



Neutral Citation Number: [2021] EWHC 2100 (Admin)

Case No: CO/1072/2020

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 26/07/2021

Before :

MR JUSTICE JACOBS

Between :

THE QUEEN (on the application of HNA)

Claimant

- and -

**SECRETARY OF STATE FOR THE HOME
DEPARTMENT**

Defendant

Ramby de Mello and Paul Diamond (instructed by J M Wilson Solicitors) for the Claimant
David Blundell QC and Julia Smyth (instructed by Government Legal Department) for the
Defendant

Hearing date: 15th July 2021

Approved Judgment

Mr Justice Jacobs:

A: Introduction

1. The Claimant is a Syrian national who left Syria in 2013 as a result of the civil war in that country. In 2014, he travelled to Jordan with his wife and three children. He and his wife were born into Muslim families, but in 2015 they converted to Christianity. Prior to that time, he had registered with the United Nations High Commissioner for Refugees which is commonly known as the UNHCR. The UNHCR is a United Nations agency mandated to aid and protect refugees. It has been in existence for around 70 years and has staff working in many countries, including the neighbouring countries where very large numbers of Syrian nationals have arrived as refugees in recent years.
2. The Vulnerable Persons Resettlement Scheme (the “Scheme”) is an ex gratia scheme which was put in place, initially in January 2014, by the Defendant (“SSHD”) in order to support and assist third-country national refugees outside the United Kingdom who had fled the conflict in Syria. The background to the Scheme is described in some detail in the judgments of Elisabeth Laing J and the Court of Appeal in *Turani and others v SSHD (“Turani”)*: [2019] EWHC 1586 (Admin) and [2021] EWCA Civ 348. It is not necessary to repeat that detail in this judgment. A critical feature of the scheme is that it involves the UNHCR as the exclusive body with responsibility for referring refugees to the UK authorities for possible admission under the Scheme.
3. In *Turani*, a challenge to the lawfulness of the scheme was made by a number of Palestinian refugees from Syria (or “PRS” as they were described in the judgments) on the basis of a number of arguments. A central issue was whether the SSHD was in breach of section 29 (6) of the Equality Act 2010 (“EA 2010”) on the grounds of indirect discrimination against PRS. That discrimination arose from the fact that PRS were in practical terms excluded from the Scheme. This was because the UNHCR’s mandate did not extend to those individuals, since there was another United Nations agency, the United Nations Relief Works and Agency (“UNRWA”) which had responsibility for Palestinians. The challenge in that case was primarily directed to the decision of the SSHD to rely exclusively on the UNHCR, and the failure to put in place any alternative mechanism to enable PRS to be referred.
4. The challenge was ultimately unsuccessful before both Elisabeth Laing J and the Court of Appeal. In broad summary, both courts were satisfied that the practical exclusion of PRS from the Scheme constituted indirect discrimination, with the Court of Appeal deciding that there was no territorial limitation which precluded a claim for such discrimination under the EA 2010. However, both courts were also satisfied that the indirect discrimination which resulted from the use of the UNHCR as the exclusive gatekeeper to the Scheme, thereby excluding PRS, had been shown to be justified by the SSHD as a “proportionate means of achieving a legitimate aim”: see EA 2010 s 19 (2) (d).
5. The present case includes a challenge to the same Scheme. The Claimant seeks a declaration that the SSHD has breached section 29 of the EA 2010, in directly discriminating or indirectly discriminating against the Claimant. The Claimant also seeks a mandatory order for the introduction into the Scheme – including into the new scheme that was (at the time of commencement of the proceedings) about to replace it – of “criteria for settlement in the United Kingdom premised on religion; and to reserve

any remaining places on the [Scheme] for those who are members of religious minorities”.

6. The complaint which underlies the Claimant’s grounds of challenge is, fundamentally, that the Scheme is operated so as to discriminate unlawfully, on grounds of religious belief, against religious minorities, and, in particular, Christians.
7. Permission to apply for judicial review, originally advanced on the basis of four grounds, was refused on the papers. On the renewed application, permission was refused by Morris J in relation to two of the four grounds of challenge. He ordered that the remaining two grounds should be the subject of a rolled-up hearing: i.e. a hearing where the court determines whether the claimants should have permission to apply for judicial review and if it determines they should, goes on to consider and determine the judicial review. The case was, however, stayed pending the judgment of the Court of Appeal in *Turani*. As a result of that decision, the Claimant decided not to pursue one of the two remaining grounds, based upon breach of the Public Sector Equality Duty (“PSED”). The decision of the Court of Appeal in *Turani* had made the Claimant’s PSED argument unsustainable. The Claimant maintained, however, that some of the facts relied upon in support of the PSED case were material to the remaining ground, namely discrimination. The decision of the Court of Appeal in *Turani* had, to some extent, been favourable to the Claimant in relation to the discrimination case, since the court rejected a territorial argument of the SSHD which had succeeded before Elisabeth Laing J.
8. Shortly before the rolled-up hearing in the present case was due to take place, the Claimant sought to add additional grounds for judicial review. Mr. de Mello, who appeared for the Claimant, recognised that permission to rely upon these additional grounds was required. Save in relation to one point, I rejected the application to add further grounds, in light of: the late stage at which permission to amend was sought; the fact that the SSHD had not had a proper opportunity to adduce evidence responsive to the new points; and the important background of a case management order of Morris J, whose purpose was to ensure that the issues were identified, and relevant evidence served, well in advance of the hearing. Mr. Blundell QC accepted, however, that he was in a position to deal with an argument based on irrationality, because this was very closely related to, if not substantially the same as, the discrimination claim.
9. The decision in *Turani* was referred to by both sides, in particular the SSHD, and (as described above) the present proceedings were previously stayed pending the result in that case. It is sensible to explain the differences and potential similarities between the case on discrimination now advanced and that which was unsuccessfully advanced in *Turani*. This also serves to identify the parties’ principal arguments in that regard and to introduce the parties’ principal arguments in the case.
10. First, in *Turani*, the claimants’ case was advanced on the basis of indirect discrimination, resulting from their practical exclusion from the Scheme as a result of the respective mandates of UNHCR and UNRWA. The Claimant in the present case does not, and cannot, allege there was practical exclusion akin to the situation in *Turani*. The Scheme is unquestionably available to individuals in the position of the Claimant. The statistical evidence, discussed in more detail below, shows that refugees from Christian and other minorities have been resettled under the Scheme. However, the

Claimant contends that it is in practice far more difficult for him as a Christian, and in particular a Christian who has converted from being a Muslim, to access the Scheme. The Claimant relied (as in *Turani*) upon the fact that the UNHCR was the exclusive gatekeeper for potential refugees who might be accepted by the UK authorities under the Scheme. In the present case, however, the Claimant's case focused upon the manner in which UNHCR carried out its role as gatekeeper. This involved requiring the Claimant, and people like him, to attend for interviews with UNHCR. The attendance of the Claimant, and minorities such as Christians (and in particular Christian converts) was, on the Claimant's case, difficult if not impossible: because the UNHCR personnel were themselves Muslim, and they displayed hostility to Christians which, on the Claimant's case, is endemic amongst Muslims in many Arab countries including Jordan

11. Secondly, in *Turani*, the case was advanced on the basis only of indirect discrimination. In the present case, the Claimant also advances a case of direct discrimination. This was based primarily upon the Claimant's particular experience when he went to a UNHCR refugee camp in October 2018 for an interview which might lead to his being referred by the UNHCR under the Scheme. He alleges that he was there subject to hostility, from the local UNHCR personnel, based upon his religion as a Christian. This was direct discrimination for which the SSHD was liable, either because the UNHCR personnel were acting as agents of the SSHD, or on the basis of vicarious liability under English common law.
12. Third, the Claimant in the present case relies, in support of his judicial review claim, upon his rights the European Convention on Human Rights ("ECHR"), and in particular Article 14 thereof which relates to discrimination. That case was, in oral argument, pursued only in relation to the indirect discrimination aspect of the case, for reasons which will become apparent. The claimants in *Turani* do not appear to have advanced an Article 14 argument.
13. Fourth, the SSHD relies upon the decision in *Turani* whereby the Court of Appeal upheld the decision of Elisabeth Laing J that any indirect discrimination in that case was a proportionate means of achieving a legitimate aim. The SSHD's principal argument is that there was no indirect discrimination in the present case at all, essentially on the basis that the Scheme has no features which amount to indirect discrimination – unlike the position in *Turani* where the PRS could rely upon their practical ineligibility for the Scheme. The SSHD argues that if it was proportionate to have a scheme which was discriminatory, in excluding PRS completely (for all practical purposes), then the argument to that effect must succeed in the present case too, where Christians and other minorities were eligible for the Scheme and had been sent to the UK pursuant to it.
14. Fifth, unlike *Turani*, the SSHD in the present case advances a case based upon the Claimant's delay in bringing the present proceedings. This should, on the SSHD's case, lead to the refusal of permission because no extension of time should be granted.
15. Finally, the SSHD draws attention to the fact that the Scheme has now run its course. It ultimately involved the acceptance of 20,000 people, and all of the places have now been taken. The SSHD therefore says that the present application is academic. It seemed to me, however, that whilst the SSHD's other arguments raised substantial issues, the argument that the application was academic was unpersuasive. Whilst the Scheme itself has come to an end, there is a replacement scheme which is also operated in conjunction

with the UNHCR. The arguments based on indirect discrimination, if valid, would be equally applicable to the replacement scheme.

16. In the next sections of this judgment, I will set out the relevant facts and evidence in greater detail, before dealing with the issues as follows:
- i) Direct discrimination concerning the events in October 2018.
 - ii) Indirect discrimination arising from the exclusive involvement of the UNHCR, and the difficulties presented to Christians and other minorities who wish to be considered for resettlement under the Scheme.
 - iii) Common law arguments based on irrationality.
 - iv) Article 14 of the ECHR.
 - v) Delay.

B: The Scheme and the role of UNHCR

17. The establishment of the Scheme was first announced in an oral statement in Parliament by the then SSHD on 29 January 2014. It was clear right from the start that the UNHCR was integral to the aims and operation of the Scheme. After having described the nature of the crisis in Syria, the SSHD said as follows:

“Following consultations with the United Nations High Commissioner for Refugee’s office in London in recent days, I can tell the House that the Government will be launching a new programme to provide emergency sanctuary in the UK for displaced Syrians who are particularly vulnerable.

This programme – the Vulnerable Person Relocation scheme – will be based on three principles. First, we are determined to ensure that our assistance is targeted where it can have the most impact on the refugees at greatest risk. The programme will focus on individual cases where evacuation from the region is the only option. In particular we will prioritise help for survivors of torture and violence, and women and children at risk or in need of medical care who are recommended to us for relocation by UNHCR. This is where we believe we can make a distinctive contribution as the United Kingdom.

Second, the scheme will be run in addition to the two resettlement programmes the Home Office currently operates in partnership with the UNHCR: the Gateway programme which settles 750 refugees from a small number of targeted locations every year, and the Mandate Resettlement Scheme, which is designed to resettle individual refugees who have been recognised as refugees by UNHCR, and have a close family member in the UK who is willing to accommodate them. It will also be in addition to the asylum claims which we have been

considering – and will continue to consider – under our normal rules. Since the crisis began we have taken in nearly 3,500 Syrian asylum seekers – the fourth highest in the EU – with 1,100 Syrian nationals recognised as refugees in the year to September 2013.

Third, because we want to focus our assistance on the most vulnerable people, we do not intend to subscribe to a quota scheme. I want to make clear to the House, therefore, that this programme will run in parallel with the UNHCR’s own Syria Humanitarian Admission Programme (HAP), and we will work in close consultation with UNHCR offices in London, in Geneva and in the region.

The United Kingdom has a deep and strong working relationship with UNHCR built up over many years. £61 million of UK humanitarian assistance to Syria is being delivered through UNHCR programmes. Our approach is entirely consistent with the wider UNHCR programme, is supported by them and will allow us the control to make best use of our capability to help these cases.”

18. On 25 March 2014, the Immigration and Security Minister laid a written ministerial statement before Parliament. The Minister stated that since the announcement on 29 January 2014 when the Scheme was launched, “we have been working closely” with the UNHCR to identify those who are most vulnerable. The first group of Syrians was due to arrive that day. The government had been working closely with the UNHCR and others to ensure that the particular needs of the beneficiaries, with their extreme vulnerabilities, would be met.
19. On 7 September 2015, the Prime Minister made a statement to the House of Commons in which he confirmed that the UK would resettle up to 20,000 Syrian refugees. In July 2017, the SSHD made a written statement to Parliament which indicated that the UK government was on track to meet its commitment of resettling 20,000 refugees by 2020. Reference was again made to the government “working closely with the UNHCR to identify individuals who are most at risk in the region and whose particular needs can only be met in countries like the UK”. Prior to that time, the Scheme was confined to Syrian nationals, but its scope was then amended so as to enable the UNHCR to refer the most vulnerable refugees in the region who had fled the Syrian conflict and could not safely return to their country of origin, whatever their nationality.
20. The SSHD’s evidence for the present proceedings included a witness statement from Mr. Gideon Winward, who is employed by the Home Office as the Head of the Refugee Resettlement Policy Team, and who worked in that role in the Resettlement, Asylum Support and Integration Directorate, UK Visas and Immigration, since 2019. He had also provided a witness statement in *Turani*. I have based the description of the UNHCR, in the following paragraphs, upon that evidence and the documents exhibited to his statement or referred to therein.
21. The Scheme was one of a number of refugee resettlement schemes offering a safe and legal route to the UK for the most vulnerable refugees. According to the 2018 policy statement referred to below, there are four such schemes. In relation to all four schemes,

the UK worked closely with the UNHCR which was, he said, “uniquely placed to identify those living in formal refugee camps, informal settlements and host communities who would benefit most from resettlement to the UK”. He said that the UNHCR was the internationally recognised and mandated agency for dealing with refugees, globally, and had been entrusted by the United Nations General Assembly with the mandate to provide international protection to refugees and “in partnership with Governments” to seek durable solutions for them. It had a global presence and over 70 years of experience.

22. The reference to “partnership with Governments” indicated that the UNHCR did not work only with the UK government in relation to the resettlement of refugees, but also with other governments around the world. The concept of “partnership” was not, of course, partnership in the Partnership Act 1890 sense of people joining together to carry on a business for profit. Rather, it was the colloquial meaning of people (here governments and a United Nations agency) working together towards a common end: resettling the most vulnerable people.
23. Mr. Winward described the way in which the various schemes worked. The UNHCR would identify and propose refugees for resettlement from among its registered refugee population in the Middle East and North Africa (MENA) region. The UNHCR operated procedures for registration and, as explained above, the Claimant was a registered refugee. The identification of refugees included people living in different circumstances: in formal refugee camps, informal settlements and among host communities. Through the Scheme, the UK resettles refugees, referred by the UNHCR, who were living in Iraq, Turkey, Lebanon, Jordan and Egypt.
24. The UNHCR has well-established procedures and criteria, set out in the UNHCR Resettlement Handbook, for identifying the most vulnerable refugees. The 1951 UN Convention Relating to the Status of Refugees underpins international refugee protection. The Convention defines a refugee to include someone who “owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country”.
25. Those refugees referred for resettlement fell under at least one of the following submission criteria: “Legal and/or Physical Protection Needs; Survivors of Torture and Violence; Medical Needs; Women and Girls at Risk; Family Reunification; Children and Adolescents at Risk; Lack of Foreseeable Alternative Durable Solutions”. These criteria were used for all resettlement countries including the UK.
26. The UNHCR Resettlement Handbook runs to some 400 pages. Unsurprisingly, it takes a non-discriminatory approach to the identification of refugees for resettlement, stating at page 216:

“UNHCR identifies refugees for resettlement based on a refugee’s objective need for resettlement and not on their subjective desire for it. Identification should not be based on the desire of any specific actors, such as the host state, resettlement states, other partners, or UNHCR staff themselves”

27. For the UK's resettlement schemes, including the Scheme, the UNHCR refers refugees that meet its criteria and where, having assessed their needs, the UNHCR has determined that resettlement to the UK is the most appropriate durable solution for them. The UK does not intervene in this identification and referral process. Individuals cannot apply directly to the UK for resettlement as there is no application process to the UK schemes. Referrals for resettlement to the UK can only be made by the UNHCR after they have carried out their assessment using their criteria.
28. Refugees referred to the UK for resettlement are not automatically permitted to enter the UK under the Scheme. The UK government carries out checks, including security screening, and makes an assessment of whether the case should be accepted. If so, then the Home Office will look to identify suitable accommodation and support. The overall process is described in a "Resettlement: policy statement" published by the Home Office in July 2018.
29. The policy statement describes the role of the UNHCR as having responsibility for all out-of-country casework activity relating to the UK's resettlement schemes. The UNHCR would therefore: "interview registered refugees to determine their experiences and current circumstances in the host country"; conduct a full "Refugee Status Determination" or "RSD"; and "conduct a resettlement interview and assess that refugees meet the criteria for resettlement in accordance with UNHCR's resettlement handbook before referring them to the UK for consideration". As the Claimant's case developed, it focused on what were alleged to be the discriminatory nature of the interview process.
30. The "casework" activity of the UNHCR included the identification of the country or resettlement scheme to which a refugee should be referred. If the UNHCR considered that an individual should be referred to the UK, it would send the UK a form which confirmed that the individual had been determined by UNHCR to be a refugee according to the terms of the 1951 Convention. This form was a summary of both the RSD and the resettlement consideration. It would then be processed by the Home Office casework team, who determine whether the case should be accepted for resettlement to the UK. The policy statement then described the allocation process in the UK, which was largely done "in partnership with local authorities", as well as details of travel and arrival and life in the UK.
31. Globally, the need for resettlement vastly outweighs the availability of places. UNHCR estimate that there are over 80 million forcibly displaced people worldwide, of which over 26 million are recognised as refugees, with over 1.4 million of these being in need of resettlement. Against that backdrop, UNHCR referred just under 40,000 people to states for consideration in 2020. (The figure of 40,000 was a worldwide figure: it included a substantial number of refugees from Syria, but also from other countries). Fewer than 23,000 people were actually resettled in 2020. This shows the stark contrast between humanitarian need, and the availability of resettlement as a solution. Mr. Winward's evidence was that:

"The need to maximise the impact of the few resettlement places there are around the world is one of the reasons that UNHCR plays such a pivotal role in international resettlement efforts. They are unique in their oversight of global resettlement quotas and are the principle referral partner for nearly all of the world's

resettlement states. Their ability to coordinate the UK's efforts with those of other countries, helps to ensure that we can collectively have the biggest impact"

C: The operation of the Scheme in relation to religious minorities

Introduction

32. The evidence of both parties addressed, in different ways, the approach of the UNHCR and the operation of the Scheme in relation to religious minorities. The essence of the case of the SSHD was that the Scheme was intended to operate in a non-discriminatory way, in accordance with principles of impartiality and neutrality, and that this was indeed how the Scheme was operating and understood to be operating.
33. The Claimant's case, at least as originally advanced, was that in the context of the persecution of Christian and other minorities in the Middle East, impartiality and neutrality was not good enough: hence the claim for a mandatory order for the introduction of criteria for settlement premised on religion. This aspect of the Claimant's argument was supported by the evidence of Lord Carey, the former Archbishop of Canterbury. In his witness statement, he explained the perilous situation of, in particular, Christians and Yazidi refugees, who face (in some of the countries to which they have fled) total discrimination in access to resources, security and welfare. Lord Carey's evidence did not focus on the UNHCR itself, or its procedures. He did say, however, that Christians could not enter the UNHCR camps, and had been attacked in refugee centres in Europe by Muslim adherents. He suggested that there should be separate UNHCR camps or refugee accommodation for religious minorities. He expressed the view that the majority of individuals settled under the Scheme should be Christians and other religious minorities, with Christians and Yazidi being prioritised. He urged the UK government to use the final places under the Scheme for Christians and religious minorities.
34. During the course of the hearing, however, Mr. de Mello recognised the difficulties in advancing a case of discrimination under the EA 2010, whether direct or indirect, on the basis that Christians or other minorities should be given priority over people of other faiths. The corollary of the argument that Christians and other religious minorities should be prioritised, with the majority of places on the Scheme being allocated to those groups, is that the Scheme should therefore discriminate against individuals who were of the Muslim or other faiths. This would, as Mr. Blundell submitted, be difficult if not impossible to defend if a discrimination claim were to be made, for example, by a Muslim claimant.
35. It was no doubt for this reason that the focus of the Claimant's argument was ultimately not directed at the principles of neutrality and impartiality on which the Scheme was required to operate – but rather at the way in which the Scheme worked in practice on the ground in Jordan, because of the requirement for an interview and the hostility that would confront a Christian, particularly a convert, who sought to be interviewed.
36. The evidence which related to the above matters was as follows.

The criteria

37. As will be apparent from the criteria described above, and as explained in Mr. Winward's evidence, the UK's resettlement schemes followed the humanitarian principles of impartiality and neutrality. This meant that a determination of the refugee's needs formed the basis of a refugee being referred to the UK, rather than a person's ethnic or religious affiliation. Whilst religious belief was not a specific indication of vulnerability in its own right, a person's religion could cause or heighten the risk a refugee faces. Where this was the case, the UNHCR takes it into consideration when assessing the specific needs and vulnerabilities of a refugee.
38. Thus, under the UK's resettlement schemes, there are a number of preconditions, including that: a person is determined to be a refugee by the UNHCR and that resettlement is the most appropriate solution. In determining of whether a person is a refugee, the 1951 Convention includes religion (i.e. fear of persecution on grounds of religion) as one of the five tests. Religion therefore comes in at that stage. It is also potentially relevant at the next stage, when the UNHCR determines the refugee's vulnerabilities and protection needs. If there are vulnerabilities resulting from a refugee's religious affiliation in his or her host country, those would be taken into account. Accordingly, membership of a minority religious group was relevant to the assessment of vulnerability and need and hence suitability for resettlement.

Statistics

39. In considering the statistics described below, it is in my view important to bear in mind the context in which they arise. As described in Section B above, the individuals in need of resettlement (1.4 million) vastly outnumber the resettlement places available around the world. There can be little doubt that some individuals in the Middle East who are Christians, or members of other minority religious groups, will form part of the 1.4 million in need of resettlement – as evidenced by the fact that some individuals in these categories have in fact been resettled under the Scheme. It does not follow, however, that people of other faiths do not have an equally strong case. As Elisabeth Laing J said in *Turani*, it is impossible to make a judgment about the comparative vulnerability of groups of people, or of individuals, from the comfort of a London court room.
40. A table exhibited by Mr. Winward provided a breakdown of the individuals who had been referred to the UK under the Scheme as at 5 January 2021. Some 20,015 individuals had arrived, of which 19,636 were of Islamic denominations. This represented just over 98% of the total. The remainder of arrivals (with numbers of individuals in brackets) were: non-faith denominations (6); other denominations (62); Christian denominations (106); Unspecified (205). These groups totalled around 1.9% of the whole. The 106 Christians represented 0.52% of the whole.
41. The statistics also showed that no Christians proposed for resettlement had been rejected by the Home Office. In contrast, some 365 refugees of Islamic denominations had been rejected after referral.
42. Statistics had also been provided by the Home Office in 2017 pursuant to a Freedom of Information Act (FOIA) request. This showed the numbers of refugees who were referred, and arrived, in the years 2014 – 2016. The broad picture was very much the same as the figures as at 5 January 2021, although these statistics also gave a more

detailed breakdown of the religions. Thus, in 2016, the number of referrals were: Muslim – Sunni (7057); Muslim- Shia (13); Christian (27); Yazidi (5); Druze (6); Eastern Orthodox (4); Islam (386); Mandeian (1); Non-specified (0). In that year, Christians represented 0.36% of the total referrals. The comparative figure for Christians in the prior year, 2015, was higher: 1.63%.

43. The FOIA request had also asked the Home Office to state what representations the UK Government had made to the UNHCR concerning the disproportionately low percentage of Syrian Christians among Syrian refugees recommended for resettlement in the UK under the Scheme. The response was as follows:

“The UK works according to the humanitarian principles of impartiality and neutrality – which means that we do not take into consideration the ethno-religious origins of people requiring assistance as we assist solely on the basis of needs, identified by UNHCR.

There has been no compelling evidence to suggest that Syrian Christians do not have fair and equitable access to the VPR scheme. Therefore no specific representations have been made by the UK Government to UNHCR on this basis.”

This remains the SSHD’s position in the context of the present proceedings.

44. A subsequent question in the FOIA request was whether the Home Office had an action plan to deal with the under representation of Christians among Syrian refugees resettled in the UK under the Scheme. The response was:

“As above we have not made representations to UNHCR on the specific issue of Christian refugees. We are however working with UNHCR and their partners to intensify their outreach to all minority groups that might otherwise be reluctant to register with them. In all the countries from which we resettle Syrian refugees, UNHCR has undertaken particular efforts to encourage religious and other minorities to register. These include mobile registration teams, outreach teams, and Help Desks for areas where different minority groups are concentrated to facilitate registration and access to services – all part of an effort to facilitate registration for those refugees who for whatever reason cannot or choose not to access the main registration offices.”

45. In the materials served in support of the application, significant reliance was placed by the Claimant on the statistical evidence in support of the indirect discrimination case. The Amended Statement of Facts and Grounds alleged that the figures for religious minorities were out of all proportion to their representation in the Syrian population as a whole. The statistics were said to be significant not only because Christians, Shi’a and Yazidis were “vastly under-represented – but also, where a group is specifically targeted as religious minorities had been – they should be disproportionately over-represented in the refugee statistics”.

46. The statistics, and the reliance placed on them in support of the indirect discrimination case, were addressed in Mr Winward's evidence. He said that the total number of Syrian Christian refugees referred to the UK for resettlement by the UNHCR was broadly comparable with the total number of Syrian Christian refugees that have registered with the UNHCR and that they have referred for resettlement to a third country. I did not understand this to mean, as submitted on behalf of the Claimant, that every registered Christian refugee had been referred for resettlement – thereby evidencing the reluctance of Christians to register. Rather, it means that broadly the same number of Christian refugees have been referred to the UK as have been referred to other countries.
47. Mr. Winward addressed the argument on under-representation in two ways. First, he drew attention to the lack of available data in relation to the percentage of Christians in the general Syrian population. It was difficult to know the correct percentages with any certainty: the last official census was in 1960. There are no reliable data in relation to the number of Christians still in Syria, displaced or otherwise, nor in relation to the number of Syrian Christians that have left. He referred to the "World Factbook" published by the CIA. This identified the Christian population in Syria as 10%, but noted that it may be considerably smaller as a result of Christians fleeing the country during the ongoing civil war. However, the CIA had indicated that it had "low-no confidence level on the statistics" provided on the religious demography.
48. Secondly, Mr. Winward explained that, over the past few years, the Home Office had considered concerns raised in various fora that the percentage of Christian refugees resettled may, when compared to some assessments of the pre-war population estimates, be lower than one might expect. He said:
- "We have explored this in detail, including through reviewing academic literature, extensive engagement with UNHCR, discussing with other refugee resettlement states, and through direct engagement with faith leaders and faith-based groups (both in the UK and in Jordan). Following this work, our understanding is that there are a number of reasons why the proportion of refugees registered with UNHCR may be lower than their assumed representation in the population: these include the level of faith-based support for displaced Christians in the region; stronger support networks and diaspora opportunities for Christians outside the Middle East; the perceived stigma of being a refugee; and other legal immigration and family reunion routes to join family members and communities around the world all may play a part in explaining the difference. As already set out, the issues are compounded by the fact that the data about the proportion of Christians in the Syrian population is not reliable, and there has also been no recent, reliable, assessment of the proportion of Syrian Christians who remain in Syria. This means that overall, the situation is highly complex."
49. It was no doubt as a result of this evidence that Mr. de Mello acknowledged, in his oral argument, that there was a lack of statistical data. Mr. Blundell submitted that the data did not enable any conclusions on indirect discrimination to be drawn, and I agree. There is no baseline which shows, satisfactorily, what proportion of the Syrian population comprised Christians or other minorities before the civil war, nor what

proportion they form of the refugee population or those who have registered with UNHCR. It is therefore difficult to draw any conclusion as to whether the comparatively low percentages of arrivals, as described above, is under-representative of the relevant group for the purposes of the comparison. This might be less significant if the evidence showed, for example, that Christians were the majority population in Syria before the civil war, and that they comprised the majority of the people who had fled the country. In such a case, statistics which showed a low percentage of referral of Christians might be very troubling. However, the evidence indicates that Christians were a minority in pre-civil war Syria, and that the overwhelming majority of the population were of Islamic denomination. It is therefore unsurprising that the majority of referrals should be in individuals who follow the Islamic faith.

50. Furthermore, Mr Winward's evidence identifies matters which may – plausibly in my view – serve to explain any under-representation in the number of Christian refugees being referred, and why the proportion of refugees registered with UNHCR may be lower than their assumed representation in the population. One, but not the only, reason for this is the level of faith-based support for displaced Christians. This is evidenced, on an individual level, by the circumstances of the Claimant himself: he has been assisted by the Christian community. In his brief submissions, by way of explaining Lord Carey's position, Mr Diamond drew attention to the considerable work carried out by the Christian community in the Middle East, in order to provide assistance and protection to individuals such as the Claimant. One consequence of this considerable work, to which Lord Carey through Mr. Diamond paid tribute, is that it may mean that individuals of other faiths – who do not have the benefit of this work – may be given higher priority in the evaluation of need and vulnerability by the UNHCR.
51. In the light of these matters, I did not think that the statistics were such as to enable any conclusion to be drawn as to discrimination in the way that the Scheme was administered by UNHCR. It seemed to me that this was acknowledged in the submissions on behalf of the Claimant.

The experience of the Claimant

52. The Claimant has provided two witness statements in these proceedings. These witness statements described his personal position, and that of his family, but most importantly for present purposes the way in which he alleges that he was treated by the UNHCR. In his first statement, served in March 2020, he says that the consequence of renouncing his Muslim faith is that he is considered an apostate and that his life was in danger from both family members and the authorities. He feared that if the Jordanian authorities ascertained that he was no longer Muslim, he would be taken to the Syrian border and handed over to the Syrian authorities where he believed he would be killed.
53. Having left Syria for Jordan with his pregnant wife and son, they registered as refugees with the UNHCR in July 2014. They had initially been in a UN refugee camp, but this was controlled by Islamists and there was considerable violence there. The family stayed there for one month, but then left. After a year living in a town, the Claimant was arrested and sent back to the camp. But after 4 months, a family member sponsored his family allowing them to leave the camp. During this time, he had kept his conversion to Christianity a secret from his wider family and others. His statement described the religious intolerance in Jordan, and the possible consequences for Christians and in

particular those who have converted. They might be killed by family members or Islamists, or anyone who took offence at their conversion to Christianity.

54. The Claimant had not initially told the UNHCR of his conversion. The UNHCR therefore assumed that he and his family were still Muslim. The family had not succeeded in securing registration in any programme for resettlement in a non-Muslim land. After his conversion in 2015, however, his need for resettlement had become pressing. In August and September 2018, concerns had been expressed, and threats made, by family members who saw that the Claimant's wife was no longer wearing a Hijab and Chador. In October 2018, the Claimant felt that he had no alternative but to inform the UNHCR of his conversion to Christianity. He attended the agency, told them about his conversion, and requested an appointment. He was spoken to politely, and was gratified to be given an appointment the next day.
55. The Claimant believed that the UNHCR staff had then, following that initial discussion, told many people at the agency about his conversion, and the fact that he would be attending the next day. When he did attend for his appointment, a number of staff members began blocking his entrance into the office in a threatening manner. They were openly mocking him, laughing at him and blocking him aggressively. They said disparaging things about his wife and himself, and how they were immoral and should not be bringing up children. He believed that he had been singled out for this treatment because of his Christian faith. The UN officials and staff are, he said, nearly all Muslim and Arab. The Claimant was frightened and disorientated. They made him give the reason publicly for attending an appointment, and he informed them that he had become a Christian. The conversation continued in a threatening and abusive manner. The Claimant had no alternative but to leave the office: he was fearful and was clearly not going to be let into his appointment. He telephoned later and was spoken to sympathetically, and assured that the UNHCR staff had acted professionally. However, he believed that this was a pretence, and that the conversation was being recorded or traced. He was told to put his complaint into the "safety box" if he was unable to see anyone. The Claimant described this as a ridiculous request in a country like Jordan.
56. The events in October 2018 were not the subject of a complaint to the UNHCR pursuant to the procedures which they operate. Nor was there any immediate complaint to the SSHD. Indeed, those events were not specifically referred to when a pre-action protocol letter was sent to the SSHD in October 2019. Matters developed, however, in January 2020 when the wider families of the Claimant and his wife discovered their conversion to Christianity. This led to threats by the family to kill the Claimant. He turned to the local Christian community for support, and on around 15 January 2020 was moved to a safe house for protection. The local Christian community has thereafter been assisting the Claimant – an action which is said to be not without a significant degree of risk. At around the same time, in January 2020, the Claimant wrote to the British embassy in Jordan to advise them of the problems that he was facing. In February 2020, he instructed his legal representatives to contact the Home Office and advise them of the difficulties that he had, and asked for his case to be included within the Scheme. Correspondence followed, with the Home Office stating that it did not self-select refugees for resettlement nor intervene in UNHCR's established selection processes.
57. The Claimant's first witness statement concluded by saying in summary that, as Christians, they had no hope for resettlement in reliance on the UNHCR. His experience showed that they would not be selected on grounds of discrimination, and their lives as

converts would be difficult and precarious unless they were resettled in Western society like the UK.

58. The Claimant made a further statement on 27 June 2021, and this was served on around 9 July 2021 shortly prior to the hearing. The statement was served well outside the time prescribed for further evidence under the timetable laid down by Morris J. Notwithstanding the delay in service, I gave permission to the Claimant to rely upon paragraphs 22 – 37 of his statement which addressed the SSHD’s argument that permission to apply for judicial review should be refused on the grounds of delay. In those paragraphs, the Claimant provided some further detail as to the situation of himself and his family. He said that after his experience at the UNHCR, he did not expect any assistance from them: making a formal complaint was unrealistic. He describes the perilous situation in which his family found itself in around January 2020, when wider family members had come to his dwelling to kill him and take his wife and children. He had been put in a safe house by the local church. There was no point going to the UNHCR or the Jordanian police: both would expose his family and the church without offering any assistance. Until January 2020, his situation was survivable. But it escalated rapidly at that point. He could not work, as he would risk discovery, and therefore the church continued to support him financially. The family could not attend any public events, other than church meetings. The church had placed cameras around the house in case of an attack. His children could not go to school: they would be treated as Muslim, but they would likely speak openly about their Christian faith and then the family would be exposed. The children had no family life, but only church events.

The position of Christians other than the Claimant

59. The Claimant’s alleged treatment by the UNHCR in October 2018 was the subject of the Claimant’s direct discrimination case against the SSHD. However, the Claimant’s case also relied upon other evidence in support of the argument that his situation was far from unique, and was representative of a far wider problem. To a large extent, this evidence was not directed at the conduct of the UNHCR, whether in Jordan or otherwise, or indeed at any aspect of the Scheme or its operation. Rather, it provided evidence of discrimination against Christians in countries with a Muslim majority, including by the authorities such as the police in those countries.
60. For example, Mr. de Mello referred to a Refugee Review Tribunal (“RRT”) report, dated 4 September 2009 (over 4 years before the introduction of the Scheme) which described the treatment in Jordan of converts to Christianity. The report discussed the potential exposure of a Christian convert to proceedings in a Sharia court to a verdict that a convert is an apostate whom any Muslim could kill. However, the higher court (to which appeals were automatic) had never upheld a Sharia court ruling that stipulated for the killing of an apostate. The Australian Department of Foreign Affairs and Trade (DFAT) was quoted as saying that its interlocutors had no knowledge of any person being killed because he or she was an apostate. The DFAT also stated that Muslims who convert are on some occasions more likely to be at risk of persecution in Jordan by their own family members, and that persons at risk usually have only a few options to safeguard themselves. However, the DFAT’s interlocutors did not know of any incident in Jordan where a convert’s family had killed or otherwise physically harmed apostates. The RRT report referred to a report by a UK Christian organization which listed Jordan as 37th on its 2009 list of the worst 50 countries for the persecution of Christians.

61. I agree with Mr. Blundell's submission that the 2009 RRT report said nothing about the UNHCR or its treatment of Christian refugees in Jordan in the context of the Scheme. I do not accept Mr. de Mello's submission that an inference can be drawn, from that report, as to the approach of UNHCR staff, in circumstances where the RRT report does not address that issue and where UNHCR staff would be expected and required not to behave in an intimidatory fashion towards Christian refugees. Mr. Blundell submitted that since the Claimant's case (as developed in Mr. de Mello's opening) was based on the RRT report, and since that report said nothing about the UNHCR, that really was the end of the factual case. I do not, however, accept that the RRT report was the only evidence on which the Claimant sought to rely.
62. The Claimant's evidence included a witness statement from Majd Gammoh, who had worked with refugees in Jordan. Mr Gammoh gave some very general evidence to the effect that many Christians reported discrimination from UNHCR processes; from registration to aid distribution and especially in being put forward for resettlement. They also did not feel that they would be protected by the UNHCR in camps. The UNHCR's position, as expressed in meetings, was that their staff were trained to be sensitive to diversity. But Mr. Gammoh said that this was contrary to the testimony of many refugees.
63. In paragraphs 109 – 110 of its Amended Statement of Facts and Grounds, the Claimant referred to other evidence, available to the SSHD, that the delegation to the UNHCR of exclusive selection of potential beneficiaries of the Scheme would result in detriment to Christians and other religious minorities. This argument was advanced in the context of the Claimant's subsequently withdrawn case on the PSED, but these paragraphs were identified by the Claimant as being relevant to the discrimination case that remained.
64. In paragraph 110, the Claimant referred to the statistics, which I have already addressed. The Claimant also referred to a resolution of the House of Commons in April 2016. Earlier in the Grounds, the Claimant quoted a resolution that "Christians, Yazidis and other ethnic and religious minorities in Iraq and Syria are suffering genocide". This resolution did not therefore concern either the UNHCR or the Scheme, or indeed the position of people in Jordan. It described the position generally in the two countries concerned.
65. However, paragraph 110 referred to evidence given by a Mr. Carl Anderson before a sub-committee of the United States House Foreign Affairs Committee in December 2015. I was not provided with a transcript of his evidence, or any conclusions reached by the committee. However, the evidence was described as follows, with the Claimant's underlining retained:

"3. The Christian communities of Iraq and Syria, along with those of other vulnerable religious minorities, fear taking shelter in the camps of the United Nations High Commissioner for Refugees (UNHCR) because of religiously motivated violence and intimidation inside the camps. We recommend that the United States insist on proper security inside the camps and identify ways to ensure that Christians and other vulnerable minorities from Iraq and Syria are not subject to violence inside UNHCR facilities, including the possibility of providing separate facilities for minorities and hiring professional staff that

would include members of the minority communities. The U.S. should require the UNHCR to gather and make public, along with its other data, the religious affiliation of all the refugees it served. To ignore reports of humanitarian problems, without prompt investigation and corrective action, is itself an injustice.”

“Syrian Christians and other vulnerable minorities are disproportionately excluded from the U.S Syrian Refugee Resettlement Program due to reliance on a functionally discriminatory UNHCR program. We recommend that the U.S. government take immediate action to implement its stated policy of “prioritizing” the resettlement of vulnerable minorities, including Christians. In addition, we recommend that the U.S. government end its sole reliance on the UNHCR for refugee referrals and engage private contractors to identify, document and refer Christian, Yazidi, and other vulnerable minority refugees from Syria and Iraq who are in need of resettlement.”

66. The Claimant also referred in that paragraph to evidence from Lord David Alton and Fiona Bruce MP, following a visit to Syrian refugee camps, in November 2015 (again with the Claimant’s underlining retained):

“The House of Commons International Development Select Committee is currently conducting an inquiry into the Syrian Refugee Crisis. At an evidence session recently, a witness, speaking on behalf of an organization which works in the region directly with refugees, gave testimony that “we are not aware of Christians being within UN registered camps” – the camps to which UK Aid makes a substantial funding contribution. The Committee was told that Christians avoid these camps – and therefore access to the support within them – because of fear: “if your culture is different, you stand out and are more of a target, which makes you nervous to go there.”

Another witness in written evidence to the inquiry states “Christians are generally not able to go to camps for fear of intimidation and risk...Because many Christians and other minority groups do not enter the camps due to fear of religious persecution, this would result in them being doubly disadvantaged as they will not have equal access to the scheme.” This double disadvantage refers to effective exclusion from the Syrian Vulnerable Persons Scheme – after having already been driven away from their home towns or villages, often as a result of religious persecution – these refugees, surviving outside the UN camps, have no chance of being selected as some of the 20,000 refugees the UK has committed to welcome here. An Archbishop familiar with the region says that if they are outside the refugee camps “The UN don’t really help these families.””

67. In its response to these points in its detailed grounds served in February 2021 pursuant to the order of Morris J, the SSHD submitted that the matters relied upon did not amount

to evidence, let alone ample evidence, that the Scheme would unlawfully discriminate against Christians, or does so. It did not support the case that UNHCR officials were guilty of the conduct described by the Claimant, involving his practical ejection from an interview. The SSHD also submitted that the evidence did not begin to demonstrate that the SSHD ought to have suspected that such conduct was occurring and taken action accordingly, whether as part of the PSED or otherwise.

68. The Claimant also referred to a report of the Bishop of Truro and, subsequent to the hearing, provided a copy of his final report and recommendations published in 2019. The report was entitled: “Bishop of Truro’s independent review for the Foreign Secretary of FCO support for persecuted Christians”. I was not referred to any particular passages in the report during argument. I note, however, that the report does not discuss the position in Jordan in any detail. It did refer to the evidence of Mr. Anderson to the sub-committee of the US House Foreign Affairs Committee. It also referred to having received a “wealth of evidence, both oral and written, about the alarming situation for Christian refugees who have fled religious persecution in their homeland only to find it again within designated camps and accommodation in Lebanon, and even Europe”. It does not contain criticism of the UNHCR, but does make (on page 103) an “overwhelming recommendation” that HMG should explore whether the UNHCR, who administer these camps and receive huge amounts of aid from the UK to do so, satisfactorily considers religious identity in its vulnerability criteria. Amongst the recommendations at the conclusion of the report was the following:

“Where UK actions are delegated to international institutions/agencies (such as UNHCR) minority visibility among beneficiaries should be a priority. Humanitarian law mandating no ‘*adverse distinction*’ must not be used as a cover for making no distinctions at all and letting the majority community benefit disproportionately. The FCO, in its international engagement must resist any temptation to ‘outsource’ its obligations in this regard.”

The Bishop’s recommendations were accepted by the UK government in their entirety in July 2019.

69. In his witness statement, Mr. Winward responded to the essential points described above by describing, first the efforts made to assist Christians and other minority groups. His evidence was as follows:

“25. In light of the complexity of the situation, and with the aim of supporting parity of access for all refugees, UNHCR has undertaken particular efforts to encourage religious and other minority groups to register. These include the use of mobile registration teams, outreach teams, and the availability of Help Desks for areas where different minority groups are concentrated. These measures are all part of an effort to facilitate registration for those refugees who for whatever reason cannot or choose not to access the main registration offices.

26. The Home Office has also explored with UNHCR expansion of its network of community-based support offices. This, in part,

led to the drawing together of faith leaders, UNHCR, and other interested parties to a meeting in Jordan in January 2018 where issues pertaining to the availability of services, including resettlement, were discussed. The outcomes of this meeting included: The designation of a point of contact in UNHCR Jordan so that the church leaders and NGOs can interact with UNHCR staff and reach them directly to refer cases they think require support (including alerting UNHCR to cases which need handling with specific sensitivity or in a confidential manner); confirmation of UNHCR complaints processes, including noting that concerns or allegations relating to specific cases can be reported to UNHCR's independent inspection office in Geneva; and the development of a method for UNHCR to be informed of suggestions on how to make refugees feel more safe and confident throughout engagement with their processes."

70. Secondly, he responded specifically to the Claimant's allegations that officials of the UNHCR had conducted themselves in bad faith, and had discriminated against Christians more generally, and the related allegation that the Home Office should have been aware of those matters and should have taken action accordingly. He said that the Home Office strongly refuted the allegation. He described the UNHCR as a respected international organization, which adheres to humanitarian principles, one of which was impartiality. He referred to the UNHCR's specific systems in place to mitigate the risk of any malfeasance, and to investigate allegations of misconduct by UNHCR staff, interpreters, guards or NGO partners. These systems included: complaint forms and boxes at branch offices; helplines to provide counselling and information; an independent body, called the Inspector General's Office ("IGO") to whom referrals could be made anonymously; a requirement for UNHCR staff to report misconduct, irrespective of any complaint. He also exhibited the specific Registration Standards of the UNHCR, which provided guidance on how registration operations should be conducted in order to contribute to the legal and physical protection of persons of concern to UNHCR.

71. He concluded as follows:

"33. In all of our dealings with UNHCR, it has consistently provided the Home Office with assurance that it is committed to ensuring that refugees, internally displaced and stateless persons have equal access to rights, protection, assistance and resources, and are able to participate as active partners in the decisions that affect them.

34. I should make very clear that I am not aware of any misconduct by UNHCR officials of the kind alleged by the Claimant. As set out above, there is also nothing to suggest that the allegations made by the Claimant in this case were reported through the appropriate processes.

35. I have already explained above why statistical data about the proportion of Christians resettled on the VRPS versus their representation in the population would not be indicative of the

UNHCR behaving in a discriminatory fashion. I also understand that the Claimant has suggested that UNHCR run their camps so as to create an environment that is unwelcoming to Christians and other minorities. I am not aware of any evidence which supports that assertion and have no reason to think it is correct. More generally, it is my understanding that UNHCR primarily refers to those who do not live in camps for resettlement, and that around 95% of Syrian refugees, regardless of their background, reside outside of formal refugee camps, often by choice, as there are more livelihood opportunities in urban, semi-urban, and rural non-camp areas. Additionally, most of those referred for resettlement by UNHCR areas are resident outside of formal refugee camps. Please see these statistics at pages 78 to 94 of the attached bundle.

36. In conclusion, there is simply no reason for the Home Office to have suspected that the UNHCR is or has been conducting itself improperly. For obvious reasons, we would expect to see very strong evidence before we formed a view that this was happening.”

C: Legal Framework

72. Section 13 of the EA 2010 defines direct discrimination. Subsection (1) provides that:

“A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.”

73. “Religion or belief” is, by section 4 EA 2010, a protected characteristic. Section 4 is amplified in regard by section 10.

74. Section 19 EA 2010 defines indirect discrimination. So far as is relevant, it provides that:

“(1) A person (A) discriminates against another (B) if A applies to B a provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic of B’s.

(2) For the purposes of subsection (1), a provision, criterion or practice is discriminatory in relation to a relevant protected characteristic of B’s if—

(a) A applies, or would apply, it to persons with whom B does not share the characteristic,

(b) it puts, or would put, persons with whom B shares the characteristic at a particular disadvantage when compared with persons with whom B does not share it,

(c) it puts, or would put, B at that disadvantage, and

(d) A cannot show it to be a proportionate means of achieving a legitimate aim.”

75. Section 29 EA 2010 prohibits discrimination in the provision of services and the exercise of public functions. Subsection (1) prohibits discrimination in relation to the provision of a service to the public or a section of the public. A person providing that service is a “service provider”. Subsection (2) provides that a service provider (A) must not, in providing the service, discriminate against a person (B), by subjecting B to “any other detriment”. Subsection 29 (6) relates to the exercise of public functions and provides that:

“A person must not, in the exercise of a public function that is not the provision of a service to the public or a section of the public, do anything that constitutes discrimination, harassment or victimisation.”

76. The Claimant contended that, in the present case, the main service provider was the SSHD, and the secondary service provided was the UNHCR acting on behalf of the SSHD.
77. Section 109 deals with the liability of employers and principles. Subsection (1) provided that anything done by a person (A) in the course of A’s employment must be treated as also done by the employee. Subsection (2) provided that anything done “by an agent for a principal, with the authority of the principal, must be treated as also done by the principal”.
78. Section 112 provides that a person (A) must not knowingly help another (B) to do anything which contravenes various parts of the EA 2010, including Part 3 which concerns services and public functions.
79. Section 114 gives jurisdiction to the county court to determine a claim for contravention of Part 3. Section 118 provides for a 6-month time-limit starting on the date of the act to which the claim relates.

D: Direct discrimination

The parties’ arguments

80. Although a more expansive case of direct discrimination was advanced in the written grounds, the case ultimately advanced by the Claimant was relatively narrow. It was based on the events in October 2018 when, on the Claimant’s case, he turned up for his interview with the UNHCR and was subjected to threats and abuse in consequence of his religion, including the fact that he was a Christian convert. The Claimant contended that the UNHCR staff, who made these threats and abuse, were the agents of the SSHD; alternatively that the SSHD was liable for their acts on the basis of English law principles of vicarious liability.
81. In support of the agency argument, Mr de Mello referred to a decision of the Employment Appeal Tribunal (Silber J presiding) in *Bungay v Saini* Appeal No. UKEAT/0331/10/CEA. The case involved an allegation of discrimination, on grounds of faith, on the part of the appellants who were members of the board at the All Saints

Haque Centre. The issue on appeal was whether or not the appellants had acted as agents for the Centre. The EAT applied the common law rules of agency principles set out in the then current edition of *Bowstead on Agency*:

“Agency is the fiduciary relationship which exists between two persons, one of whom expressly or impliedly assents that the other should act on his behalf so as to affect his relations with third parties, and the other of whom similarly manifests assent so as to act or so acts pursuant to the manifestation. The one on whose behalf the act or acts are to be done is called the principal. The one who is to act is called the agent. Any person other than the principal and the agent may be referred to as a third party”.

82. In support of the vicarious liability argument, Mr de Mello referred to the decision of the Supreme Court in *Various Claimants v Catholic Child Welfare Society* [2012] UKSC 56, [2013] 2 AC 1.
83. In paragraph 40 of the Claimant’s written argument, an argument was advanced that the SSHD had knowingly aided the junior staff of the UNHCR to discriminate against converts, with liability arising under EA section 112. It is fair to say that, in his oral submissions, Mr. de Mello advanced this argument somewhat diffidently.
84. On behalf of the SSHD, Mr. Blundell submitted that there was no agency relationship between the SSHD and the UNHCR. Nor were the principles of vicarious liability applicable. He did not dispute the proposition that, if an agency relationship did exist, and if the events in October 2018 had in fact taken place as described by the Claimant, a claim for direct discrimination against the SSHD could be made. Such a claim would be expected to be made in the county court, and would be subject to the 6-month time limit. The claim would not, however, result in relief being granted in relation to the Scheme. It would be an ordinary claim for damages arising from a particular incident of discrimination. In fact, the Claimant’s claim in these proceedings does not include a claim for damages.
85. As to whether the incident had in fact occurred, the SSHD’s position was that she did not know anything about the facts of the incident, other than as stated by the Claimant. The incident had not been reported at the time, and had therefore not been the subject of any investigation by the UNHCR in accordance with their procedures. The UNHCR had originally been served as an interested party to the present proceedings, but had asserted its immunity in accordance with a note verbale from the Office of Legal Affairs of the United Nations. This relied upon the immunity granted to the United Nations and its officials under Article 105 of the Charter of the United Nations. The Office of Legal Affairs requested the FCO to inform the court of its position in that respect.

Discussion

86. The evidence as to what happened in October 2018 is not very satisfactory. There was no contemporaneous complaint, despite the existence of various ways in which matters could be brought to the attention of the UNHCR. The events were not referred to in the pre-action protocol letter. The first occasion on which the events were relied upon appears to have been some 15 months later, in January 2020, when the present litigation was being contemplated. If these events occurred, then they were plainly contrary to

the way in which the personnel of the UNHCR were supposed to act. All of these matters might lead one to doubt that the events occurred in the way described by the Claimant. Nevertheless, the Claimant's evidence is the only direct evidence as to these events which is before the court, and there has been no application to cross-examine him. I therefore consider it right to proceed on the basis of the Claimant's evidence.

87. However, I see no basis on which to conclude that there was a relationship of principal and agent between the SSHD and the UNHCR. The nature of an agency relationship is summarised in the passage from *Bowstead* which was quoted in the *Bungay* decision. A more detailed discussion of the relevant principles can be found in the judgment of Lavender J in *Tuke v JD Classics* [2018] EWHC 755 (QB), paragraph [4]:

“(1) Agency is a fiduciary relationship which exists between two persons, one of whom expressly or impliedly manifests assent that the other should act on his behalf so as to affect his relations with third parties, and the other of whom similarly manifests assent so to act or so acts pursuant to the manifestation: see *Bowstead & Reynolds on Agency* (2018), 21st Edn, para 1-001.

(2) There is no particular formality to the creation of agency. In cases not involving ratification, agency arises by the conferring of authority by the principal on the agent, which may be express or implied from the conduct or situation of the parties: *Bowstead*, para 2-001.

(3) Agency may be implied where one party has conducted himself towards another in such a way that it is reasonable for that other to infer from that conduct assent to an agency relationship: *Bowstead*, para 2-029.

(4) In determining whether or not there is an agency relationship between the parties, the Court may look at the matter objectively: *Bowstead*, paras 2-030 to 2-032.

(5) As Lord Pearson said in *Garnac Grain Company Incorporated v HMF Faure & Fairclough Ltd* [1968] AC 1130, at p. 1137, the question for the Court is whether the parties:

"have agreed to what amounts in law to such a relationship, even if they do not recognise it themselves and even if they have professed to disclaim it, as in *Ex parte Delhasse*. But the consent must have been given by each of them, either expressly or by implication from their words and conduct. Primarily one looks to what they said and did at the time of the alleged creation of the agency. Earlier words and conduct may afford evidence of a course of dealing in existence at that time and may be taken into account more generally as historical background. Later words and conduct may have some bearing, though likely to be less important."

(6) As set out by Donaldson J in *Teheran-Europe Co Ltd v S. T. Belton (Tractors) Ltd* [1968] 2 QB 53, at pp. 59-60, in principle an agent may contract on behalf of his principal in one of three ways:

(a) by creating privity of contract between the third party and his principal without himself becoming a party to the contract;

(b) by creating privity of contract between the third party and his principal, whilst also himself becoming a party to the contract; and

(c) by creating privity of contract between himself and the third party, but no such privity between the third party and his principal.”

88. In my view, the UNHCR was given no authority by the SSHD to affect the relationship of the SSHD with any refugees, and there is nothing which would lead to the conclusion that (as Mr de Mello submitted) a fiduciary relationship existed between the UNHCR and the SSHD. The UNHCR’s work involved their staff in identifying vulnerable individuals who might be referred for the various resettlement programmes which existed around the world. The UNHCR could not, and did not, make any commitment on the part of the SSHD to accept any individual or group of individuals. The UNHCR had its own principles and processes for identifying refugees, and these would involve the UNHCR considering whether to make any referral to the UK government, to some other government operating a resettlement programme, or to make no referral at all. In making these decisions, the UNHCR was (as Mr. Blundell submitted) carrying out its own mandate from the United Nations to resettle individuals by providing a durable solution. It carried out that mandate under its own auspices, procedures and powers, which did not stem from the SSHD. The UNHCR did not, in my judgment, owe any duties of loyalty to the SSHD, such duties being the distinguishing obligation of a fiduciary: see the classic judgment of Millett LJ in *Bristol & West Building Society v Mothew* [1998] Ch 1, 18A-C.
89. Mr. Blundell submitted that the nature of the relationship between the UNHCR and the various governments who operated resettlement schemes was one of partnership. The UNHCR would use its expertise to identify individuals who should be referred, but this required governments to make schemes available on which refugees could be placed. The UNHCR was therefore referred to as a partner agency. This was not in the classic sense of the Partnership Act 1890 but in the colloquial sense of people or organisations (including governments) working together towards a common aim. It seems to me that this is an appropriate way of describing the relationship, but in my view it is a long way from a relationship of principal and agent.
90. The argument based on vicarious liability is no better. As is clear from the *Catholic Child Welfare Society* case, to which Mr de Mello referred, the modern law of vicarious liability no longer draws a line between employees and independent contractors. That case has been considered in subsequent Supreme Court authority, *Cox v Ministry of Justice* [2016] UKSC 10, [2016] AC 660.

91. The relevant principle is summarised in paragraph [24] of *Cox*:

“The result of this approach is that a relationship other than one of employment is in principle capable of giving rise to vicarious liability where harm is wrongfully done by an individual who carries on activities as an integral part of the business activities carried on by a defendant and for its benefit (rather than his activities being entirely attributable to the conduct of a recognisably independent business of his own or of a third party), and where the commission of the wrongful act is a risk created by the defendant by assigning those activities to the individual in question.”

92. Lord Reed expanded upon this concept at paragraphs [29] – [30]

“[29] It is important, however, to understand that the general approach which Lord Phillips PSC [in *Catholic Child Welfare Society*] described is not confined to some special category of cases, such as the sexual abuse of children. It is intended to provide a basis for identifying the circumstances in which vicarious liability may in principle be imposed outside relationships of employment. By focusing upon the business activities carried on by the defendant and their attendant risks, it directs attention to the issues which are likely to be relevant in the context of modern workplaces, where workers may in reality be part of the workforce of an organisation without having a contract of employment with it, and also reflects prevailing ideas about the responsibility of businesses for the risks which are created by their activities. It results in an extension of the scope of vicarious liability beyond the responsibility of an employer for the acts and omissions of its employees in the course of their employment, but not to the extent of imposing such liability where a tortfeasor's activities are entirely attributable to the conduct of a recognisably independent business of his own or of a third party. An important consequence of that extension is to enable the law to maintain previous levels of protection for the victims of torts, notwithstanding changes in the legal relationships between enterprises and members of their workforces which may be motivated by factors which have nothing to do with the nature of the enterprises' activities or the attendant risks.

[30] ... The individual for whose conduct it may be vicariously liable must carry on activities assigned to him by the defendant as an integral part of its operation and for its benefit. The defendant must, by assigning those activities to him, have created a risk of his committing the tort.”

93. In the present case, the UNHCR's staff were not employees of the SSHD so as to give rise to a classic case of vicarious liability. Furthermore, the UNHCR was clearly not carrying on activities as part of the business of the SSHD or the UK government. The

UNHCR was a United Nations agency with worldwide responsibility for refugees. The UNHCR's operations were their own operations, carried out pursuant to their own procedures. No risk was created by the UK government deciding to work in conjunction with the UNHCR in relation to the Scheme. On the contrary, the Scheme enabled the UNHCR to enlarge the resettlement opportunities for the very large number of refugees who were vulnerable.

94. I also reject the case, tentatively advanced, that the SSHD knowingly aided the junior staff of UNHCR to act in a discriminatory way. There is no evidence to support that conclusion, which is contrary to the evidence of Mr. Winward described above.
95. Mr. de Mello accepted that, so far as concerns the direct discrimination case, the principle that the ECHR does not have extra-territorial effect, except in very limited circumstances, was applicable: see *Bankovic v Belgium* [2001] ECHR 890, *Al-Skeini v UK* [2011] ECHR 1093, reaffirmed by the Grand Chamber in *MN v. Belgium* (unreported, judgment of 5 March 2020, application no. 3599/18). This meant that, in relation to the direct discrimination claim, the Claimant's argument based on Article 14 ECHR did not advance matters. I discuss extra-territoriality, in the context of indirect discrimination, in Section G below.

E: Indirect discrimination under the EA 2010

96. Indirect discrimination under the EA 2010 involves the application of an apparently neutral "provision, criterion or practice", or PCP as it is generally known, that puts or would put people with a particular protected characteristic at a particular disadvantage compared with others: see *Turani* para [27]. Religion is a protected characteristic, and therefore being Christian (or another minority faith) is protected.

The parties' arguments

97. The Claimant's pre-hearing written materials were somewhat imprecise in the identification of the PCP. One theme was that there was indirect discrimination because the criteria used by the UNHCR, and the Scheme itself, did not provide for positive discrimination in favour of Christians and other minorities. This theme was reflected in the claim for a mandatory order that the criteria should be "premised upon religion", and that any remaining places on the Scheme should be reserved for religious minorities. Another argument, specifically advanced in paragraph 54 of the Claimant's skeleton argument for the hearing, was that the PCP in the present case were the "criteria used by UNHCR (and approved by the Defendant) to interview and assess refugee claims". The identified criteria have been set out in paragraph [25] above.
98. Neither of these ways of advancing the case is sustainable. As previously discussed, the introduction of criteria which discriminated in favour of Christians would be susceptible to challenge on the basis that they discriminated against Muslims and other non-Christians. As far as the criteria themselves are concerned, these were expressly referable to the humanitarian principles of impartiality and neutrality. They focused on vulnerability and need, and I did not consider that there was any basis on which it could be said that the criteria chosen were indirectly discriminatory. In the end, Mr de Mello did not pursue either of these lines of argument.

99. The Claimant's case ultimately focused on the existence of a requirement for refugees to be interviewed, initially for the purpose of determining their refugee status with a view to registration, and subsequently with a view to considering them for potential resettlement. The Claimant submitted in its written argument that the "PCP failed to provide a proper and safe system for (Syrian) Christians to register their claims for resettlement in the UNHCR in Jordan". Their claims could and should be conducted through reputable NGO's situated there for consideration by UNHCR, in Amman or elsewhere, or the possibility of self-referral to the local British embassy or the possibility of setting up different camps for this small group of refugees or selection by co-religionists. The PCP was applied to all Syrian refugees seeking resettlement. It put or would put Syrian converts from this group at a particular disadvantage compared with Syrian refugees who do not come from this group of applicants. The Claimant submitted that it was clear that Christians in Jordan experience discriminatory obstacles when applying to register and process their claims for resettlement.
100. In his oral submissions, Mr. de Mello said that the PCP was the interview requirement, and specifically the interview in Jordan. As shown by the Claimant's experience, the whole system works against Christians as a result of the attitude of the UNHCR officials and staff. In his reply submissions, Mr. de Mello emphasised that he was not seeking priority or preferential treatment for Christians. There should, however, be ways of treating Christians differently from other religions, not in terms of whether they are refugees, but rather in relation to processing and interview. The argument therefore focused on the process.
101. He submitted that if the discriminatory impact of the PCP was established, then it would be very difficult to justify it. There were less intrusive measures that could be adopted: for example, going through other NGO's and then getting in touch with the UNHCR.
102. On behalf of the SSHD, Mr. Blundell submitted that the SSHD's evidence in paragraphs 33 to 35 of its evidence should be accepted: see paragraph [71] above. This is in accordance with the principle contained in authorities such as *R (Soltany) v SSHD* [2020] EWHC 2291, para [88]: namely, that where there are disputes of fact, the court would generally proceed on the basis of the facts stated in the SSHD's written evidence, unless there is something inherently implausible or inconsistent with other incontrovertible evidence which would lead the court not to accept it.
103. He submitted that, in the light of that evidence, the court could not conclude that there was a systemic problem. The Claimant's experience was that of a particular individual, but this was not sufficient. In that regard, the statistics did not assist in demonstrating a systemic problem: no conclusions could be drawn from them. There was no baseline detail to make out a claim of indirect discrimination based on the statistics.
104. As far as the claim generally was concerned, and also specifically the interview process, Mr. Blundell submitted that this attacked the wrong target. That process was a matter for the UNHCR to determine: it had nothing to do with the SSHD. In so far as the claim was based on a failure by the SSHD to make enquiries in relation to the alleged discrimination, with reliance being placed on the duty of enquiry established in *Secretary of State for Education and Science v Tameside Metropolitan Borough Council* [1977] AC 1014: the position was that the SSHD had made appropriate enquiries, and there was no basis for the court to intervene by way of judicial review.

105. Mr. Blundell submitted that the Australian RRT report showed discrimination against Christians in wider Jordanian society, but said nothing about the UNHCR or its interview processes. The claim therefore failed on the facts, since the Claimant had not got over the hurdle of showing differential treatment of Christians. It was not necessary to consider the arguments based on justification. However, any indirect discrimination in the present case would be justified. In that regard, the SSHD relied upon the evidence of Mr. Winward as to why the UNHCR were used, and the decisions of Elisabeth Laing J and the Court of Appeal in *Turani*.

Discussion

106. In an indirect discrimination case, where reliance is placed on the EA 2010, it is important to identify the PCP relied upon and for the court to be satisfied that it has the discriminatory effect identified in section 19 (2): that it puts or would put “B” at a particular disadvantage when compared with persons with whom B did not share the protected characteristic. In *Turani*, the PCP relied upon by the claimants was that all referrals under the Scheme were to be made exclusively by the UNHCR. The judge said that she had no doubt that the PCP did have the effect described in section 19 (2). That was essentially because the impugned PCP made it much harder for a PRS (a Palestinian refugee in Syria) to get near the gatekeeper than it was for other, non-PRS, people who were displaced by the same conflict. The only gatekeeper was the UNHCR, and its mandate did not extend to PRS. The statistical evidence in that case showed that PRS had no practical possibility of being selected for the Scheme: PRS were in practice wholly excluded from the Scheme or very nearly so. (See the judgment of Elisabeth Laing J at paragraphs [8], [116] – [126] and the judgment of the Court of Appeal at [41] [43] and [79]). In that case, once the issue of territoriality had been decided (ultimately against the SSHD), the only issue was justification for the PCP.
107. In the present case, the PCP relied upon is not quite the same. The Claimant does not allege that the PCP is that all referrals under the Scheme are made exclusively by the UNHCR, although this is relevant by way of background to the PCP on which reliance is placed. The PCP here relates the existence of a requirement for an interview between a refugee and the UNHCR, at the stage when an individual applies for registration as a refugee but more importantly at the time when the UNHCR is giving consideration to whether he or she should be referred to a government for resettlement under arrangements such as the Scheme. It is indeed a feature of the Scheme, as explained in the Home Office policy statement dated July 2018, that the UNHCR will interview registered refugees to determine their experiences and current circumstances in the host country, and conduct a resettlement interview and assess that refugees meet the criteria for resettlement in accordance with the UNHCR’s resettlement handbook before referring them to the UK for consideration.
108. Although the PCP relates to the requirement for an interview or interviews, it was not suggested by the Claimant that it was inappropriate or discriminatory simply because an interview was to take place. Indeed, it is difficult to see how the process of identifying refugees for possible resettlement, and understanding their experiences and current circumstances, could take place without an interview of some kind. Rather, the Claimant’s argument focuses on the interview process, which (so it is argued) means that Christian refugees have to go into an intimidatory environment where they will meet or encounter UNHCR local Muslim personnel who share and will express the

hostility to Christians which is common amongst people and authorities in the relevant country, here Jordan.

109. At the heart of the Claimant's case, therefore, is the submission that the UNHCR is operating its interviewing processes in Jordan in a discriminatory fashion, because of the hostility of the local Muslim population – who comprise a large number of the local UNHCR staff – towards Christians, and in particular those who have converted from Islam to Christianity.
110. I was not persuaded by Mr. Blundell's argument that the Claimant's case focused on the "wrong target"; because it concerned the conduct of the UNHCR on the ground, whereas it needed to concern the actions of the SSHD. It seems to me that if it is indeed a feature of the practical operation of the Scheme that Christians, including Christian converts, are disadvantaged because of the requirement for interview, and because of the hostility of the UNHCR staff conducting such interviews towards Christians, then this is potentially a matter which could be laid at the door of the SSHD under section 19 (2). I think that a relevant analogy could be drawn with the situation in *Turani*, where the consequence of the exclusive involvement of the UNHCR was that PRS were disadvantaged in terms of their access to the scheme. In that case, the disadvantage arose because of the terms of the UNHCR's mandate, which excluded PRS. Here, on the Claimant's case, the disadvantage arises because of the discriminatory attitudes and approach of the UNHCR Muslim staff who in practice carry out the day-to-day work of the UNHCR, with a consequent impact on referrals of Christians and other minorities for the Scheme.
111. Mr. Blundell also submitted, however, that insofar as the Claimant relied on alleged hostile "animus of UNHCR personnel" (the expression used in the concluding paragraph of the grounds), there was no independent evidence to support his allegations about what occurred in his case, and absolutely nothing to support a widespread practice. In those circumstances, he submitted that the claim failed on the facts. He referred to the decision of the Court of Appeal in *ZK v Redbridge LBC* [2020] EWCA Civ 1597 at paragraph [80] in support of the proposition that the question is not whether isolated incidents occurred, but whether there are systemic failings. I did not understand Mr. de Mello to contend that isolated incidents would be sufficient to establish the relevant PCP in the present case, or to dispute the proposition that the evidence needed to show systemic failings if the case of indirect discrimination were to succeed. The Claimant's case was that there were indeed systemic failings here.
112. In *Turani*, the evidence was clear that there was (what could be described as) systemic discrimination against PRS under the Scheme. That was because referrals were made exclusively by the UNHCR, whose mandate did not include PRS. The statistical evidence also showed that in practice PRS had no access to the Scheme.
113. In the present case, however, there is a substantial issue as to whether or not there is any systemic discrimination by the UNHCR at all. Mr. Blundell says that the evidence on that issue, adduced by the SSHD, should be accepted. Mr. Blundell submits that in the context of this issue, it is necessary also to focus on the actual PCP relied upon, namely the interview process rather than, for example, general societal discrimination in countries which have a majority Muslim population. He says that there is no evidence, or at least no satisfactory evidence, of discrimination resulting from that interview process.

114. I consider that both of these arguments by the SSHD are well-founded, and I accept them.
115. The evidence of Mr. Winward on behalf of the SSHD, which I have described in Section B above, is that the UNHCR is a respected international organisation which adheres to humanitarian principles, including impartiality. This is evident from the written materials before the court or referred to in the evidence, such as the UNHCR Resettlement Handbook and the UNHCR Registration Standards. The UNHCR recognises the possibility of misconduct, and it has established the IGO in order to deal with allegations of misconduct. The UNHCR had consistently provided assurances to the UK government as to its commitment that refugees have equal access to rights, protection, assistance and resources. Mr. Winward, who occupies a senior position at the Home Office in relation to refugees, is not aware of any misconduct by UNHCR officials of the kind alleged by the Claimant, and is unaware of any evidence which supports the assertion that the UNHCR run their camps so as to create an unwelcoming environment. He concludes by saying that there was no reason for the Home Office to have suspected that the UNHCR is or has been conducting itself improperly.
116. The substance and effect of that evidence is to dispute, on the facts, that there is systemic discrimination against Christians by the UNHCR, whether in Jordan or indeed elsewhere. On an application for judicial review, where witnesses have not been cross-examined, the ordinary approach is to accept the SSHD's evidence, at least unless that evidence is internally contradictory, implausible, or inconsistent with other incontrovertible evidence: see *Soltany* paras [87] – [88].
117. In the present case, I do not consider (and I did not understand the Claimant to submit) that the SSHD's evidence was internally contradictory or implausible. I bear in mind that the UNHCR is a respected international organisation, which has worked with both the UK and other governments for very many years.
118. Nor in my view is there other incontrovertible evidence which means that the SSHD's evidence should not be accepted. At one stage, it appeared that significant reliance would be placed, by the Claimant, upon the statistical evidence as providing clear and incontrovertible evidence of indirect discrimination. There are certainly cases where the statistics can tell a very clear story of discrimination, or at least provide a prima facie case. The former was the position in *DH v Czech Republic* (2008) 47 EHRR 3, on which the Claimant relied. In that case, there was statistical evidence that a Roma child was 27 times more likely than a similarly situated non-Roma child to be sent to a special school (50% versus between 2 and 5%: see paragraph [134]). The ECtHR said (at paragraph [188]) that statistics which appear on critical examination to be reliable and significant will be sufficient to constitute the prima facie evidence the applicant is required to produce.
119. In the present case, however, the statistical evidence cannot be regarded as reliable and significant, for reasons already discussed in Section B. There is no satisfactory baseline for the purposes of ascertaining whether the proportion of Christians and other minorities that have been referred under the Scheme is disproportionately low. Christians formed, on any view, a minority of the population in pre-civil war Syria, and they are far from being the only category of people to have been displaced. There are, obviously, vast numbers of people of different religions who are refugees and who might qualify for referral. There are also plausible explanations, advanced in the

evidence of Mr Winward, to why the relevant proportion of Christians may be lower than their assumed representation in the pre-civil war Syrian population.

120. Apart from the statistical evidence, the Claimant relies upon various other statements which appear in the evidence. None of these statements, including the evidence of Majd Gammoh, could in my view be regarded as incontrovertible evidence of systemic discrimination by the UNHCR. Much of that evidence is not in fact directed to showing discrimination by the UNHCR, still less discrimination in relation to the interview processes which is the relevant PCP in the present case.
121. For example, the evidence of Lord David Alton and Fiona Bruce MP, in their 2015 report, is concerned with a general reluctance on the part of Christians to enter refugee camps because of persecution within the camps. This appears to refer to persecution by other refugees, and there is no specific evidence of persecution by the UNHCR staff. Furthermore, as Mr. Winward points out, the overwhelming majority of refugees, recommended by the UNHCR for settlement, do not live in refugee camps. The Bishop of Truro's report does not criticise UNHCR staff, and indeed does not focus on Jordan at all. The 2009 Australian report also does not refer to the UNHCR at all.
122. It seems to me that the strongest criticism of the UNHCR itself is contained in the extract from the evidence of Mr. Anderson to the subcommittee of the US House Foreign Affairs Committee: see paragraph [65] above. This refers to a "functionally discriminatory UNHCR programme". The quoted extracts from that evidence do not explain why the programme is functionally discriminatory, and it appears that this may be due to Christians' fear of entering the camps because of possible violence and intimidation. There is nothing to suggest that the UNHCR staff itself were responsible for this intimidation. It is not clear that Mr. Anderson has taken into account the fact that 95% of refugees referred for settlement do not live in the camps.
123. I do not consider that what was said by Mr. Anderson on that occasion, even if taken in conjunction with the other matters relied upon by the Claimant, amounts to incontrovertible evidence which should lead to rejection of the SSHD's evidence.
124. In saying this, I have not disregarded the Claimant's own evidence as to how he alleges that he was treated in October 2018. I do not, however, regard that evidence as being either incontrovertible or providing support for the case of systemic discrimination by the UNHCR. Although I proceed on the basis that these events did occur, it remains an uncorroborated account of mistreatment on a particular occasion.
125. I also accept Mr. Blundell's submission to the effect that there is no, or at least no satisfactory and still less incontrovertible, evidence of discrimination resulting from the interview process which is the relevant PCP relied upon in the present case. The materials relied upon by the Claimant, and which have been discussed above, do not really focus on the interview process. However, in so far as they concern a reluctance or fear on the part of Christian refugees to register with the UNHCR, it is relevant to take into account the evidence of Mr. Winward in paragraphs 25 – 27 of his witness statement as to outreach and other programmes which are designed to facilitate registration, as well as the work carried out with faith-leaders and churches. Again, I consider that I should accept that evidence. It shows, in my view, that a Christian refugee has a number of available ways of accessing the UNHCR, if necessary with the assistance of church leaders, for the purposes of interview. The refugee is therefore not

left with the only option being, as described in the Claimant's evidence, to walk on his or her own into an allegedly hostile UNHCR building or compound. I did not think that the Claimant's evidence, including the evidence of Majd Gammoh, really addressed or countered the SSHD's evidence in this regard.

126. For these reasons, I do not consider that the evidence is sufficient to show that the relevant PCP relied upon does have the effect described in section 19 (2) of the EA 2010. In so far as the claim is based upon indirect discrimination under the EA, it cannot succeed.
127. In reaching this conclusion, I have taken into account Mr. de Mello's argument, based on the decision in *Thlimmenos v Greece* 31 EHRR 15 GC, that the prohibition on discrimination under Article 14 ECHR includes the case when states without an objective and reasonable justification fail to treat differently persons whose situations are significantly different. I will address Article 14 separately below. The argument does not, however, advance the case under the EA 10. The *Thlimmenos* principle only applies to claims under Article 14: see *Soltany* para [399].
128. In these circumstances, it is not necessary to address in detail the SSHD's case that the relevant PCP was a proportionate means of achieving a legitimate aim, and whether the SSHD had satisfied its burden of proof on that issue. I had initially considered that the decision in *Turani*, which was favourable to the SSHD on that issue, must lead to a favourable conclusion in the present as well. This was because the SSHD succeeded on justification in *Turani*, notwithstanding that the relevant PCP (that all referrals to the Scheme were to be made exclusively by the UNHCR) meant PRS were practically excluded from the Scheme in their entirety – whereas, in the present case, Christians and other minorities are not excluded from the Scheme and indeed have been referred to the UK and have arrived here under the Scheme.
129. However, the relevant PCP in the present case is different: it focuses on the interview process. It also involves an allegation (which was not made in *Turani*) of widespread discriminatory attitudes and conduct on the part of UNHCR. In contrast, it was accepted by counsel for the claimants in *Turani* that the UNHCR was a “good choice”: (see Elisabeth Laing J para [123]). I do not think that it necessarily follows from the decision in *Turani* that a defence of justification would be applicable in the different circumstances of the present case, if the Claimant's factual case were to have been established. Since that case has failed, however, I do not think that it is sensible or necessary to address what the position on justification would have been if the case had succeeded.

F: Rationality

130. The Claimant made a number of points in relation to rationality.
131. First, reliance was placed, in the Claimant's written papers, on the failure of the Scheme to include a category of religion or belief in the context of the Middle East where persecution on grounds of religion and belief is a basic facet of life. This argument was originally advanced as a case of direct discrimination, but then became an argument based on rationality. Mr. de Mello ultimately did not press the argument in his oral submissions. He recognised that positive discrimination in favour of Christians and

other minorities would render the scheme susceptible to challenge by individuals of other religions who, on this basis, would be discriminated against.

132. It seems to me that it cannot be said to be irrational for the SSHD to introduce a Scheme which was impartial as between people of different faiths, and which used criteria which were not dependent upon religious faith. This is particularly so where, as here, the criteria nevertheless allowed the existence of persecution, on the grounds of religious faith, and indeed all circumstances concerning the vulnerability and need of refugees, to be taken into account by the UNHCR when deciding who to refer.
133. I also accept Mr. Blundell's argument that the SSHD had a considerable margin of appreciation as to how to act when formulating the Scheme: *R (ABCIFER) v. Secretary of State for Defence* [2003] EWCA Civ 473 at paragraph [86]. That is particularly the case in the context of an *ex gratia* scheme established under common law powers, which does not establish any right to be considered on the part of someone who might hypothetically benefit from it: *R (Sandiford) v. Secretary of State for Foreign and Commonwealth Affairs* [2014] UKSC 44. The basis, criteria and scope of the Scheme are all, ultimately, matters for SSHD alone. I agree that the judicial review process cannot be used to achieve the political aim of a differently formulated scheme with new substantive criteria.
134. Secondly, the Claimant submitted that the SSHD's failure to provide a safe and appropriate system for the Claimant and his group to register and progress their resettlement claims is unreasonable. In my view, this argument repeats in substance the indirect discrimination argument which has failed on the facts for reasons set out above.
135. Thirdly, the Claimant said that the failure to provide the safe system was a result of the SSHD's failure to conduct a proper enquiry in breach of the *Tameside* duty of enquiry. In *R (Balajigari) v Home Secretary* [2019] EWCA Civ 673, the Court of Appeal identified the relevant principles as follows:

“[70] The general principles on the *Tameside* duty were summarised by Haddon-Cave J in *R (Plantagenet Alliance Ltd) v Secretary of State for Justice* [2015] All ER 261, paras 99-100. In that passage, having referred to the speech of Lord Diplock in *Tameside*, Haddon-Cave J summarised the relevant principles which are to be derived from authorities since *Tameside* itself as follows. First, the obligation on the decision-maker is only to take such steps to inform himself as are reasonable. Secondly, subject to a *Wednesbury* challenge (*Associated Provincial Picture Houses Ltd v Wednesbury Corpn* [1948] 1 KB 223), it is for the public body and not the court to decide upon the manner and intensity of inquiry to be undertaken: see *R (Khatun) v Newham London Borough Council* [2005] QB 37, para 35 (Laws LJ). Thirdly, the court should not intervene merely because it considers that further inquiries would have been sensible or desirable. It should intervene only if no reasonable authority could have been satisfied on the basis of the inquiries made that it possessed the information necessary for its decision. Fourthly, the court should establish what material was before the authority and should only strike down a decision not to make further

inquiries if no reasonable authority possessed of that material could suppose that the inquiries they had made were sufficient. Fifthly, the principle that the decision-maker must call his own attention to considerations relevant to his decision, a duty which in practice may require him to consult outside bodies with a particular knowledge or involvement in the case, does not spring from a duty of procedural fairness to the applicant but rather from the Secretary of State's duty so to inform himself as to arrive at a rational conclusion. Sixthly, the wider the discretion conferred on the Secretary of State, the more important it must be that he has all the relevant material to enable him properly to exercise it.”

136. In the present case, Mr Winward’s evidence shows that the SSHD had made appropriate enquiries in relation to the various points which have previously been raised concerning the statistics alleged to show a disproportionately low percentage of Christians being referred under the Scheme. Mr Winward describes how the issue raised in various fora had been explored in detail, resulting in an understanding as to the possible reasons for the (alleged) low percentage. At the same time, there have been continued dealings by the Home Office with the UNHCR, with whom there is a very long-standing relationship, in which assurances have been received as to its commitment to equal access to rights. The principle is that the decision-maker is only to take steps to inform himself as are reasonable, and that it is for the public body to decide upon the manner and intensity of the inquiry. Against the above background, I do not consider that it can be said that no reasonable person could have been satisfied, on the basis of inquiries made, that it possessed the information necessary for its decision.

G: Article 14

137. The Claimant advanced his indirect discrimination case with an alternative argument, relying upon Article 14 ECHR. This provides:

“The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status”.

138. This Article has been considered in many cases, including in the recent decision of the Supreme Court in *R (SC) v Secretary of State for Work and Pensions* [2021] UKSC 26. The leading judgment was delivered by Lord Reed. At para [36] he said that, as was apparent from its terms, Article 14 can only be considered in conjunction with one or more of the substantive rights or freedoms set forth in the Convention or its protocols. In the present case, the Claimant relies upon Articles 2 (right to life), 3 (prohibition of torture), 8 (right to respect for private and family life) and 9 (freedom of thought, conscience and religion).
139. There was no dispute as to the questions which need to be considered, if the Claimant could overcome the SSHD’s threshold argument described below. These questions were summarised by the SSHD as follows, reflecting para [37] in *R (SC) v Secretary of State for Work and Pensions*:

- (a) do the circumstances fall within the ambit of one or more ECHR rights?
- (b) is the claimant being treated differently from persons in a relevantly similar situation, or treated similarly to persons in relevantly different situations?
- (c) is such treatment based on an identifiable characteristic, or “other status”?
- (d) if so, is there an objective justification?

140. The SSHD’s threshold argument was based upon the territorial application of the ECHR. Article 1 provides:

“The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section 1 of this Convention”

141. The SSHD submitted that the claim, in so far as it was based upon Article 14 and other Convention rights, fell at the first hurdle. This was because the EHCR does not have extra-territorial effect except in very limited circumstances, for example where a state party controls the territory of another: *Bankovic, Al-Skeini*.

142. This principle was reaffirmed by the Grand Chamber in *MN v. Belgium*. That case also involved Syrian refugees. They were seeking to enter Belgium, but had been denied entry visas by the Belgian authorities. The relevant contested decisions (see paragraph [110]) had been taken by the Belgian authorities in Belgium. The decisions were made in response to visa applications submitted by the applicants to the consular services of the Belgian embassy in Beirut, with a view to obtaining authorisation to enter Belgium so that they could claim asylum in that country.

143. In order to determine whether the ECHR applied, the court examined whether “exceptional circumstances” existed which could lead to a conclusion that Belgium was exercising extraterritorial jurisdiction in respect of the applicants. The general principles, derived from the case-law, were set out at paragraphs [101] – [106] of the judgment. The court said (at [103]) that an exception to the principle, that jurisdiction exists under Article 1 was limited to a State Party’s own territory, occurs where that state exerts effective control over an area outside its national territory. The use of force by a state’s agents operating outside its territory could also bring persons, who found themselves under the control of the state’s authorities, into the state’s Article 1 jurisdiction: see paragraph [105]. In paragraph [106], the court said that jurisdiction may also arise from acts or omissions of diplomatic or consular officials when, in their official capacity, they exercise abroad their authority in respect of that state’s nationals or property.

144. The court’s conclusion at paragraph [118] was that there was no jurisdiction in that case.

“In this connection, the Court accepts the argument of the respondent Government, supported by the third-party intervening Governments, that none of the case-law precedents cited in paragraph 106 above are applicable to the present case, given that it contains none of the connecting links which

characterised the above-mentioned cases. Firstly, the applicants are not Belgian nationals seeking to benefit from the protection of their embassy. Secondly, at no time did the diplomatic agents exercise *de facto* control over the applicants. The latter freely chose to present themselves at the Belgian embassy in Beirut, and to submit their visa applications there – as indeed they could have chosen to approach any other embassy; they were then free to leave the premises of the Belgian embassy without any hindrance.”

145. Mr. de Mello argued that there were exceptional circumstances in the present case. As previously discussed, he accepted that Article 14 did not apply to the direct discrimination case, which relied upon the actions of the UNHCR personnel in Jordan in October 2018. However, he said that there were two reasons why there was jurisdiction here.
146. First, he submitted that the Scheme was formulated in the UK by the SSHD, and it had an extra-territorial impact because it affected the entry into the UK of aliens who were recommended for entry clearance. I do not consider that this provided a basis upon which *MN* could be distinguished, or exceptional circumstances found. In *MN*, the visa applications were refused in Belgium, with a consequent impact upon *MN* abroad in Beirut. This was insufficient to ground jurisdiction, notwithstanding the extra-territorial effect of the decision under review.
147. Secondly, he referred to the Equality Act s 29 (9), which provides that:
- “In the application of this section, so far as relating to race or religion or belief, to the granting of entry clearance (within the meaning of the Immigration Act 1971), it does not matter whether an act is done within or outside the United Kingdom”
148. I do not consider that section makes any difference to the application of the principles stated in *MN*. The existence of Section 29 (9) does not establish any of the circumstances which have been considered as exceptional in the case-law; for example, the exertion of control over an area outside a state’s national territory, or the use of force by agents operating outside its territory. The argument fails for essentially the same reason as the first argument fails: it is not sufficient, to establish jurisdiction, simply to show that a domestic decision has an extra-territorial impact on another individual.
149. In these circumstances, the Article 14 claim does fail at the first hurdle and it is not necessary to discuss the parties’ arguments as to whether or not it has any application to the present facts.

G: Delay

150. Since this was a “rolled-up” hearing, I have necessarily considered the merits of the Claimant’s arguments. For the reasons set out above, I do not consider that they have merit, and I would therefore refuse permission to apply for judicial review on that basis.

151. It is therefore unnecessary to consider in detail the SSHD's argument that the application for permission should be refused on the ground of delay alone, irrespective of the merits of the case or the Claimant's application for an extension of time. I will, however, address that point as briefly as possible.
152. The SSHD contends that the present claim has been brought well outside the 3-month time-limit for judicial review proceedings. Mr. Blundell submits that, at the very latest, time began to run in October 2018, which is when the Claimant alleges he was prevented from accessing the Scheme. In that regard, he referred to a number of decisions of the Court of Appeal: *Badmus v Secretary of State for the Home Department* [2020] EWCA 657, [2020] 1 WLR 4609; *R (Delve) v SSWP* [2020] EWCA Civ 119, [2021] ICR 236; and *R (AK) v SSHD* [2021] EWCA Civ 1038, 9 July 2021. In *AK* at paragraph [38], Lewis LJ identified the basic principle: time begins to run in respect of a claimant seeking to challenge such a measure when he or she is affected by the measure that is challenged.
153. I agree with the SSHD that, in the present case, this was October 2018 at the latest. Although an argument to the contrary was advanced in the Claimant's skeleton argument, Mr de Mello rightly accepted that the claim was not filed within time.
154. In paragraph [48] of *AK*, Lewis LJ said:

“ The courts do adopt a rigorous approach to such applications and it is well recognised that there is a public interest in judicial review claims being brought promptly and in any event no later than three months and a failure to do so is seen as a significant and serious failure. The courts will consider and scrutinise carefully whether there is a good reason for the delay. They do consider other relevant circumstances including whether the claim involves issues of public importance which it is in the public interest to resolve and also any prejudice to other parties of allowing the claim to proceed”.

In the subsequent paragraphs, Lewis LJ discusses various issues which, in that case, were relevant to the decision as to whether or not to extend time.

155. The first intimation of any intention to challenge the legality of the Scheme was the Claimant's pre-action protocol letter of 28 October 2019. That letter was sent on behalf of two proposed claimants, Lord Carey and an anonymous Syrian refugee who had converted to Christianity from Islam. The SSHD submitted that the anonymous refugee was the present Claimant, and this was not disputed. By the time of this letter, the Claimant therefore had access to legal advice. This letter was sent a full year after the October 2018 conduct of which complaint was made. The letter does not, however specifically advance a claim by reference to the Claimant's treatment on that occasion. The grounds for judicial review were the more general points as to, for example, the need for the Scheme to have different selection criteria. The letter also indicated that Lord Carey had taken counsel's advice in April 2017, and that the story was on the front page of the Daily Telegraph.
156. The SSHD responded to that letter on 20 November 2019. One of the points taken in that letter was delay.

157. On 21 January 2020, the Claimant wrote to the British Embassy in Jordan. It was at this stage that the Claimant's case as to his treatment in October 2018 was first articulated. On 7 February 2020, his representatives wrote to the Home Office requesting that his case be included within the Scheme. On 12 February 2020, his representatives wrote to the UNHCR London office. Further correspondence between the Claimant's representatives and the Government Legal Department ("GLD") ensued. On 2 March 2020, the SSHD responded to the Claimant's letter of 7 February 2020.
158. The present claim was commenced on 16 March 2020. No application was made at that stage for an extension of time, although The Administrative Court Judicial Review Guide says that such an application is required: see in the current Guide para 5.4.4.2, which is materially the same in prior editions. The application was eventually made at the oral permission hearing on 27 October 2020, albeit that at that stage – and indeed thereafter prior to the service of his second statement shortly before the July 2021 hearing – no real explanation was provided as to the delay in making a claim from October 2018.
159. Against this background, I consider that there are no good reasons to justify an extension of time in relation to the direct discrimination case, which depends upon the Claimant's particular treatment by the UNHCR in October 2018. By the time that the issues were raised, a very considerable amount of time had passed and it would in practice be difficult if not impossible for the SSHD to look into the allegations. The delay should in my view be seen in the context not only of the 3-month time limit for judicial review proceedings, but the 6-month time limit for EA claims in the county court.
160. The indirect discrimination case raises wider considerations, including whether there is a public interest in resolving the issues raised by the Claimant. It is clear that the case is, understandably, regarded as very important by various members of the Christian community. I also bear in mind the points made by Mr Diamond as to the work carried out by churches to assist refugees in Syria, and that the present proceedings are to some extent aimed at alleviating the work which they perform and of course the difficult situation of refugees.
161. A number of points were made on behalf of the SSHD in relation to the consequences of delay. For example, it was suggested that, if the proceedings had been commenced promptly, they would or might have been dealt with at the same time as the *Turani* case. I am doubtful whether that would have happened. Permission to apply for judicial review was granted in December 2017, which was long before the events of October 2018. The first instance hearing in *Turani* took place in June 2019. I was not therefore persuaded by the SSHD's argument that the delay has been prejudicial because another case has already been heard and determined. The SSHD also relied upon the fact that the Scheme's 20,000 places have now been filled, and that it has come to an end. I was also not persuaded that this was a powerful point, since the relevant feature of the new scheme – the use of the UNHCR as the exclusive referral agency – is the same. For reasons briefly discussed in Section A, I do not regard the indirect discrimination case as academic.
162. I considered that ultimately the question of extension of time involved weighing the respective merits of the Claimant's public interest argument in the context of the significant delay which has taken place. I consider that the balance comes down against

granting an extension of time. This is because of what I regard as the significant delay in commencing the present proceedings after the time of the pre-action protocol letter was sent in October 2019. That letter was sent at a time when there had already been significant delay, when the Claimant had access to legal advice, and indeed where Lord Carey had obtained legal advice over two years earlier. In the responsive letter sent by the SSHD in November 2019, one of the points taken was delay. Against that background, it does seem to me that proceedings needed to be commenced promptly, but that there was significant delay thereafter which would make it inappropriate to grant an extension of time.

Conclusion

163. For the above reasons, I refuse the application for permission to apply for judicial review. I also refuse the application to extend time.