to believe that the Claimant may be a victim of trafficking or about the Claimant's age could not be pursued, at that time, as the Claimant had disappeared.

#### *Legislative Background*

14. It is unlawful for a public authority to act in a way which is incompatible with a convention right, *s.6(1) Human Rights Act 1998*. Article 4 of the European Convention on Human rights prohibits slavery and forced labour, the relevant provisions are;

1. *No one shall be held in slavery or servitude.*
2. *No one shall be required to perform forced or compulsory labour.*

Article 4 imposes a duty on the Defendant to take reasonable steps to protect an individual from being trafficked or re-trafficked. That duty is identified as "investigative", "administrative" and "operational" or "protective". The operational or protective duty is engaged when an individual is at "real and immediate" danger of being re-trafficked.

15. The age of the Claimant is disputed. When he was detained it was concluded by immigration officials that he was significantly over 18, based on his physical appearance and demeanour and in the absence of credible evidence to the contrary. That follows current guidance on age assessment for detained persons. However, *Section 51 Modern Slavery Act 2015* has created a presumption about the age of a detained person who is or might be, on reasonable grounds, the victim of trafficking.

*(1) This section applies where—*

*(a) a public authority with functions under relevant arrangements has reasonable grounds to believe that a person may be a victim of human trafficking, and*

*(b) the authority is not certain of the person's age but has reasonable grounds to believe that the person may be under 18.*

*(2) Until an assessment of the person's age is carried out by a local authority or the person's age is otherwise determined, the public authority must assume for the purposes of its functions under relevant arrangements that the person is under 18.*

*(3) "Relevant arrangements" means arrangements for providing assistance and support to persons who are, or who there are reasonable grounds to believe may be, victims of human trafficking, as set out in—*

*(a) guidance issued under section 49(1)(b);*

*(b) any regulations made under section 50(1).*

*(4) "Local authority" has the same meaning as in the Children Act 1989 section 105 of that Act).*

16. The Defendant has drafted guidance, issued under s. 49(1)(b) of the Act to deal with its "functions under relevant arrangements" so that when there are reasonable grounds to believe that a detained person may be under 18 **and** there are reasonable grounds to believe that she may be a victim of trafficking then she must be treated as a child pending a local authority age assessment, ([Victims of Modern Slavery, Competent Authority](#)).
17. [Directive 2011/36/EU](#) identifies trafficking as a serious crime which creates a gross violation of fundamental rights. Its prevention is described as a priority. It sets out enhanced protection for children. It further describes the provision which should be made for such victims, either as potential defendants in criminal cases or more generally. It has not yet been brought fully into effect.

*Recital 18) It is necessary for victims of trafficking in human beings to be able to exercise their rights effectively. Therefore assistance and support should be available to them before, during and for an appropriate time after criminal proceedings. Member States should provide for resources to support victim assistance, support and protection. The assistance and support provided should include at least a minimum set of measures that are necessary to enable the victim to recover and escape from their traffickers. The practical implementation of such measures should, on the basis of an individual assessment carried out in accordance with national procedures, take into account the circumstances, cultural context and needs of the person concerned. A person should be provided with assistance and support as soon as there is a reasonable-grounds indication for believing that he or she might have been trafficked and irrespective of his or her willingness to act as a witness. In cases where the victim does not reside lawfully in the Member State concerned, assistance and support should be provided unconditionally at least during the reflection period. If, after completion of the identification process or*

*expiry of the reflection period, the victim is not considered eligible for a residence permit or does not otherwise have lawful residence in that Member State, or if the victim has left the territory of that Member State, the Member State concerned is not obliged to continue providing assistance and support to that person on the basis of this Directive. Where necessary, assistance and support should continue for an appropriate period after the criminal proceedings have ended, for example if medical treatment is ongoing due to the severe physical or psychological consequences of the crime, or if the victim's safety is at risk due to the victim's statements in those criminal proceedings.*

Although the directive was enacted on 5 April 2011 its transposition, due by 6 April 2013, has not yet taken place.

18. In ratifying and implementing [The Anti-Trafficking Convention](#) the United Kingdom assumed protective and remedial obligations to trafficking victims. The Defendant's duty to provide assistance under the Anti-Trafficking Convention is engaged no later than the point at which a decision is made that there are reasonable grounds to believe a particular appellant to be a victim of trafficking.

*Article 10. 2 Each Party shall adopt such legislative or other measures as may be necessary to identify victims as appropriate in collaboration with other Parties and relevant support organisations. Each Party shall ensure that, if the competent authorities have reasonable grounds to believe that a person has been victim of trafficking in human beings, that person shall not be removed from its territory until the identification process as victim of an offence provided for in Article 18 of this Convention has been completed by the competent authorities and shall likewise ensure that that person receives the assistance provided for in Article 12, paragraphs 1 and 2.*

19. The leading authority on the positive obligations arising under Articles 4 of the Convention is [Rantsev v Cyprus and Russia \(2010\) 51 EHRR 1](#). It was a case concerning the trafficking into Cyprus of Russian women to work as cabaret artistes. It sets out the history of the development of European jurisprudence in this area and reviewed the relevant authorities in considerable detail.

## **2. General principles of Article 4**

**1. The Court reiterates that, together with Articles 2 and 3, Article 4 enshrines one of the basic values of the democratic societies making up the Council of Europe (Siliadin, cited above, § 82). Unlike most of the substantive clauses of the Convention, Article 4 makes no provision for exceptions and no derogation from it is permissible under Article 15 § 2 even in the event of a public emergency threatening the life of the nation.**

**2. In assessing whether there has been a violation of Article 4, the relevant legal or regulatory framework in place must be taken into account (see, mutatis mutandis, Nachova and Others v. Bulgaria [GC], nos. 43577/98 and 43579/98, § 93, ECHR 2005-VII). The Court considers that the spectrum of safeguards set out in national legislation must be adequate to ensure the**

*practical and effective protection of the rights of victims or potential victims of trafficking. Accordingly, in addition to criminal law measures to punish traffickers, Article 4 requires member States to put in place adequate measures regulating businesses often used as a cover for human trafficking. Furthermore, a State's immigration rules must address relevant concerns relating to encouragement, facilitation or tolerance of trafficking (see, mutatis mutandis, Guerra and Others v. Italy, 19 February 1998, §§ 58 to 60, Reports of Judgments and Decisions 1998-I; Z and Others v. the United Kingdom [GC], no. 29392/95, §§ 73 to 74, ECHR 2001-V; and Nachova and Others, cited above, §§ 96 to 97 and 99-102).*

3. *In its Siliadin judgment, the Court confirmed that Article 4 entailed a specific positive obligation on member States to penalise and prosecute effectively any act aimed at maintaining a person in a situation of slavery, servitude or forced or compulsory labour (cited above, §§ 89 and 112). In order to comply with this obligation, member States are required to put in place a legislative and administrative framework to prohibit and punish trafficking. The Court observes that the Palermo Protocol and the Anti-Trafficking Convention refer to the need for a comprehensive approach to combat trafficking which includes measures to prevent trafficking and to protect victims, in addition to measures to punish traffickers (see paragraphs 149 and 163 above). It is clear from the provisions of these two instruments that the Contracting States, including almost all of the member States of the Council of Europe, have formed the view that only a combination of measures addressing all three aspects can be effective in the fight against trafficking (see also the submissions of Interights and the AIRE Centre at paragraphs 267 and 271 above). Accordingly, the duty to penalise and prosecute trafficking is only one aspect of member States' general undertaking to combat trafficking. The extent of the positive obligations arising under Article 4 must be considered within this broader context.*

4. *As with Articles 2 and 3 of the Convention, Article 4 may, in certain circumstances, require a State to take operational measures to protect victims, or potential victims, of trafficking (see, mutatis mutandis, Osman, cited above, § 115; and Mahmut Kaya v. Turkey, no. 22535/93, § 115, ECHR 2000-III). In order for a positive obligation to take operational measures to arise in the circumstances of a particular case, it must be demonstrated that the State authorities were aware, or ought to have been aware, of circumstances giving rise to a credible suspicion that an identified individual had been, or was at real and immediate risk of being, trafficked or exploited within the meaning of Article 3(a) of the Palermo Protocol and Article 4(a) of the Anti-Trafficking Convention. In the case of an answer in the affirmative, there will be a violation of Article 4 of the Convention where the authorities fail to take appropriate measures within the scope of their powers to remove the individual from that situation or risk (see, mutatis mutandis, Osman, cited above, §§116 to 117; and Mahmut Kaya, cited above, §§ 115 to 116).*

5. *Bearing in mind the difficulties involved in policing modern societies and the operational choices which must be made in terms of priorities and resources, the obligation to take operational measures must, however, be interpreted in a way which does not impose an impossible or disproportionate burden on the authorities (see, mutatis mutandis, Osman, cited above, § 116). It is relevant to the consideration of the proportionality of any positive*

*obligation arising in the present case that the Palermo Protocol, signed by both Cyprus and the Russian Federation in 2000, requires States to endeavour to provide for the physical safety of victims of trafficking while in their territories and to establish comprehensive policies and programmes to prevent and combat trafficking (see paragraphs 153 to 154 above). States are also required to provide relevant training for law enforcement and immigration officials (see paragraph 155 above).*

*6. Like Articles 2 and 3, Article 4 also entails a procedural obligation to investigate situations of potential trafficking. The requirement to investigate does not depend on a complaint from the victim or next-of-kin: once the matter has come to the attention of the authorities they must act of their own motion (see, mutatis mutandis, Paul and Audrey Edwards v. the United Kingdom, no. 46477/99, § 69, ECHR 2002-II). For an investigation to be effective, it must be independent from those implicated in the events. It must also be capable of leading to the identification and punishment of individuals responsible, an obligation not of result but of means. A requirement of promptness and reasonable expedition is implicit in all cases but where the possibility of removing the individual from the harmful situation is available, the investigation must be undertaken as a matter of urgency. The victim or the next-of-kin must be involved in the procedure to the extent necessary to safeguard their legitimate interests (see, mutatis mutandis, Paul and Audrey Edwards, cited above, §§ 70 to 73).*

*7. Finally, the Court reiterates that trafficking is a problem which is often not confined to the domestic arena. When a person is trafficked from one State to another, trafficking offences may occur in the State of origin, any State of transit and the State of destination. Relevant evidence and witnesses may be located in all States. Although the Palermo Protocol is silent on the question of jurisdiction, the Anti-Trafficking Convention explicitly requires each member State to establish jurisdiction over any trafficking offence committed in its territory (see paragraph 172 above). Such an approach is, in the Court's view, only logical in light of the general obligation, outlined above, incumbent on all States under Article 4 of the Convention to investigate alleged trafficking offences. In addition to the obligation to conduct a domestic investigation into events occurring on their own territories, member States are also subject to a duty in cross-border trafficking cases to cooperate effectively with the relevant authorities of other States concerned in the investigation of events which occurred outside their territories. Such a duty is in keeping with the objectives of the member States, as expressed in the preamble to the Palermo Protocol, to adopt a comprehensive international approach to trafficking in the countries of origin, transit and destination (see paragraph 149 above). It is also consistent with international agreements on mutual legal assistance in which the respondent States participate in the present case (see paragraphs 175 to 185 above).*

20. The test of “real and immediate” has been considered definitively in the case of [Rabone v Pennine HHS Foundation Trust \[2012\] UKSC 2](#) by Lord Dyson, MR.



37. *I accept that it is more difficult to establish a breach of the operational duty than mere negligence. This is not least because, in order to prove negligence, it is sufficient to show that the risk of damage was reasonably foreseeable; it is not necessary to show that the risk was real and immediate. But to say that the test is a high one or more stringent than the test for negligence does not shed light on the meaning of "real and immediate" or on the question whether there was a real and immediate risk on the facts of any particular case.*
38. *It seems to me that the courts below were clearly right to say that the risk of ... suicide was "real" in this case. On the evidence ... it was a substantial or significant risk and not a remote or fanciful one.....*
39. *As for whether the risk was "immediate" ..... In the case of *In re Officer L* [\[2007\] 1 WLR 2135](#), para 20, Lord Carswell stated that an apt summary of the meaning of an "immediate" risk is one that is "present and continuing". In my view, one must guard against the dangers of using other words to explain the meaning of an ordinary word like "immediate". But I think that the phrase "present and continuing" captures the essence of its meaning. The idea is to focus on a risk which is present at the time of the alleged breach of duty and not a risk that will arise at some time in the future*

### *The Approach*

21. The Claimant says that there is a clear breach of the Defendant's protective or operational duty under Article 4 because she failed to take reasonable steps to protect the Claimant in circumstances where she knew, or ought to have known, that there was a credible suspicion that he was a victim of trafficking. The submission goes further and argues that the "breach in this case is symptomatic of a wider problem" and that the alleged breach in this case identifies a gap in protection for victims and potential victims of trafficking and is therefore also a breach of the wider duty. A large volume of evidence has been served to support the contention that others, with experience and expertise in this field, were of the view that the Claimant was under 18 at the time of his detention, was the victim of trafficking and was therefore at a real and immediate risk of being trafficked or re-trafficked. It is submitted that the Defendant has failed to comply with her obligations under Article 4. The questions for the court, in its own judgement, are identified as follows;
- i) Did the Claimant's circumstances put him into the category where an operational duty arose or was capable of arising?
  - ii) Did the Defendant know or should she have known of circumstances giving rise to a credible suspicion that the Claimant had been trafficked and was at a real and immediate risk of being re-trafficked?
  - iii) What steps, if any, were taken to protect him and were they reasonable?
  - iv) Consequently, is the Defendant in breach of her duties under Article 4?

22. Mr Buttler makes the submission that there were grounds giving rise to a credible suspicion, based on the combination of circumstances; the high incidence of trafficking amongst Vietnamese nationals, particularly those in their teens in combination with the fact that the Claimant was travelling in a lorry with other Vietnamese males who may have been trafficked and that three of them had disappeared by the time of the decision. Further that there was uncertainty about his age and the clear view of his solicitor that he was under 18. There is a wealth of evidence dealing with the prevalence of Vietnamese nationals amongst those who are trafficked into the UK. It is not possible to be certain about the proportionate incidence but it is accepted to be high. All of these features were known to the officials who detained and eventually released the Claimant.
23. The Equality and Human Rights Commission intervenes with leave. Its role under statute in this field is well known and acknowledged. Its intention is expressed as being to focus on the wider legal and policy framework rather than on the facts of the individual case. It submits that the failures in this individual case are evidence of “a wider systems failure”. That the policy and guidance available is inadequate to enable those charged with discharging the Defendant’s duties under Article 4 to meet those obligations. It is submitted that the transposition date of the Directive was more than three years ago. Consequently, its proposals have not been brought into effect in that there are still no independent child trafficking advocates and that no “relevant functions” within s 51 of the Modern Slavery Act 2015 have been determined. It argues that the guidance provided does not go anything like far enough properly to identify risk and then to provide adequate measures to deal with that risk.
24. The Defendant argues that the claim in this case relates solely to the decision of 6 November 2015 to release the Claimant in the manner described, without safeguarding measures having been put in place. She argues that there was no evidence that this individual was at a real and immediate risk of being trafficked or re-trafficked at the time. Mr Lewis submits that neither the Claimant nor the Intervener has leave to argue for a declaration that the entire system of dealing with known or suspected victims of human trafficking is unlawful. The order by May J of 27 January 2016, granting permission to the Claimant to bring Judicial Review proceedings says,

“There is a reasonably arguable challenge under Art 4 to the SoS’ decision to release the claimant from detention without putting protective measures in place. If the parties seek to amend their grounds of challenge/defence following a “conclusive grounds” decision in the claimant’s case then they may apply to do so pending the hearing date. It is inferred from the Amended Grounds of Defence that a “conclusive grounds decision is to be made imminently (see para 4 of the Amended Grounds of Defence). There will be no order to expedite the hearing whilst the claimant’s whereabouts remain uncertain. For that reason there will also be a general liberty to apply.”

On 11 April 2015 Hickinbottom J granted the application to intervene on the ambit of the State’s positive obligation to putative victims of trafficking and, in particular, child victims. In the observations to his order he said,

“The Claimant challenges the Secretary of State’s decision to release him from administrative detention, on the grounds that, in releasing him, she breached her duty to take reasonable steps to protect him from the risk of re-trafficking in

breach of her positive Article 4 obligations. The EHRC seeks to intervene.....In my view, the EHRC's part in the claim, albeit, modest in extent, might be particularly useful for the court"

25. The Defendant submits that the evidence served in support of the Claimant's case sets out the general problem, which is accepted, of the high prevalence of trafficking amongst teenage Vietnamese nationals. It is submitted that this, even in combination with concerns expressed about others from the same lorry, does not move the position from the general to the particular in order to establish that there were grounds for credible suspicion that the Claimant had been or may have been the victim of trafficking. Further that there was no basis upon which a real and immediate risk of re-trafficking could be established.

### *Analysis*

26. All the parties have presented complex and detailed arguments, both orally and in writing, with great skill. The broader arguments raise questions of principle and general application. There is a wealth of material to support the genuinely held and earnestly expressed concerns of those who represent the Claimant's interests that there is a significant problem of trafficking, not limited to but prevalent amongst Vietnamese nationals. There is no doubt about the sincerity of their belief that he was and is the victim of trafficking.
27. If there was a credible basis to suspect that he was trafficked into the UK then he has not been offered reasonable protection against being re-trafficked. The questions at the core of the case are, first, was he trafficked or was there enough material to give rise to a credible suspicion that he had been trafficked? Second, if he was trafficked does that mean that he was at a real and immediate risk of being re-trafficked?
28. Applying the test set out in *Rantsev* to the issues, namely, "***In order for a positive obligation to take operational measures to arise in the circumstances of a particular case, it must be demonstrated that the State authorities were aware, or ought to have been aware, of circumstances giving rise to a credible suspicion that an identified individual had been, or was at real and immediate risk of being, trafficked or exploited***". What are the circumstances said to give rise to the credible suspicion? It is accepted that simply being a Vietnamese national of about 18 years of age is not enough. The incidence is high but not high enough for that automatically to give rise to grounds for a credible suspicion. It is submitted on the Claimant's behalf that there is more, there is the fact that he was travelling in a lorry with other Vietnamese males, who were thought may be victims of trafficking and that one of them had disappeared from foster care and two from detention. It is also submitted that those who represent him had put forward evidence of their belief that he was under 18. There were 16 males in the same lorry, 9 of whom were not Vietnamese nationals. There is no suggestion that the other nationals were victims of trafficking. It is difficult to see how the Claimant's presence in the lorry with other Vietnamese, about whom the same concerns were expressed, can without more, amount to grounds for credible suspicion. It is further submitted that three of the other Vietnamese males had disappeared by 6 November. That is true but one returned in due course. That such persons disappear frequently and for a variety of reasons is obvious.

29. On the age issue it is clear, given that the male who disappeared and returned was in foster care that some consideration had been given to the age of the detainees and he had been assessed as young enough for foster care rather than detention. The immigration officials who considered the age of the detained Vietnamese nationals must, on the day of detention or later, have applied the guidelines and determined that at least one of them was or may have been under 18. The determination of the Claimant's age at that point is disputed but it is not demonstrably unreasonable. There was a conflict of opinion which was not determined before his disappearance. The certainty on the part of the Claimant's witnesses that he was under 18 and has since been trafficked does not prove that he has and does inform the decision taken on 6 November 2015, which is the decision under challenge.
30. Although I do not find such grounds established I have gone on to consider the Rabone test, namely, looking for a substantial or significant risk of re-trafficking which is present and continuing. On the premise that there were grounds for the credible suspicion that the Claimant had been trafficked into the UK it is argued that having been trafficked he was at a real and immediate risk of being re-trafficked. Even if there were credible grounds for suspicion, what more is there to give rise to a real and immediate risk? It is accepted that being Vietnamese and about 18 is not enough but that, actually, is the basis upon which the submission is founded. It is said that in such cases it is common practice for contact between the traffickers and the trafficked to be re-established after detention and for there to be a "voluntary" or forced reunion. Accepting that evidence, it is still based on the age and nationality of the Claimant without any or any sufficient additional grounds to establish the basis of this challenge.
31. Accordingly, I do not find an operational breach of Article 4 in this case. Article 4 imposes positive duties on the defendant, including but not limited to the implementation and enforcement of proper systems to ensure compliance with those duties. If it had been necessary for the determination of this case, I would be likely to have agreed with the Claimant's and Intervener's submissions that a general failure to comply with the positive duties created by Article 4 could amount to a failure in an individual case. It was not necessary and I do not make that finding. There was an operational duty owed to the Claimant, and on the evidence available to me it was adequately fulfilled. The release of the Claimant on 6 November was not unlawful. As there was no specific failure I do not find a systemic failure.
32. That there is an obligation to discover and protect those who are the victims of human trafficking is obvious. It is a mark of a civilised state, it places a high and continuing burden on the Defendant. It must be discharged by the maintenance and enforcement of proper systems based, in large measure, on adequate training of frontline staff and the provision of safe and secure facilities. It requires vigilant scrutiny to maintain an adequate minimum standard. That adequate minimum standard was achieved in this case.
33. However, it must be added that given the representations that were made, from late October but particularly on 6 November, his release should not have taken place until those representing him had been allowed to make an urgent application for an injunction. The fact that representations changed over time from a request for immediate and unconditional release to release conditional upon safeguarding

measures being in place does not justify release in disregard of the request for such a delay to allow access to the courts.

34. Accordingly, this claim for judicial review fails.