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IN HIS MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

ON APPEAL FROM THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND
KING'S BENCH DIVISION (JUDICIAL REVIEW)

BETWEEN:

MINA BOUNAR

Appellant:

and

SSHD

Respondent:

Mr John Larkin KC and Mr Robert McTernaghan (instructed by Phoenix Law) for the Appellant
Mr Philip Henry KC and Ms Marie Claire McDermott (instructed by the Crown Solicitors Office) for the Respondent

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Before: McCloskey LJ, Horner LJ and McAlinden J

McCLOSKEY LJ (*delivering the judgment of the court*)

Introduction

[1] Mina Bounar (the "appellant") an Italian national, initiated judicial review proceedings against the Secretary of State for the Home Department (the "Secretary of State") on 4 July 2023. The High Court acceded to her petition for urgency and an inter-partes hearing ensued the following day. The decision of Fowler J, with admirable expedition, dismissing the case was communicated to the parties one day later. The case comes before this court pursuant to a Notice of Appeal dated 25 July 2023. One of the enquiries initiated by this court, almost 12 months ago, was whether the appeal had become academic, bearing in mind the *Salem* principle. The progress of the appeal has not been expeditious and at times the court posed the question, of whether, the appellant was serious about pursuing it.

Factual matrix

[2] The key elements of a rather convoluted history spanning a period of up to 12 years are the following:

(a) In 2012/2013 the appellant entered the United Kingdom.

(b) In August 2017, having been convicted of certain summary offences, the appellant received an effective sentence of 7 months imprisonment suspended for a period of two years.

(c) From November 2017 to February 2019, the appellant was living in Australia and, subsequently, Italy.

(d) On 20 March 2019, pursuant to an extradition warrant the appellant was arrested in Italy and removed to Northern Ireland (NI).

(e) On 10 April 2019 the appellant was convicted of several further summary offences, receiving an effective sentence of 4 months imprisonment suspended for three years.

(f) On 27 September 2019 the appellant made an application under the EU Settlement Scheme for repatriation to Italy.

(g) Between July 2019 and March 2023 the appellant was convicted of a catalogue of further summary offences at Laganside Magistrates' Court and Edinburgh Sheriff Court respectively.

(h) In April and May 2023 the initial formal steps with a view to the appellant's deportation to Italy were taken by the Secretary of State.

(i) On 20 April 2023 the Secretary of State served formal notice of intention to deport the appellant.

(j) On separate dates in May 2023 the appellant was convicted of further summary offences, receiving an effective sentence of 8 months imprisonment suspended for two years.

(k) On 16 May 2023 the appellant consented to returning to Italy via the Secretary of State's Facilitated Return Scheme.

(l) On 22 May 2023 the Public Prosecution Service ("PPS") notified the appellant that there were two outstanding criminal cases concerning her.

[3] As a result of her several convictions at Laganside Magistrates' Court on 30 March 2023 the appellant was in sentenced custody. From a date which is not entirely clear (notwithstanding the court's exhortations to the parties) she found herself in immigration detention. This triggered the most important phase from the perspective of these proceedings.

[4] The critical phase began on 2 June 2023, when the appellant applied to the First-tier Tribunal (the "FtT") for bail. At this stage the appellant's legal representatives were hopeful that a housing association would accommodate the appellant in the event of being granted bail. A listing before the FtT on 9 June 2023 followed. The FtT acceded to the appellant's bail application. The bail order was conditional in nature, containing the following material terms:

> "The Tribunal grants immigration bail subject to the Applicant being subject to the following conditions …
>
> **Residence**
>
> On suitable accommodation being identified for release, the applicant is to reside at that address.
>
> …
>
> **Other**
>
> … Commencement of the grant of immigration bail is conditional on arrangements being in place within 28 days of today's date for suitable accommodation for the applicant either by way of agreement between the applicant and respondent; or on the provision of support in accordance with paragraph 9 of Schedule 10 to the Immigration Act 2016 …
>
> **If no suitable accommodation is identified within 28 days, this conditional grant of bail will lapse.**"
> [Emphasis added.]

Prior to the bail hearing, on 5 June 2023 the Secretary of State had made a decision refusing the appellant's application under the EU Settlement Scheme.

The relevant statutory provision

[5] Schedule 10, paragraph 1 of the Immigration Act 2016 (the "2016 Act") empowers the Secretary of State and the FtT to grant bail to any person pending their deportation from the United Kingdom ("UK"). By paragraph 2(1) any grant of bail must be subject to conditions, which may include any of those specified in paragraph

2, one of which is residence. Certain obligatory factors must be taken into account. The issue of accommodation for a person granted bail is addressed in paragraph 9 of schedule 10:

> "9(1) Sub-paragraph (2) applies where—
>
> (a) a person is on immigration bail subject to a condition requiring the person to reside at an address specified in the condition, and
>
> (b) the person would not be able to support himself or herself at the address unless the power in sub-paragraph (2) were exercised.
>
> (2) The Secretary of State may provide, or arrange for the provision of, facilities for the accommodation of that person at that address.
>
> (3) But the power in sub-paragraph (2) applies only to the extent that the Secretary of State thinks that there are exceptional circumstances which justify the exercise of the power.
>
> (4) The Secretary of State may make a payment to a person on immigration bail in respect of travelling expenses which the person has incurred or will incur for the purpose of complying with a bail condition.
>
> (5) But the power in sub-paragraph (4) applies only to the extent that the Secretary of State thinks that there are exceptional circumstances which justify the making of the payment."

For convenience, we shall describe this as "Schedule 10 accommodation."

The chronology continued

[6] Resuming the narrative, during the period 13 June to 8 August 2023 the Secretary of State made three decisions refusing to grant the appellant Schedule 10 accommodation. Furthermore, on 4 July 2023 the Secretary of State (it seems) made a deportation order in respect of the appellant.

[7] On 6 July 2023, the appellant's bail order was scheduled to lapse. This doubtless was the main impetus for the emergency judicial review leave application initiated on 5 July 2023. The target of this challenge was the first of the Secretary of State's Schedule 10 accommodation refusal decisions, made on 3 July 2023. Leave to

apply for judicial review was refused (*infra*). The ensuing appeal to this court did not proceed with expedition.

[8] It is necessary to address the reason given for the Secretary of State's refusal of the appellant's first Schedule 10 application:

> "To be eligible for the provision of accommodation, you must be granted immigration bail with a condition that requires you to reside – or live – at a specified address. This is known as a residence condition. You must also be unable to support yourself at that address without the assistance of the Secretary of State. Our records show that you do not have a residence condition attached to your grant of immigration bail. You are therefore ineligible for assistance."

The same reason (this court understands) was given for the ensuing second and third refusal decisions.

[9] The appellant continued to have the benefit of a FtT bail order. Unfortunately, neither party was able to clarify for the court whether this was as a result of (a) an 'own motion' review by the FtT of its initial order, giving rise to an extension of the relevant period or (b) an application by the appellant for a review, or (c) a fresh bail application to the FtT generating a second bail order in favour of the appellant. In the event, there was a further listing before the FtT on 3 August 2023 for the purpose (it seems) of reviewing an extant conditional bail order. Notwithstanding its requests, the court has not been informed of the outcome of this review. The only information provided is that the appellant's junior counsel and his instructing solicitor attended the listing.

[10] The single fact which <u>does</u> emerge clearly is that the appellant remained in immigration detention until 15 August 2023. The court's attempt to ascertain whether there was an application to the Secretary of State for immigration bail has been unyielding. However, both parties are agreed that on 15 August 2023 the appellant was released on immigration bail. The impetus for this seems to have been the advent of the availability of a place in Simon Community (a registered charity) accommodation.

[11] From 22 August 2023 to 10 July 2024 the appellant resided in charitable accommodation. On 11 July 2024 the Secretary of State made a favourable accommodation decision. No clear information about the appellant's further interaction with the Northern Ireland criminal justice system has been forthcoming. Furthermore, the appellant has not sworn any recent affidavit. The only tolerably clear fact is that she has evidently been in remand custody since 19 August 2024.

At first instance

[12] Fowler J, commendably, listed the judicial review leave application out of hours. His order of dismiss was pronounced within hours. There were four pleaded grounds of challenge, irrationality, breach of Article 5 ECHR, the frustration of a substantive legitimate expectation and a failure to comply with the published policy/guidance "Immigration Bail – Interim Guidance." In his written judgment which followed soon thereafter, the judge recorded at para [11] the central thrust of the appellant's case, namely that the Secretary of State had a <u>duty</u> to provide her with accommodation and had failed to discharge such duty. Dismissing this contention, the cornerstone of the judge's reasoning, adhering faithfully to the statutory language, was that the grant of immigration bail to the appellant did not contain a condition requiring her to reside at a *specified address*: see paras [26]–[28]. The judge also pronounced himself satisfied that the impugned decision did not infringe the Secretary of State's policy guidance.

The issues

[13] The outcome of the court's several attempts to clarify the real issues in this appeal was the following. One central contention was advanced on behalf of the appellant by Mr Larkin KC and Mr McTernaghan of counsel, namely the FtT's conditional bail order fell within the embrace of Schedule 10, paragraph 9 because a bail address <u>was</u> specified in the order. A subsidiary argument advanced was that it is not open to the executive branch of the government to act in such a way as to nullify or frustrate a judicial order. While Article 5 ECHR had fluttered in the appellant's pleading and earlier, unvarnished written submissions, ultimately it barely surfaced in written aregumentv and did not feature at the hearing.

[14] Properly analysed, the appellant's central argument is tantamount to a contention that the accommodation refusal decisions of the Secretary of State are legally flawed because they entailed a misconstruction of Schedule 10, paragraph 9. Mr Larkin agreed with the court's suggestion that the fundamental issue raised by this appeal is the construction of this statutory provision.

[15] The appellant's core submission engages certain long recognised principles of statutory construction. In *R (on the application of O) v Secretary of State for the Home Department* [2022] UKSC 3, [2023] AC 255, Lord Hodge, with whom those in the majority agreed, stated at para 29:

> "The courts in conducting statutory interpretation are 'seeking the meaning of the words which Parliament used': *Black-Clawson International Ltd v Papierwerke Waldho-Aschaffenburg AG* [1975] AC 591, 613 per Lord Reid. More recently, Lord Nicholls of Birkenhead stated: 'Statutory interpretation is an exercise which requires the court to identify the meaning borne by the words in

> question in the particular context.' (*R v Secretary of State for the Environment, Transport and the Regions, Ex p Spath Holme Ltd* [2001] 2 AC 349, 396.) Words and passages in a statute derive their meaning from their context. A phrase or passage must be read in the context of the section as a whole and in the wider context of a relevant group of sections. Other provisions in a statute and the statute as a whole may provide the relevant context. They are the words which Parliament has chosen to enact as an expression of the purpose of the legislation and are therefore the primary source by which meaning is ascertained. There is an important constitutional reason for having regard primarily to the statutory context as Lord Nicholls explained in *Spath Holme*, p 397:
>
>> 'Citizens, with the assistance of their advisers, are intended to be able to understand parliamentary enactments, so that they can regulate their conduct accordingly. They should be able to rely upon what they read in an Act of Parliament.'"

[16] In *R (Quintavalle) v Secretary of State for Health* [2003] UKHL 13, [2003] 2 AC 687, at para 8, Lord Bingham of Cornhill explained that legislation is usually enacted to make some change, or address some problem, and the court's task, within the permissible bounds of interpretation, is to give effect to that purpose. He also approved as authoritative that part of the dissenting speech of Lord Wilberforce in *Royal College of Nursing of the United Kingdom v Department of Health and Social Security* [1981] AC 800, 822, where Lord Wilberforce said:

> "In interpreting an Act of Parliament it is proper, and indeed necessary, to have regard to the state of affairs existing, and known by Parliament to be existing, at the time. It is a fair presumption that Parliament's policy or intention is directed to that state of affairs."

[17] To like effect, in *Barclays Mercantile Business Finance Ltd v Mawson* [2004] UKHL 51, [2005] 1 AC 684, at para 28 Lord Nicholls of Birkenhead highlighted another principle of some antiquity, namely the importance of having regard to the ascertainable purpose of the statutory provision under scrutiny:

> "... the modern approach to statutory construction is to have regard to the purpose of a particular provision and interpret its language, so far as possible, in a way which best gives effect to that purpose."

Further, by a principle of equally venerable antiquity, a construction which produces an absurd, impractical, illogical, anomalous or unworkable result is almost invariably inappropriate as this is most unlikely to have been intended by the legislature: see *R v McCool* [2018] UKSC 23; [2018] NI 181, [2018] 1 WLR 2431, paras 23 and 24.

[18] The cornerstone of the appellant's case is *R (Humnymtski) v Secretary of State for the Home Department* [2020] EWHC 1912 (Admin), a first instance decision of the High Court of England and Wales. It is necessary to highlight at the outset that, fundamentally, this was a challenge to a policy operated by the Secretary of State in the realm of Schedule 10, combined with a claim for false imprisonment.

[19] The following features of the admirably comprehensive judgment of Johnson J are highlighted. In his examination of para 9 of Schedule 10 to the 2016 Act, the judge employed the language "*statutory power*"(with which we fully agree – and this was not contested); a refusal decision could be challenged only on public law and ECHR grounds: para [14]; there was an overarching requirement that immigration detention be lawful at all times; para [17]: the Secretary of State had unpublished internal policy guidance on the provision of Schedule 10 accommodation: para [20]ff; the focus was on the "*exceptional circumstances*" provisions of the guidance: paras [21]–[22]; the operation of the guidance must be compliant with Article 3 ECHR: paras [26]–[28]; the Secretary of States published guidance also had to be considered: paras [29]–[40]; within this policy "*exceptional circumstances*" was an open-ended concept: para [35]; there was detailed evidence about how the policy was operated in practice: paras [41]-[60]; arguments that the first claimant's case was an abuse of the court's process and academic were rejected; paras [154] and [158]; having regard to the first claimant's obligation to live in accommodation approved by the Probation Service pursuant to a post-release supervision requirement, the conditional bail order of the FtT directed the Secretary of State to "… seek suitable accommodation … compatible with any conditions of the supervising probation officer and other court/police orders or notices": paras [159]-161]. Pausing, the contrast between this FtT bail order and the bail order secured by the appellant in the present case is stark.

[20] At this juncture, one comes to the nub of the court's decision first regarding the first claimant. At paras [162]–[164] Johnson J made the assessment that the Secretary of State had decided not to grant this claimant Schedule 10 accommodation because he was not a high risk foreign national offender, as required by the Secretary of State's policy. The claimant was "… entitled to have his request considered and that simply did not happen"; para [163]. Thus:

> "It follows that the decision not to provide [the claimant] with accommodation was unlawful because there was a failure to have regard to material considerations, namely whether [his] circumstances were exceptional by reason of his post-sentence residence condition and/or a risk of inhuman and degrading treatment and/or the observations made, and directions given by the Tribunal

> when granting bail. Put another way, the Secretary of State unlawfully fettered her own discretion to provide accommodation in exceptional circumstances by treating the fact that [the claimant] was not a high risk FMO as determinative of his entitlement to accommodation." [para [165])

[21] Separately, the Secretary of State had failed in her duty to "… consider fairly and rationally whether there are exceptional circumstances so as to justify the provision of accommodation"; para [167]. Furthermore, the decision-making process was procedurally unfair because it excluded the first claimant, he was given no opportunity to make representations and there was no right of appeal or request for review; para [168]. Summarising, the English Administrative Court decided that (a) the impugned Schedule 10 refusal decision of the Secretary of State was unlawful as it was beset by a host of public law infirmities and (b) for the reasons explained in paras [175]–[182], the claimant's detention during the period of one week following the impugned decision of the Secretary of State was unlawful. Finally, it is necessary to have regard to the relief secured by the successful claimants. At paras [298]–[303] the court ordered as follows:

> "Mr Humnyntskyi has established that he was unlawfully detained and is entitled to a declaration to that effect.
>
> 'A' has established that the Secretary of State breached his Convention rights and thereby acted in breach of section 6 of the Human Rights Act 1998. That is because the Secretary of State unlawfully breached the prohibition on inhuman and degrading treatment, by refusing Schedule 10 accommodation in circumstances where A was at a real and immediate risk of suffering such treatment. He is entitled to a declaration to that effect and an award of damages by way of just satisfaction.
>
> 'WP' has established that she was unlawfully detained from 10 January 2020 until 22 April 2020. She is entitled to an award of damages.
>
> I will set directions for the assessment of damages in the cases of A and WP.
>
> The Claimants have established that the Secretary of State's policy for granting Schedule 10 accommodation is unlawful because:

> (1) It is systemically unfair. It creates a real risk that unfair decisions will be made in a significant number of cases. Those risks materialised in the cases before the court.
>
> (2) In its operation it fetters the Secretary of State's discretion to consider whether the situation of an individual applicant amounts to exceptional circumstances. That unlawful fetter was applied in the cases before the court.
>
> They are entitled to declarations to that effect."

[22] The decision in *Humnymtski* concerned the same statutory provision as that arising for consideration in this appeal. The passages upon which the appellant relies are at paras [18]–[19]:

> "Paragraph 9 of Schedule 10, read with paragraph 2, risks tying a Gordian knot. That is because a person may not be granted Schedule 10 accommodation unless they have been released on bail subject to a residence condition that specifies an address (paragraph 9(1)). If the person is reliant on the Secretary of State to provide the accommodation then an address cannot be specified until the accommodation is provided. But the Secretary of State cannot provide the accommodation until the person has been released on bail. There is therefore a risk of circularity.
>
> The circularity is avoided, and the knot untied, in one of two ways. First, the Tribunal (or the Secretary of State) might make an 'in principle' decision to grant bail subject to a residence condition. That grant of bail will then only take effect if and when the Secretary of States provides accommodation. Second, the Secretary of State might make an 'in principle' decision to provide accommodation. That accommodation will then only be provided if and when bail is granted. This pragmatic approach to the legislative regime is helpfully confirmed in a letter from the Home Office dated 26 March 2018 (in the context of the correspondence described at paragraphs 41-46 below):
>
>> 'A 'specified address' can be either an address that is already specified or one that is to be specified.'"

[23] We have analysed extensively the issues in *Humnymtski* and what the court actually decided. This exercise demonstrates that the above passages are *obiter*. It further highlights the considerable differences between that case and the present. Fundamentally, *Humnymtski* was a challenge to the Secretary of State's policy guidance: see in particular para [1] and the final relief granted, namely a declaration that this policy guidance was unlawful: see para [302]. We would further draw attention to an identifiable error in para [18]: "released on bail" is neither the language of the statute nor that of the conditional bail order of the FtT. The subject of such orders is not released on bail. Rather, the person remains in detention unless and/or until the specified condition, concerning accommodation, is satisfied.

[24] Crucially, we consider it abundantly clear that in para [19] of his judgment Johnson J did not purport to engage in an exercise of construing para 9 of Schedule 2 to the 2016 Act. Rather, he drew on, and expressed his understanding of, a practice described in correspondence on behalf of the Secretary of State: see paras [19] and [42]ff. As regards the sensible, practical arrangement described in the second of his "in principle" formulations, we would add that the relevant policy guidance, included in the evidence before this court, does not appear to contain anything precluding the operation of the practical mechanism discussed above. Furthermore, recognising the primacy of the primary legislation, there appears to be nothing in paragraph 9 of Schedule 10 to the 2016 Act, precluding or frustrating the operation of this mechanism.

[25] In our view, there can be no serious doubt about the correct construction of para 9(1) of Schedule 10 to the 2016 Act. The words "an address specified in the condition" are unambiguous. The same assessment applies to the words "that address" in para 9(2). The "address" contemplated by para 9(1) is a concrete, specific place of residence. In any case where a concrete, specific place of residence is not specified in the FtT's bail order, para 9(1)(a) of Schedule 10 does not apply. The consequence of this is that para 9(2) is not engaged.

[26] In any case where para 9(1)(a) does apply, para 9(2), in the statutory language, "applies." The effect of this is that the discretionary power of the Secretary of State to provide, or arrange for the provision of, facilities for the accommodation of the subject at the specified address is engaged. While this engagement could arise in a number of ways, the most typical (we apprehend) would be that which occurred in the *Humnymtski* case, namely a request by the subject's solicitors – or, if unrepresented, the subject himself or some other person assisting them or acting on their behalf. However, in the present case – for the reasons explained – para 9(2) was not engaged since para 9(1)(a) did not apply.

[27] We would add that the simple, practical arrangement described in the second "in principle" formulation in para [19] of *Humnymtski* is uncomplicated. It simply entails the detained person, or their representative, and the Secretary of State proactively confronting the issue of accommodation before any bail order is made by the FtT. In cases where this mechanism is employed, the Secretary of State will, if minded to do so, merely be providing an advance indication of how the discretion

enshrined in para 9 of Schedule 2 is likely to be exercised in the event of a bail order materialising. This is, as Johnson J suggested, an "in principle" indication. It is in essence a provisional decision. If no bail order then materialises, it falls away. On the other hand, if a bail order does materialise then this provisional decision would normally be expected to crystallise into the final, concrete decision entailing the exercise of the para 9(2) discretion. We say "normally" only because there could conceivably be cases – for example, involving a material change of circumstances – in which a final decision declining to exercise the discretion in the subject's favour could lawfully be made.

[28] In those cases where the second "in principle" practice is not, for whatever reason, adopted, and if a conditional bail order of the type made in the present case ensues, the problem can be addressed by the subject in one of two different ways, namely (a) by seeking a variation of the extant bail order or (b) in cases where the order has for whatever reason expired, making a new bail application to the Secretary of State. In both situations, the *lacuna* arising out of the failure to apply the "in advance" mechanism first time around can in principle be rectified. In the particular case of the variation option, the order itself will typically provide the window of opportunity: in this case 28 days.

[29] As regards the <u>first</u> of the Johnson J's two "in principle" formulations, as will be apparent this is not harmonious with our construction of paragraph 9 of Schedule 10 to the 2016 Act. In a sentence, the substitution of "to be specified" for "specified" produces an abrupt linguistic collision which effectively rewrites the statutory language. Furthermore, it would produce results which may not be compatible with the decision of the Northern Ireland High Court in *Re BG's Application* [2012] NIQB 13 and subsequent decisions.

[30] In those cases where the simple arrangement which we have described above is not, for whatever reason, adopted, and if a conditional bail order of the type made in the present case ensues, the problem can be addressed by the subject in one of two different ways, namely (a) by seeking a variation of the extant bail order or (b) in cases where the order has for whatever reason expired, making a new bail application to the Secretary of State. In both situations, the *lacuna* arising out of the failure to apply the "in advance" mechanism first time around can in principle be rectified. In the particular case of the variation option, the order itself will typically provide the window of opportunity: in this case 28 days.

[31] For completeness, we address four further decisions which featured in the written submissions on behalf of the appellant. Each of these is also a first instance decision of the High Court of England and Wales. The first of these, *R (Barizi) v Secretary of State for the Home Department* [2023] EWHC 3491 (Admin) provides no support for the appellant's case since the impugned decision of the Secretary of State in that case was an assessment under para 9(3) of Schedule 10 to the 2016 Act that there were "no exceptional circumstances" justifying the exercise of the power in para 9(2). This is abundantly clear from paras [12] and [20]. The second point of distinction

is that the case turned on the question of whether the Secretary of State had acted in compliance with his policy guidance: see para [20]ff.

[32] In the next of these cases, *R (ER) v Secretary of State for the Home Department* [2023] EWHC 3187 (Admin), the FtT, as in the instant case and in *Barizi*, made an "in principle" bail order in favour of the claimant. A subsequent application to the Secretary of State for accommodation under paragraph 9 of Schedule 10 was not determined. At a bail review hearing the Secretary of State's representative informed the FtT that the provision of such accommodation was considered inappropriate because of a possibility of an accommodation offer by the Probation Service. Some weeks later, in the midst of the ensuing judicial review proceedings, it emerged that there had been a letter of refusal which had not been transmitted to the claimant or his solicitors. This featured among a catalogue of errors and defaults, deprecated by the judge and giving rise to an interim mandatory order requiring the Secretary of State to identify Schedule 10 accommodation within one week. Fundamentally, this order was based on the court's assessment of a strongly arguable case that the refusal decision was vitiated in several respects: see paras [23]–[24]. In granting the relief the judge noted, and did not demur from, *Humnymtski* paras [18]–[19]. The relevant passage, para [24], is conclusionary in terms and lacking in analysis. Furthermore, in both cases, there was no recognition that the fundamental issue was one of statutory construction requiring the kind of exercise we have conducted in this judgment. Para 24 of *ER* is in conflict with the views or conclusions we have expressed above.

[33] The third of these decisions is *R (Nakrasevicius) v Secretary of State for the Home Department* [2024] EWHC 1856 (Admin). This is another illustration of a mandatory interim relief order, in this case requiring the release of the claimant from immigration detention and the provision to him of Schedule 10 accommodation, in judicial review proceedings. This case is factually remote from the instant case as it has no bail framework. The judge did not engage at all with the submission of counsel for the Secretary of State that the statutory conditions were not satisfied: see para [24]. With respect to the judge, that argument seems to us unanswerable. In the statutory language, the claimant was <u>not</u> "on immigration bail." For the reasons given we consider that the appellant derives no assistance from this decision.

[34] Finally, we can identify nothing in *R (Sawko) v Secretary of State for the Home Department* [2023] EWHC 3146 (Admin) warranting any approach differing from that espoused above. We observe in particular that this is a mere leave decision and, furthermore, one which does not subject *Humnymtski* to the analysis we have undertaken in this judgment.To summarise, none of the decisions invoked on behalf of the appellant is, as a matter of precedent, binding on this court and none of them assists the appellant in any event for the reasons we have given.

Conclusion

[35] It follows from all of the foregoing that the impugned decision of the Secretary of State under paragraph 9 of Schedule 10 to the 2016 Act was based upon a correct

construction of this statutory provision and is, therefore, unassailable. The appellant's subsidiary argument, noted in paras [13]–[14] above, fails in consequence. Stated succinctly, the Secretary of State's decision reflected her duty to comply with the relevant statutory provision. The obstacle which the appellant encountered in her quest to secure her liberty as soon as possible in the wake of the FtT's conditional bail order was the legislation to which the Secretary of State was as a matter of constitutional obligation bound to give effect. The ensuing decision was unimpeachable in public law terms.

[36] For the reasons given, we dismiss the appeal and affirm the order of Fowler J. As a footnote, the question of whether this judgment requires any revision of FtT practice in bail matters is not for this court.