II. DETENTION AND THE COMMON EUROPEAN ASYLUM SYSTEM

Issues:

(i) Detention in UK pending transfer to another Member State;
(ii) Detention in another Member State pending transfer to the UK;
(iii) Risk of detention in another state as grounds for resisting transfer.

Common European Asylum System

- **the Dublin III Regulation** (Council Regulation (EC) No 604/2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national).

- **the Reception Directives** (Council Directive 2013/33/EU laying down minimum standards for the reception of asylum seekers ("the recast Reception Directive"). The UK has opted out of the recast version, and remains governed by the previous version: Council Directive 2003/9/EC laying down minimum standards for the reception of asylum seekers)
- **the Qualification Directives** (Council Directive 2011/95). Again, this the recast Qualification Directive does not apply to the UK. The UK remains governed by Qualification Directive 2004/83/EC).

- **the Procedures Directives** (Council Directive 2013/32/EU on common procedures for granting and withdrawing international protection ("the recast Procedures Directive"). Again, this does not apply to the UK. The UK remains governed by Council Directive 2005/85/EC.

- **the Eurodac Regulation** (Regulation (EU) No 603/2013

Together, the legislation comprising the CEAS forms a complete body of rules of law - see Advocate-General Jaaskinen in ***C-4/11 Puid v Bundesrepulik Deutschland*** [2014] Q.B. 346 in his opening paragraph:

> "The European Union has harmonised both the procedures and substantive rules of refugee law, thereby establishing a complete body of rules law within the Common European Asylum System. It is founded on respect for relevant rules of international law, including the principle of non-refoulement…"

Dublin III Regulation

Article 2(n):

> "'risk of absconding' means the existence of reasons in an individual case, which are based on objective criteria defined by law, to believe that an applicant or a third country national or a stateless person who is subject to a transfer procedure may abscond."

Article 28:

"Detention

1. Member States shall not hold a person in detention for the sole reason that he or she is subject to the procedure established by this Regulation.
2. When there is a significant risk of absconding, Member States may detain the person concerned in order to secure transfer procedures in accordance with this Regulation, on the basis of an individual assessment and only in so far as detention is proportional and other less coercive alternative measures cannot be applied effectively.
3. Detention shall be for as short a period as possible and shall be for no longer than the time reasonably necessary to fulfil the required administrative procedures with due diligence until the transfer under this Regulation is carried out.
Where a person is detained pursuant to this Article, the period for submitting a take charge or take back request shall not exceed one month from the lodging of the application. The Member State carrying out the procedure in accordance with this Regulation shall ask for an urgent reply in such cases. Such reply shall be given within two weeks of receipt of the request. Failure to reply within the two-week period shall be tantamount to accepting the request and shall entail the obligation to take charge or take back the person, including the obligation to provide for proper arrangements for arrival.
Where a person is detained pursuant to this Article, the transfer of that person from the requesting Member State to the Member State responsible shall be carried out as soon as practically possible, and at the latest within six weeks of the implicit or explicit acceptance of the request by another Member State to take charge or to take back the person concerned or of the moment when the appeal or review no longer has a suspensive effect in accordance with Article 27(3).
When the requesting Member State fails to comply with the deadlines for submitting a take charge or take back request or where the transfer does not take place within the period of six weeks referred to in the third subparagraph, the person shall no longer be detained. Articles 21, 23, 24 and 29 shall continue to apply accordingly.
4. As regards the detention conditions and the guarantees applicable to persons detained, in order to secure the transfer procedures to the Member State responsible, Articles 9, 10 and 11 of Directive 2013/33/EU shall apply."

Reception Directive
Article 8

"Detention
1. Member States shall not hold a person in detention for the sole reason that he or she is an applicant in accordance with Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (8).
2. When it proves necessary and on the basis of an individual assessment of each case, Member States may detain an applicant, if other less coercive alternative measures cannot be applied effectively.
3. An applicant may be detained only:
(a) in order to determine or verify his or her identity or nationality;
(b) in order to determine those elements on which the application for international protection is based which could not be obtained in the absence of detention, in particular when there is a risk of absconding of the applicant;
(c) in order to decide, in the context of a procedure, on the applicant's right to enter the territory;

(d) when he or she is detained subject to a return procedure under Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals (9), in order to prepare the return and/or carry out the removal process, and the Member State concerned can substantiate on the basis of objective criteria, including that he or she already had the opportunity to access the asylum procedure, that there are reasonable grounds to believe that he or she is making the application for international protection merely in order to delay or frustrate the enforcement of the return decision;
(e) when protection of national security or public order so requires;
(f) in accordance with Article 28 of Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (10).
The grounds for detention shall be laid down in national law.
4. Member States shall ensure that the rules concerning alternatives to detention, such as regular reporting to the authorities, the deposit of a financial guarantee, or an obligation to stay at an assigned place, are laid down in national law."

Article 9

"Guarantees for detained applicants
1. An applicant shall be detained only for as short a period as possible and shall be kept in detention only for as long as the grounds set out in Article 8(3) are applicable.
Administrative procedures relevant to the grounds for detention set out in Article 8(3) shall be executed with due diligence. Delays in administrative procedures that cannot be attributed to the applicant shall not justify a continuation of detention.
2. Detention of applicants shall be ordered in writing by judicial or administrative authorities. The detention order shall state the reasons in fact and in law on which it is based.
3. Where detention is ordered by administrative authorities, Member States shall provide for a speedy judicial review of the lawfulness of detention to be conducted ex officio and/or at the request of the applicant. When conducted ex officio, such review shall be decided on as speedily as possible from the beginning of detention. When conducted at the request of the applicant, it shall be decided on as speedily as possible after the launch of the relevant proceedings. To this end, Member States shall define in national law the period within which the judicial review ex officio and/or the judicial review at the request of the applicant shall be conducted.
Where, as a result of the judicial review, detention is held to be unlawful, the applicant concerned shall be released immediately.
4. Detained applicants shall immediately be informed in writing, in a language which they understand or are reasonably supposed to understand, of the reasons for detention and the procedures laid down in national law for challenging the detention order, as well as of the possibility to request free legal assistance and representation.
5. Detention shall be reviewed by a judicial authority at reasonable intervals of time, ex officio and/or at the request of the applicant concerned, in particular whenever it is of a prolonged duration, relevant circumstances arise or new information becomes available which may affect the lawfulness of detention.
6. In cases of a judicial review of the detention order provided for in paragraph 3, Member States shall ensure that applicants have access to free legal assistance and

representation. This shall include, at least, the preparation of the required procedural documents and participation in the hearing before the judicial authorities on behalf of the applicant.
Free legal assistance and representation shall be provided by suitably qualified persons as admitted or permitted under national law whose interests do not conflict or could not potentially conflict with those of the applicant.
[but subject to some restriction in Article 9(7)]
…"

Article 10

"Conditions of detention
1. Detention of applicants shall take place, as a rule, in specialised detention facilities. Where a Member State cannot provide accommodation in a specialised detention facility and is obliged to resort to prison accommodation, the detained applicant shall be kept separately from ordinary prisoners and the detention conditions provided for in this Directive shall apply.
As far as possible, detained applicants shall be kept separately from other third-country nationals who have not lodged an application for international protection.
When applicants cannot be detained separately from other third-country nationals, the Member State concerned shall ensure that the detention conditions provided for in this Directive are applied.
2. Detained applicants shall have access to open-air spaces.
…
4. [family and legal visit]
5. [provision of information]"

Article 11

Detention of vulnerable persons and of applicants with special reception needs
…
2. Minors shall be detained only as a measure of last resort and after it having been established that other less coercive alternative measures cannot be applied effectively. Such detention shall be for the shortest period of time and all efforts shall be made to release the detained minors and place them in accommodation suitable for minors.
The minor's best interests, as prescribed in Article 23(2), shall be a primary consideration for Member States.
…
3. Unaccompanied minors shall be detained only in exceptional circumstances. All efforts shall be made to release the detained unaccompanied minor as soon as possible. Unaccompanied minors shall never be detained in prison accommodation.
…

(NB: no equivalents in 2003/9)

Procedures Directive
Article 26 (2013/32)

"Detention
1. Member States shall not hold a person in detention for the sole reason that he or she is an applicant. The grounds for and conditions of detention and the guarantees available to detained applicants shall be in accordance with Directive 2013/33/EU.

2. Where an applicant is held in detention, Member States shall ensure that there is a possibility of speedy judicial review in accordance with Directive 2013/33/EU."

Article 18 (2005/85)

"Detention

1. Member States shall not hold a person in detention for the sole reason that he/she is an applicant for asylum.

2. Where an applicant for asylum is held in detention, Member States shall ensure that there is a possibility of speedy judicial review."

Case C-528/15 Policie CR and others v Al Chodor and others

"43 Taking account of the purpose of the provisions concerned, and in the light of the high level of protection which follows from their context, only a provision of general application could meet the requirements of clarity, predictability, accessibility and, in particular, protection against arbitrariness.

44 The adoption of rules of general application provides the necessary guarantees in so far as such wording sets out the limits of the flexibility of those authorities in the assessment of the circumstances of each specific case in a manner that is binding and known in advance. Furthermore, as the Advocate General noted in points 81 and 82 of his Opinion, criteria established by a binding provision are best placed for the external direction of the discretion of those authorities for the purposes of protecting applicants against arbitrary deprivations of liberty.

45 It follows that Article 2(n) and Article 28(2) of the Dublin III Regulation, read in conjunction, must be interpreted as requiring that the objective criteria underlying the reasons for believing that an applicant may abscond must be established in a binding provision of general application. In any event, settled case-law confirming a consistent administrative practice on the part of the Foreigners Police Section, such as in the main proceedings in the present case, cannot suffice.

46 In the absence of those criteria in such a provision, as in the main proceedings in the present case, the detention must be declared unlawful, which leads to the inapplicability of Article 28(2) of the Dublin III Regulation.

47 Consequently, the answer to the question referred is that Article 2(n) and Article 28(2) of the Dublin III Regulation, read in conjunction, must be interpreted as requiring Member States to establish, in a binding provision of general application, objective criteria underlying the reasons for believing that an applicant who is subject to a transfer procedure may abscond. The absence of such a provision leads to the inapplicability of Article 28(2) of that regulation."

Transfer for Determination of an Application for International Protection (Detention) (Significant Risk of Absconding Criteria) Regulations SI 2017/405.

"4. Criteria to be considered when determining risk of absconding

When determining whether P poses a significant risk of absconding for the purposes of Article 28(2) of the Dublin III Regulation, the Secretary of State must consider the following criteria—

(a) whether P has previously absconded from another participating State prior to a decision being made by that participating State on an application for international protection made by P, or following a refusal of such an application;

(b) whether P has previously withdrawn an application for international protection in another participating State and subsequently made a claim for asylum in the United Kingdom;
(c) whether there are reasonable grounds to believe that P is likely to fail to comply with any conditions attached to a grant of temporary admission or release or immigration bail;
(d) whether P has previously failed to comply with any conditions attached to a grant of temporary admission or release, immigration bail, or leave to enter or leave to remain in the United Kingdom granted under the Immigration Act 1971, including remaining beyond any time limited by that leave;
(e) whether there are reasonable grounds to believe that P is unlikely to return voluntarily to any other participating State determined to be responsible for consideration of their application for international protection under the Dublin III Regulation;
(f) whether P has previously participated in any activity with the intention of breaching or avoiding the controls relating to entry and stay set out in the Immigration Act 1971;
(g) P's ties with the United Kingdom, including any network of family or friends present;
(h) when transfer from the United Kingdom is likely to take place;
(i) whether P has previously used or attempted to use deception in relation to any immigration application or claim for asylum;
(j) whether P is able to produce satisfactory evidence of identity, nationality or lawful basis of entry to the UK;
(k) whether there are reasonable grounds to consider that P has failed to give satisfactory or reliable answers to enquiries regarding P's immigration status.
(j) whether P is able to produce satisfactory evidence of identity, nationality or lawful basis of entry to the UK;
(k) whether there are reasonable grounds to consider that P has failed to give satisfactory or reliable answers to enquiries regarding P's immigration status."

Pour v Secretary of State for the Home Department **[2016] EWHC 401 (Admin); [2016] 2 C.M.L.R. 47;**

"Conclusions on detention
169 It was common ground that the question, in relation to the certificate that the claim is clearly unfounded, is whether the SSHD's decision is rational, to be judged by whether on one legitimate view of the facts, a tribunal properly directing itself could conclude that there were substantial grounds for believing that the return of any of the claimants to Cyprus would involve a real risk of a flagrant breach of art.5 . The misdirection alleged here is simply irrationality; it is not said that any material considerations were omitted. That is all subject to resolution of issues arising out of the decisions in NS [2012] 2 C.M.L.R. 9 , *Abdullahi* [2014] 1 W.L.R. 1895 and EM (Eritrea) [2014] UKSC 12 .
170 The first question is whether risks of a breach of art.5 ECHR or art.6 CFR are relevant at all to a Dublin return case. ...
172 My view is that, although *Abdullahi* [2014] 1 W.L.R. 1895 was not cited in *R. (on the application of B*) [2014] EWCA Civ 854 , *R. (on the application of B*) decides by necessary implication that other articles of the ECHR and CFR than 3 and 4 respectively can be prayed in aid to prevent Dublin II returns. Article 52 CFR permits the CJEU jurisprudence under CFR to progress with the ECHR jurisprudence. The CJEU has not

addressed the issue head-on, but the way it confines its judgments to the issues it faces directly, means that it should not be taken to have decided the point.

…

174 If, however, CFR articles other than CFR 4 and 19 can prevent removal, the second question is what test is applied. *R. (on the application of B)* [2014] EWCA Civ 854 was decided on the unresolved hypothesis that the real risk of a flagrant breach had to be shown, but no resolution of that was necessary to reach the decision adverse to the claimants there; [32]. So the question is what test is to be applied. Can a systemic breach of a Directive suffice to prevent return under Dublin II? Would returns under Dublin II be prevented under EU law by problems of a scale or degree involving less than a real risk of a flagrant breach of the ECHR ? Is a real risk of a flagrant breach required or is a systemic or major operational problem required? Would the *EM (Eritrea)* [2014] UKSC 12 approach be adopted, the former qualifying the other?

175 First, I accept Mr Manknell's contention that breaches of EU Directives however extensive, repeated, or systemic would not of themselves lead to Dublin returns being prevented. That would require one Member State to rule on compliance by another with EU law, a task for the CJEU. It would add to the criteria governing Dublin returns, contrary to the Regulation. The Member State's domestic system would be taken as providing means of redress, with the EU institutions fulfilling their functions as well. There is no basis in any CJEU decision for refusing a return under Dublin where breaches of Directives do not amount to a flagrant breach of an ECHR or CFR right. It would be wrong to interpret NS [2012] 2 C.M.L.R. 9 / *Abdullahi* [2014] 1 W.L.R. 1895 as holding that breaches of Directives, however widespread, but which did not amount to flagrant breaches of fundamental rights should prevent returns under Dublin. It is the relationship between breaches of the Directives and breaches of fundamental rights which would engage the CFR , and it is that which would lead to the return breaching the Dublin Regulation .

176 Secondly, the CJEU has given no indication, quite the reverse, that it would itself contemplate an approach to CFR rights which was more favourable to the individual than the ECtHR's. Whatever language it chose to use, if it were to allow breaches of articles other than 4 and 19 CFR to affect Dublin returns in the CEAS, the effect would be no less demanding than the flagrant breach test, which would rarely be proved in a Member State. EU jurisprudence would march in step with Strasbourg's, and neither lag behind nor out pace it. Systemic breaches, as a sufficient condition, though not always a necessary one, will prevent removal in the case of art.4 , because that will show that in the general run of cases that the risk of a breach of art.4 is real. That language is confined to that article. A systemic breach cannot of itself suffice to show that the breach of other articles is flagrant, a complete nullification of their essence.

177 Accordingly, I accept that it is open to the claimants to show that their art.5 ECHR and art.6 CFR rights would be flagrantly breached by return to Cyprus. But that is a very hard task to show because of the significant evidential presumption of compliance. That task is not easier for the claimants where its argument depends on non-compliance with Directives not transposed or in force, and on this Court ruling on the meaning and effect of Cypriot legislation, as I have already pointed out in relation to refoulement.

…

179 I do not accept the stark distinction drawn by Mr Manknell between the rights in art.5(1) and the rights in the other sub-articles, in particular the right in art.5(4) to take proceedings speedily to test the lawfulness of detention which is very much part and parcel of ensuring the effectiveness of what Mr Manknell submitted was the essence of the right. The right to be informed of the reason for detention is a concomitant of that.

So while I agree that the right to liberty, except on the prescribed grounds, is the essence of the right, and it is supported by the others in the sense that they make the primary right effective and breaches remediable, the distinction between them cannot be so stark. Breaches of art.5(1) are likely to be found together with breaches of art.5(2) and (4) . …

180 The first point made by Mr Knafler is that Dublin returnees who have had their asylum claims finally determined, as have these claimants, will be detained regardless of circumstances. I do not accept that he has made that out on the evidence. …For these claimants, returning as failed asylum seekers whose claims have been finally determined, unless and until they are re-opened, the position is yet clearer: SH absconded on his own case; EP lied about not going to France; he was in France when he claims to have returned to Iran, and he is an obvious abscond risk; MG on one view at least of the evidence absconded from Cyprus. That will be a common position for Dublin returnees with a final adverse decision. Although the evidence that all Dublin returnees whose claims have been finally determined are detained is sketchy, even if proven, it would not persuade me that there was some flagrant breach of art.5 or of the Reception Directive or other domestic law.

..

182 The next basis for a real risk of a flagrant breach of art.5 is the absence of a speedy judicial challenge. There is nothing in the Cyprus legislation itself which was said to contravene the Directives or art.5 . Certainly no provision or omission could found a claim that art.5 was in its essence nullified. Provision is made in art.18 PST of the Aliens and Immigration Law for detainees to be informed the reasons for detention. Remedies are provided for. The decision in *Musa v Malta* (2015) 60 E.H.R.R. 23 showed that the lack of legal aid involved no necessary breach of art.5 or art.6 , let alone a flagrant one.

183 The argument is therefore dependant on evidence that Cyprus does not observe its own law or that the remedies are in reality not available. There was some evidence from AI and KISA to the effect that notice to detainees was given in an ineffectual manner for conveying the reason for detention and the remedies. But that was not clear enough to show a systemic or routine breach, nor was there evidence which showed that it resulted in the nullification of the rights under art.5 .

…

186 I am wholly unpersuaded that there is any flagrant breach of art.5 in Cyprus for Dublin returnees who have had a final decisions on their claim."

III. RECENT CASE-LAW ON UNLAWFUL DETENTION IN THE UNITED KINGDOM

SMM v UK [2017] ECHR 582 (22 June 2017)

- European Court of Human Rights decision underlining the importance of the duty to act with due diligence, which is heightened in cases where the detainee is considered to be vulnerable. This case demonstrates an increasingly critical view of indefinite immigration detention.
- This duty existed even in cases where the Applicant's solicitors have failed to take action or are dilatory.
- This case involved a Zimbabwean national with serious mental health issues who refused to return voluntarily but who was detained for almost 3 years in spite of the stay on forced removals to Zimbabwe that was in place during his period of detention, which has been the subject of several critical reported judgments in the High Court (see most recently, *Babbage* [2016] EWHC 148 and *JM* [2017] 1 WLR 268). The facts were as follows:
    - SMM arrived in UK 2001 with six months' leave as visitor.
    - By 2007, a few driving offences and a failed asylum claim down, convicted of possession with intent to supply Class A drugs and sentenced to 3 years prison plus automatic deportation. Straight into immigration detention in 2008 on completion of sentence.
    - Second asylum application in March 2008; November 2009 his sols asked for more time to submit medical evidence; not provided until November 2010 despite SSHD chasing three times.
    - February 2011: SSHD refused second asylum claim and made a deportation order. This was challenged and was finally successful before the UT on 20 November 2012. He was released in September 2011 after the UT granted bail.
    - Applicant's solicitors had requested release in 2010 due to mental health but SSHD refused on grounds of absconding and risk of reoffending.
    - JR challenge brought in January 2011. Permission refused all the way to the Court of Appeal on the ground that there was no independent evidence of torture and that mental health could be managed in detention.
    - Applicant applied to ECtHR saying that detention from November 2008 to September 2011 was unlawful.
- Held: The ECtHR did not interfere with the findings of fact regarding torture and mental health, but considered whether the Applicant had been detained for an unreasonable length of time in all circumstances.

- the SSHD did not act with due diligence
- the fact that the medical evidence was slow in coming was not an excuse.

- However, in the light of the Applicant's conduct and the particular circumstances of the case, it was not necessary (in the terms of Article 41 of the Convention) to make any award of compensation; a finding of a violation of Article 5 in itself constituted just satisfaction.

YA [2017] EWHC 2135 (Admin)

- The most recent decided case in the saga of the Detained Fast Track ("DFT") litigation
- Following the successful challenge to the operation and lawfulness of the DFT in the *Detention Action v SSHD* [2014] EWHC 2245, and the compromise of test case litigation (in *JM & Ors v SSHD* [2015] 2231 (Admin) involving 4 lead Claimants detained in the DFT, including YA, this case concerned the application of the Consent Order in *JM* to the facts of YA's case.
- Held: The continued detention in the DFT by the SSHD had been unlawful. The SSHD should have conducted his screening and medical examination, made her decision and processed his release within eight days of detaining him. Had the proper procedures been followed for the processes of screening and the operation of Rules 34 and 35, the claimant would have been identified as a possible victim of torture whose case was too complex to be dealt with under the DFT.
- The submission that the entire period of detention was unrealistic. Screening, examination and decision-making would all have taken time. Allowing the defendant a reasonable degree of latitude, had those processes been done it would have taken her seven days to identify Y's case as too complex to remain within the DFT. Accepting a further day to process Y's release, his detention was unlawful only after the first 8 days.
- The test was whether it would have been open to a reasonable decision-maker, directing himself correctly in relation to the policy, to detain the individual in the circumstances of the case, *OM (Nigeria) v Secretary of State for the Home Department [2011] EWCA Civ 909* followed. YA's risk of absconding was not assessed or referred to in the documented reasons for detention.
- Accordingly YA was entitled to substantial damages for unlawful detention.
- Interesting as this is the first stayed case to return to the Court following the outcome in *JM*. As the Deputy Hight Court Judge noted, it is not clear how many cases have settled and how many remain unresolved and are yet to come before the courts.

Muasa v SSHD (QBD (Admin Court), 27 July 2017, unreported)

- The claimant Kenyan national applied for judicial review of the SSHD's decision to remove her from association under the Detention Centre Rules 2001 r.40 when she was in immigration detention pending removal.
- Although the first 24 hours of removal from association (RFA) were properly authorised, extension of the period of RFA beyond the first 24 hours was unlawful because it had not been authorised by an officer of appropriate seniority or independence from the management of the centre. This was not merely a procedural or technical error. Rather the requirement of authorisation by an appropriate officer was a fundamental safeguard of r.40.
- It was also an unjustified breach of the detainee's rights under ECHR art.8(1).
- The subsequent publication of the new Detention Services Orders 2/2017 provided necessary and appropriate guidance as to the application of r.40, including in relation to representations and complaints.

Wamala v Tascor Services [2017] EWHC 1461 (QB)

- This case relates to the use of force in removal cases but still of interest.
- The court held that there had been inappropriate use of force by private security guards attempting to remove W which had caused both physical and psychiatric injury to W.
- W was entitled to substantial damages of £48,000, including £30,000 PSLA, £8000 aggravated, £10,000 exemplary damages.
- The Defendant showed indifference to the legality of removal and its approach to Home Office policy and the requirements of its own service agreement regarding restraint techniques was outrageous:

  "This case will, I hope, emphasise how important it is that escorts, and those who give information to them, have a basic understanding of elementary principles as to what UKBA can and cannot do."

S v SSHD (QBD (Admin Court), 1 September 2017, unreported)

- Where it is arguable that the SSHD acted irrationally by agreeing to release the claimant from detention if suitable accommodation was available but then indicating that C could not be released into the s4 IAA 1999 bail accommodation unless a FTT judge granted bail, the Claimant should be granted interim relief.
- C's very high risk of suicide outweighed the relatively low risk of reoffending.

Miyanji v SSHD [2017] EWHC 1939 (QB)

- The public sector equality duty was not triggered in applying ECG para 55.10

T v SSHD (QBD (Admin Court), 6 July 2017, unreported)

- The delay in NRM meant that the detention was unlawful.
- However, C would be awarded only nominal damages as his continued detention would have been justified under public order grounds.

Jollah v SSHD [2017] EWHC 330 (Admin)

- It was inappropriate to apply for a declaration where the facts were unclear and also where the Claimant was no longer detained.

ALASDAIR HENDERSON, DAVID MANKNELL, SUZANNE LAMBERT