Neutral Citation Number: [2026] EWHC 1726 (Admin)

Case No: AC-2025-LON-004527

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

Friday, 10th July 2026

Before:
FORDHAM J

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Between:

THE KING (on the application of EXR)	**Claimant**
– and –	
SECRETARY OF STATE FOR THE HOME DEPARTMENT (No.2)	**Defendant**

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Stephanie Harrison KC, Shu Shin Luh, Agata Patyna and **Georgina Rea** (instructed by **Bindmans LLP**) for the **Claimant**

Cathryn McGahey KC, Mark Vinall and **Andrew Deakin** (instructed by **GLD**) for the **Defendant**

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Hearing date: 2.7.26
Draft judgment: 3.7.26

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Approved Judgment

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FORDHAM J

This judgment was handed down on 10.7.26, by circulation to the parties and uploading to the National Archives.

FORDHAM J:

Introduction

1. This is a test case raising issues about the standard of review to determine the lawfulness of decisions about whether an individual is to be treated as an adult and not a child. The case has arisen in the context of the proposed removal of an unaccompanied individual to France under the UK-France Treaty 2025 (UFT). I have already given a judgment [2026] EWHC 1568 (Admin) (First Judgment). In that judgment, I decided that a reasonableness standard of review governs the lawfulness of a decision of the SSHD to treat an unaccompanied individual as an adult for the purposes of the arrangements for implementing the UFT.

2. This sequel judgment addresses two further issues of law. **First**, what, in four key respects, is the legally correct approach to that reasonableness standard of review when it governs the lawfulness of that decision. **Second**, what standard of review governs the lawfulness of a decision to treat an individual as an adult when determining a human trafficking claim. Both issues have now been fully argued. They fit alongside what I have decided already. I am satisfied that it is appropriate to deal with them. I will not repeat the context and background which I described in detail in the First Judgment. I invite attention to it.

Issue 1: Four questions about the reasonableness standard of review

3. It was common ground that I accurately identified the four relevant remaining questions in the First Judgment at §54. I said this, arising in the context of an SSHD's decision to treat as an adult an unaccompanied individual proposed for removal to France under the UFT:

> ***What are now left over are questions about how the reasonableness standard operates in [this] context … (a) the closeness of scrutiny (b) the approach to fresh evidence (c) the approach to Merton-compliance collateral challenge (§16 above) and (d) whether reasonableness is being applied to test (i) a decision that the individual is significantly over 18 (First Judgment §§30, 31iv) or (ii) a decision that the individual is over 18.***

It is common ground that I should now answer these questions, on which the parties made helpful and focused submissions.

4. The scenario will be this. An unaccompanied individual has come to the UK on a small boat from France. The SSHD proposes to return the individual to France under the UFT. Unaccompanied children are ineligible for the inadmissibility declaration which the SSHD is making or has made. Unaccompanied children are ineligible for removal under the UFT. The individual says they are a child. The SSHD decides to treat them as an adult. A claim for judicial review is brought. The Court is determining whether it was lawful for the SSHD to treat them as an adult. That means the Court is applying a reasonableness standard of review. How does that work?

The closeness of scrutiny

5. In my judgment, the answer to this question comes to this. When the Court applies the reasonableness standard of review, to determine the lawfulness of a decision of the SSHD to treat an unaccompanied individual as an adult for the purposes of implementing the

arrangements for implementing the UFT, the familiar doctrine of anxious scrutiny is applicable. This was common ground. Two recent cases, discussing that approach, were cited by the parties. They are R (KP) v Secretary of State for Foreign, Commonwealth and Development Affairs [2025] EWHC 370 (Admin) at §§76-78; and R (Alnoor) v SSHD [2025] EWHC 922 (Admin) [2025] 4 WLR 57 at §§27-28. Those passages describe the anxious scrutiny principles which the claimant will be entitled to invoke. Close scrutiny is appropriate because of the impact and implications of the decision. The claimant is unaccompanied and is saying they are a child. If they are right, they should not be removed to France. The UFT arrangements are not suitable for removal of an unaccompanied child. The exclusion of unaccompanied children is deliberate. It has a child protection rationale. See First Judgment at §§25-27.

6. That leaves these further points:

   i) **First**, I do not accept Ms McGahey KC's submission that the public interest (see KP at §78), here in the effective working of the UFT arrangements, serves to reduce the intensity of review. This feature introduces no particular institutional or constitutional considerations, relevant to the decision to treat the individual as an adult. It is common ground that effective judicial protection is and must be compatible with the UFT arrangements. Most of all, the effective working of the arrangements includes the effective working of the exclusion for unaccompanied children. Asylum policy frequently engages public interest considerations which support judicial scrutiny being expeditious. But that is not a reason to reduce the standard of that expeditious scrutiny.

   ii) **Second**, Ms Harrison KC points to a sub-category of case, in which the following features can arise. There will be a decision to certify the individual's protection claim as clearly unfounded (First Judgment §24). Where an age issue arises in an asylum or human rights claim, which would be the subject of a judicial finding on an appeal (First Judgment §20), that will give the age issue a special significance in judicial review of the certification. That is because the judicial review test asks whether the claim could "on at least one legitimate view of the facts or the law … succeed" (ZT (Kosovo) v SSHD [2009] UKHL 6 [2009] 1 WLR 348 at §§22-23; R (EM (Eritrea) v SSHD [2014] UKSC 12 [2014] AC 1321 at §6). That means asking whether the FTT could possibly allow the appeal (ZT at §75). That could involve positing whether the FTT could decide the age question in the individual's favour, when deciding the merits of the asylum or human rights claim. I agree that such a scenario could arise, in some individual cases, and would involve the application of that test to any challenge to the certification decision. I pause to interpose that, in the context of the UFT, human rights claims are certified; whereas asylum claims are subject to a decision on inadmissibility.

The approach to fresh evidence

7. In my judgment, the answer to this question comes to this. When the Court applies the reasonableness standard of review, to determine the lawfulness of a decision of the SSHD to treat an unaccompanied individual as an adult for the purposes of implementing the arrangements for implementing the UFT, it will be open to the claimant to point to fresh evidence which post-dates the SSHD's latest decision to treat the claimant as an adult. The Assessing Age Guidance addresses relevant new evidence (First Judgment at §31v). It says that a decision on age "will need to be reviewed if there is a realistic prospect that

the new information, if considered alongside the existing information relevant to age, could result in the person being assessed as an age different to that assigned following the previous decision". If the new material is fresh evidence not previously considered by the SSHD, it can be put to the SSHD and the claimant will be able to point to it when arguing that the SSHD is acting unlawfully, in maintaining the previous refusal, and in refusing to consider the fresh evidence (cf. R (MIA) v Dorset Council [2025] EWHC 1324 (Admin)). The likely shape of this will be a Lumba adherence argument (First Judgment at §4(3)). The evidence will not be barred on admissibility grounds in judicial review. The Court will be able to receive it, and to consider its legal relevance. There was little if anything, in the end, between Ms Harrison KC and Ms McGahey KC on this question.

The approach to Merton-compliance collateral challenge

8. If this matter were free from authority, I would have found as follows. If the SSHD decides to treat an unaccompanied individual as an adult, relying on a local authority age assessment as having been Merton-compliant, the Court should simply consider for itself whether there was or was not Merton-compliance. Merton-compliance is an objective legal standard (First Judgment §15). It identifies minimum standards of fair procedure. The Court is institutionally and constitutionally well placed to insist on that legal standard. Suppose policy guidance allowed for reliance on "a fair hearing", or "a Gunning-compliant consultation". These are familiar objective legal standards. This can, moreover, be seen as a species of knock-on effect unlawfulness because the decision is based on an unlawful prior assessment (cf. R (Norton) v Haringey LBC [2025] EWCA Civ 746 [2026] PTSR 49 at §§29-31). See First Judgment at §§12, 16, 48iv.

9. I recorded this to have been accepted (First Judgment at §§16, 48iv). But Ms McGahey KC has elaborated on her position. She accepts that there can be a collateral challenge. She says a legal misdirection as to the contents of Merton-compliance would attract a substitutionary review. But, otherwise, she submits that the question is whether it was reasonable for the SSHD to have been satisfied as to Merton-compliance (as to which, see too §11 below). She cites AAM v SSHD [2012] EWHC 2567 (QB) at §§109-113, including its citation of R (J) v SSHD [2011] EWHC 3073 (Admin) at §32. AAM was a case about the lawfulness of detention, prior to the 2014 statutory changes which led to AA (Sudan). But AAM and the citation of J do use the language of reasonableness. And I cannot say that I have the necessary powerful reason for not following those earlier decisions, on the basis of being convinced that they are wrong.

10. What follows, in my judgment, is that the analysis is a nuanced one. It comes to this. Where the SSHD makes an inadmissibility declaration for the purposes of removal, treating an unaccompanied person as an adult in the application of the Inadmissibility Guidance by relying on a local authority age assessment as "Merton-compliant" in accordance with the Assessing Age Guidance, that person has the following legal right. They are able to challenge their removal by the SSHD as unlawful on the grounds of unreasonableness, by collaterally challenging the local authority age assessment on the basis that it did not meet the legal standards required in order to be "Merton-compliant". It is appropriate, in such a case, for the Court to consider for itself whether there was or was not Merton-compliance. That was the starting point in AAM itself, at §93. The overarching legal question remains one of reasonableness: AAM at §§109-113, citing J at §32. An example engaging latitude for reasonable disagreement could be if a question of Merton-compliance involves a contestable but reasonable factual evaluation of what

did or did not happen. But beyond that, and in practice, it is likely to be a small step from the Court's conclusion that there was Merton non-compliance, to its conclusion that it was unreasonable for the SSHD to have found otherwise. The Assessing Age Guidance requires careful consideration by the SSHD of Merton-compliance (First Judgment §31vi). Merton-compliance is an objective legal standard (First Judgment §15). It does identify "minimum standards of fair procedure", as recognised in AAM itself at §93. It is the position that the Court is institutionally and constitutionally well placed to insist on that legal standard. And there is an instructive parallel with policy guidance requiring "a Gunning-compliant consultation" or "a fair hearing". There is limited space, in practice, between an answer on the question of Merton-compliance which is wrong, and an answer which is unreasonable. This is not akin to a broad discretion. The application of reasonableness, and materiality, will be fact-specific. But the SSHD's latitude is narrow, for reasonably but wrongly finding an age assessment on which reliance has been placed to have been Merton-compliant.

To what decision is reasonableness being applied

11. To say that the reasonableness standard applies to a decision to treat an individual as an adult raises a question about what it is that has to be reasonable. In my judgment, the answer to this question comes to this. Given the nature of the eligibility exclusion and the child-protection rationale, and given the impact and implications of removing a child by incorrectly assessing age, there may well be significance in a measure of benefit of the doubt. This is seen in decisions to treat the individual as an adult under the "significantly over 18 policy" (First Judgment §30). But it is also seen in decisions relying on a Merton-compliant age assessment, where one question under the Assessing Age Guidance (p.56) is whether the case "appears finely balanced" and the individual should be given "the benefit of the doubt". Ms Harrison KC and Ms McGahey KC agreed that what position it is that has to be reasonable can depend on the decisions taken in an individual case. I would not be surprised to find, in a UFT context, that what needs to be reasonable is the position that the individual is clearly an adult. But that will depend on the facts and circumstances, and reasoned decision-making, in the individual case.

Issue 2: Age in Determining a Trafficking Claim

12. The question is what standard of review governs the lawfulness of a decision about an individual's age, and their being at relevant times an adult or child, when determining a human trafficking claim. One formulation of the question is this: "whether age is a question of objective fact, subject to the correctness standard of review, for the purpose of the determination of a trafficking claim and whether a negative Reasonable Grounds (RG) decision is lawful". However, as I will explain, the SSHD accepts that the answer to that broader question is sometimes "yes". A more precise formulation encapsulates the contested issue. It is whether the SSHD is right to say that "consideration of age as part of a decision-maker's assessment of the evidence in an RG decision is not reviewable on a correctness basis".

13. The scenario will be this. An unaccompanied individual has come to the UK on a small boat from France. The SSHD proposes to return them under the UFT. They have been referred into the National Referral Mechanism as a potential victim of trafficking. The competent authority is making a RG decision. That is a determination of whether there are reasonable grounds to believe that the individual is a victim of slavery or human trafficking. Within that RG decision-making, it may matter whether the individual is

being treated as an adult or a child. The competent authority decides to treat them as an adult. A claim for judicial review is brought. The Court is determining the lawfulness of the determination. In that context, a question arises as to the lawfulness of treating the individual as an adult. Does that lawfulness depend on correctness or reasonableness? Does it attract a correctness standard of review or a reasonableness standard of review? The legal context and setting is set out in the First Judgment at §§8-9, 13-14, 17.

14. Before proceeding to the analysis, there are these points to bear in mind. **First**, the legal logic will not be confined to a RG decision. It would also apply to a Conclusive Grounds (CG) decision. **Second**, the legal logic will not be confined to UFT or immigration contexts. It would also apply to a range of contexts in which modern slavery and trafficking issues are addressed. **Third**, the legal logic will apply within a decision which is not an age assessment. Whether the individual is a child or adult is not the focus of the decision, but it may be an important element. In that respect, it is more like a decision to detain (AA (Sudan)) than a local authority age assessment (A (Croydon)): see First Judgment at §13. But, unlike detention and Sch 2 §18B to the 1971 Act, the lawfulness of the RG decision will not necessarily turn on the lawfulness of the decision to treat the individual as an adult rather than a child. The lawfulness of the adult/child decision will not necessarily vitiate the lawfulness of the RG decision. That will depend on how the decision is reasoned and issues of factual and legal materiality. This, in turn, will affect the way in which a judicial review is approached and case-managed. **Fourth**, the legal logic may relate to a question about past age (eg. whether the individual was a child when something is said to have happened to them) or present age (whether the individual is a child at the time of the decision-making).

15. The relevant legal framework, for the analysis which follows, is this. Underlining in quotations is my emphasis. In the victim test, I will be using AOE to mean "adult-only element" and COE to mean "child-only elements".

    i) Part 5 of the Modern Slavery Act 2015 makes provision for the protection of victims. There is a group of provisions (ss.48-53) which deal with "identification and protection of victims" (see s.56(A1)). There is a referral duty (s.52), a statutory presumption about age (s.51) and a duty to provide an "identified potential victim" (ie. after a positive RG decision) with "assistance and support" within a recovery period (s.50A). There is a duty on the SSHD to issue statutory guidance (s.49). The statutory guidance must deal with trafficking indicators (s.49(1)(a)), assistance and support (s.49(1)(b)), arrangements for RG decisions (s.49(1)(c)) and arrangements for CG decisions (s.49(1)(d)). Trafficking indicators are described by Parliament as "the sorts of things which indicate that a person may be a victim of slavery or human trafficking" (s.49(1)(a)). In Part 5 of the 2015 Act, "child" is statutorily defined as a person under the age of 18 (s.56(3)); while "victim of slavery" and "victim of human trafficking" have the meanings given in regulations under s.69 of the 2022 Act (s.56(A1)). Some of the provisions of Part 5 have been enacted but not yet brought into force: s.48(1)-(6) (independent child trafficking advocates); s.50 (regulations about supporting victims).

    ii) Here is s.49 of the 2015 Act:

        49. Guidance about identifying and supporting victims. (1)The Secretary of State must issue guidance to such public authorities and other persons as the Secretary of State considers appropriate about – (a) the sorts of things which indicate that a person may be

> ***a victim of slavery or human trafficking; (b) arrangements for providing assistance and support to persons who there are reasonable grounds to believe are victims of slavery or human trafficking or who are such victims; (c) arrangements for determining whether there are reasonable grounds to believe that a person is a victim of slavery or human trafficking; (d) arrangements for determining whether a person is a victim of slavery or human trafficking. (1A) Guidance issued under subsection (1) must, in particular, provide that the determination mentioned in paragraph (d) is to be made on the balance of probabilities. (2) The Secretary of State may, from time to time, revise the guidance issued under subsection (1). (3) The Secretary of State must arrange for any guidance issued or revised under this section to be published in a way the Secretary of State considers appropriate. (4) If the Secretary of State makes regulations under section 50, the references in subsection (1) to "arrangements" include arrangements under the regulations.***

iii) Part 5 of the Nationality and Borders Act 2022 makes provision relating to modern slavery. There is provision for the recovery period after a positive RG decision (s.61), about suspension of removal action (s.61(2)(3)), and about leave to remain after a positive CG decision (s.65). In Part 5 of the 2022 Act, there are definitions of competent authority, RG decision, CG decision and "Trafficking Convention" (s.69(1)); "victim of slavery" and "victim of human trafficking" have the meanings given in regulations (s.69(1)). Some of the provisions of Part 5 of the 2022 Act have been enacted but not yet brought into force: s.58 (information notices), s.59 (credibility affected by late compliance with information notices), ss.66-67 (civil legal services).

iv) Here is s.59 of the 2022 Act (not yet in force):

> ***59. Late compliance with slavery or trafficking information notice: damage to credibility. (1) This section applies where – (a) a person aged 18 or over has been served with a slavery or trafficking information notice under section 58, (b) the person provided relevant status information late, and (c) a competent authority is making a reasonable grounds decision or a conclusive grounds decision in relation to the person. (2) In determining whether to believe a statement made by or on behalf of the person, the competent authority must take account, as damaging the person's credibility, of the late provision of the relevant status information, unless there are good reasons why the information was provided late. (3) For the purposes of this section, relevant status information is provided "late" by the person if it is provided on or after the date specified in the slavery or trafficking information notice. (4) In this section, "relevant status information" has the same meaning as in section 58 (see subsection (3) of that section).***

v) The Slavery and Human Trafficking (Definition of Victim) Regulations 2022 are the regulations under s.69 of the 2022 Act, which provide the meaning of "victim of slavery" and "victim of human trafficking" for the purposes of Part 5 of the 2015 Act (s.56(A1) of the 2015 Act) and Part 5 of the 2022 Act (s.69(1) of the 2022 Act). As I explained in the First Judgment at §21, the definition of victim of human trafficking (reg.3) is modified in cases where the individual "is a child at the time the method is used" (reg.3(5)(b)). This matches the modified definition in Art 4c of the Trafficking Convention. It means there is an AOE in the victim test (ie. the requirement that one of the methods in reg.3(5)(a) has been used). This was discussed in MS (Pakistan) v SSHD [2020] UKSC 9 [2020] 1 WLR 1373 at §18. Within the same definition (reg.3) there are elements of "sexual exploitation" which are crimes against "children" (reg.3(8)(a)). That means there are COE in the victim test. These AOE and COE in the victim test focus on a question about past age: whether the individual was a child when something is said to have happened to them. "Child" is defined in reg 1(3) as "a person under the age of 18" and "adult" as "a person aged 18 or over".

vi) Here is reg.3 of the 2022 Regulations:

> ***3. Victim of human trafficking. (1) For the purposes of Part 5 of the 2022 Act, "victim of human trafficking" means a person ("V") whose travel is arranged or facilitated by another person ("P") – (a) using any of the methods mentioned in paragraph (5), and (b) with a view to V being exploited. (2) P may in particular arrange or facilitate V's travel by recruiting V, transporting or transferring V, harbouring or receiving V, or transferring or exchanging control over V. (3) The consent of V (whether V is an adult or a child) to the travel is not relevant to a determination as to whether V is a victim of human trafficking. (4) It is irrelevant for the purpose of paragraph (1)(a) whether the person using the method is P or another person. (5) The methods are – (a) <u>in a case where V is an adult at the time the method is used</u> – (i) the threat or use of force or other coercive behaviour; (ii) abduction, kidnap or false imprisonment; (iii) fraud or other deception; (iv) abuse of power or a position of vulnerability; (v) the giving of payments or other benefits to achieve the consent of a person who has control over V; (b) <u>in a case where V is a child at the time the method is used</u>, any method. (6) For the purposes of paragraph (1)(b), a person is being exploited if the person is – (a) prostituted by another person or otherwise subject to sexual exploitation; (b) subjected to slavery or servitude or forced or compulsory labour; (c) encouraged, required or expected to – (i) do anything which involves the commission, by that person or another person, of an offence under section 32 or 33 of the Human Tissue Act 2004 (prohibition of commercial dealings in organs and restrictions on use of live donors); (ii) do anything which involves the commission, by that person or another person, of an offence under section 17 or 20 of the Human Tissue (Scotland) Act 2006 (prohibition of commercial dealings in organs and restrictions on use of live donors), or (iii) do anything outside the United Kingdom that, if it were done in any part of the United Kingdom, would involve the commission of an offence mentioned in paragraph (i) or (ii), or (d) subjected to force, threats or deception designed to induce that person – (i) to provide services of any kind; (ii) to provide another person with benefits of any kind, or (iii) to enable another person to acquire benefits of any kind. (7) For the purposes of paragraph (6)(a), a person is prostituted by another person ("A") where that person is compelled by A to offer or provide sexual services to a different person in return for payment or a promise of payment (whether to A or anyone else). (8) For the purposes of paragraph (6)(a), a person is subject to sexual exploitation if – (a) something is done to that person which involves the commission of an offence under – (i) section 1(1)(a) of the Protection of Children Act 1978 (indecent photographs of <u>children</u>); (ii) article 3(1)(a) of the Protection of Children (Northern Ireland) Order 1978 (indecent photographs of <u>children</u>); (iii) section 52(1)(a) of the Civic Government (Scotland) Act 1982 (indecent photographs etc. of <u>children</u>); (iv) sections 1, 2 or 7 to 10 of the Criminal Law (Consolidation) (Scotland) Act 1995 (sexual offences); (v) Part 1 of the Sexual Offences Act 2003 (sexual offences); (vi) sections 9 to 12 of the Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005 (sexual services of <u>children</u> and <u>child</u> pornography); (vii) the Sexual Offences (Northern Ireland) Order 2008; (viii) the Sexual Offences (Scotland) Act 2009, or (b) something is done to that person outside the United Kingdom that, if it were done in any part of the United Kingdom, would involve the commission of an offence mentioned in sub-paragraph (a).***

vii) The <u>Modern Slavery: Statutory Guidance for England and Wales</u> (v.4.6, 11 May 2026) is the SSHD's statutory guidance issued under her statutory duty (s.49 of the 2015 Act). As required, it deals with trafficking indicators (s.49(1)(a)), assistance and support (s.49(1)(b)), arrangements for RG decisions (s.49(1)(c)) and arrangements for CG decisions (s.49(1)(d)). There is a chapter on "child victims" (c.9), which includes provision for independent child trafficking guardians (§9.27). There is an annex (Annex E) which gives guidance for the decision-making process, within which there is provision as to adverse credibility findings based on the timing of disclosure, which describes circumstances where "the expectation is that the child will be excluded from any adverse credibility finding based on the timing of their disclosure" (§14.23). There is an annex (Annex A) which sets out "indicators of child victims", including a set of "child-specific indicators". These are within the scope of s.49(1)(a), as "the sorts of things which indicate that a person may be a victim of slavery or human trafficking". Some of these relate to past age (eg. whether the individual was a child when something is said to have happened to them) others to present age (whether they are a child at the time of the decision-making). A good example is that a "child" giving "conflicting accounts of what has happened to them" is "a common indicator of trafficking and should not be used to make judgements on the credibility of the child's account" (§10.14).

viii) Here is the Statutory Guidance §§14.21-14.23:

> ***Assessing timing of disclosure <u>in children</u>. 14.21. In cases involving individuals under 18 at the point of referral, decision makers must assess the timing of disclosure in view of specific factors relevant to the response of children to exploitation, and the impact that may have on their disclosure of relevant information. Where available, these factors include: the child's developmental stage and maturity, their cognitive and emotional capacity, background and personal circumstances, the nature and duration of the exploitation experienced, evidence of trauma suffered, and any possible enduring impact of grooming, coercion, or control by exploiters. 14.22. Decision makers must also recognise that children may be unable to identify safe opportunities to disclose, may not recognise their experiences as exploitation, or may be unwilling or unable to speak due to mistrust of authority figures. 14.23. <u>Where these factors are present, the expectation is that the child will be excluded from any adverse credibility finding based on the timing of their disclosure</u>. This position should only be departed from where the decision maker identifies compelling reasons as to why it would be appropriate to do so.***

ix) Here is the Statutory Guidance §§10.7 to 10.16:

> ***Child-specific indicators***
>
> ***10.7. Child victims may be identified in a range of contexts. They may be citizen or migrant children. Some children arrive in the UK accompanied by adults who are either not related to them or in circumstances which raise child protection concerns. For example, there may be: [i] no evidence of parental permission for the child to travel to the UK or stay with the adult [ii] little or no evidence of any pre-existing relationship with the adult or even an absence of any knowledge of the accompanying adult [iii] evidence of unsatisfactory accommodation arranged in the UK.***
>
> ***10.8. These irregularities may be the only indication that the child could be a victim of trafficking or modern slavery. On discovery, children who are victims of human trafficking or modern slavery may not show any obvious signs of distress or imminent harm.***
>
> ***10.9. Child victims may find it particularly hard to disclose and are often reluctant to give information. This may be because their stories are made up by their trafficker or exploiter, or the traffickers may have given them inaccurate information about the role of authorities, and they may have had bad experiences with corrupt authorities during their journey if trafficked. As a result, they may relate their experiences in an inconsistent way or with obvious errors. As such, First Responders and frontline staff should ensure they are familiar with child-specific indicators so that they can identify victims who do not self-identify…***
>
> ***10.10. Children under 18 travelling unaccompanied by adults or with an adult who is not their parent should not be assumed to be victims of modern slavery just based on this factor alone as their situation may be perfectly legitimate or unrelated to modern slavery.***

> ***Frontline staff should make additional enquiries as appropriate which might establish whether or not any indicators of modern slavery are present.***
>
> ***10.11. Children may be victims of child sexual exploitation, and/or child criminal exploitation including county lines. There are a number of indicators associated with these forms of exploitation and all those working with children need to be aware of them.***
>
> ***10.12. Children may have further vulnerabilities as severely abusive situations and neglect can significantly impact growth and development. Similarly, developmental conditions such as Foetal Alcohol Spectrum Disorders, may increase vulnerability.***
>
> ***10.13. PTSD and trauma responses in children at different developmental stages may vary significantly from adult presentations. As with adults, children may seem unaware that their situation is exploitative, harmful or abnormal and may not initially recognise that they are victims of a crime. They may have been told that the authorities will try to put them in prison or have been passed from one unknown adult to another.***
>
> ***10.14. Child victims may find it difficult to recount trauma they have witnessed or experienced. This may lead to the child providing conflicting accounts of what has happened to them. It should be noted that this is a common indicator of trafficking and should not be used to make judgements on the credibility of the child's account.***
>
> ***10.15. Early accounts from children who have been trafficked may also be affected by the impact of trauma. Trauma related to being trafficked could impact on the mental health of the child in a number of ways, which can result in symptoms including hostility and aggression or silence and withdrawal, difficulty in recalling details or entire episodes, and difficulty concentrating.***
>
> ***10.16. Children who have been trafficked may also be uncertain about the places and countries they have travelled through as their traffickers are likely to withhold that information from them. A child could also be worried about their removal from the UK, as well as be afraid of police or authorities' actions based on their previous experiences in their home country or on their journey to the UK. They may also fear repercussions as a result of the stories they have been told by their traffickers.***

x) The <u>European Convention on Action against Trafficking in Human Beings 2005</u> (ECAT) is the Trafficking Convention to which Parliament referred (2022 Act s.69(1)), and to which the <u>Statutory Guidance</u> also refers (see eg. §2.3). A discernible and primary purpose of the statutory scheme is to implement ECAT. The victim test (ECAT Art 4) is reflected in the 2022 Regulations. ECAT Art 4c provides for the AOE of the victim test. ECAT Art 4d defines child as a person under 18. ECAT requires assistance to victims (Art 12) and a recovery period (Art 13). It also requires an age presumption (Art 10(3)), reflected in the statutory presumption about age (s.51 of the 2015 Act). This domesticating purpose is familiar and arose from pre-existing policy guidance (<u>R (EOG) v SSHD</u> [2022] EWCA Civ 307 [2023] QB 531 at §§32, 34), such that failure accurately to reflect the ECAT is a justiciable error of law (see <u>MS (Pakistan)</u> at §20). There is good and principled reason to construe the primary legislation and Statutory Guidance so as to comply with ECAT: <u>R (ABW) v SSHD</u> [2025] EWHC 3280 (Admin) at §§99-100, 102. ECAT Art 10 is concerned with "Identification of the victims".

xi) Here is ECAT Article 10(1):

> ***ARTICLE 10. Identification of the victims. (1) Each Party shall provide its competent authorities with persons who are trained and qualified in preventing and combating trafficking in human beings, <u>in identifying</u> and helping <u>victims, including children</u>, and shall ensure that the different authorities collaborate with each other as well as with***

> ***relevant support organisations, so that victims can be identified in a procedure duly taking into account the special situation of women and child victims and, in appropriate cases, issued with residence permits under the conditions provided for in Article 14 of the present Convention.***

16. In my judgment, the correct analysis is as follows:

    i) The correctness standard of review can in principle apply where age is a factor in the determination of whether the individual is a victim of human trafficking. That was Ms McGahey KC's formulation. I think it is a helpful one, and a sound starting-point to frame the analysis.

    ii) The AOE and COE in the reg.3 victim test involve the use of "adult" and "child" in the application of the victim test (see §§15v, vi above). There, age is a factor in the determination of whether the individual is a victim of human trafficking. There, the decision-maker's approach to the individual's age – whether they were an "adult" or a "child" – would attract the correctness standard of review. Ms McGahey KC accepts this. It is not because of anything in ECAT which dictates the role of the domestic court. It is because of the structure and framing of the domestic statutory scheme.

    iii) Pausing there, the words "adult" and "child" in the victim test – which the SSHD accepts attract the correctness standard when they relevantly feature in in a RG decision – do not come from primary legislation. They are not used in the empowering provision (s.69(1) of the 2022 Act). They are in reg. 3 of the SSHD's 2022 regulations, made under a broad statutory power. The inclusion of the modified definition for a "child" is because of the AOE derived from ECAT Art 4c. Parliament must be taken to have intended the regulations under the statutory power to implement ECAT Art 4c. Where reg.3 involves decisions, about "child" or "adult", whose lawfulness depends on its correctness, this is a good example of a criterion which is not in primary legislation. See the First Judgment at §§17 and 48iii, referring to regulations in the R v Secretary of State for the Environment, ex p Alliance Against the Birmingham Northern Relief Road [1992] Env LR 447 and the FCA rule-book in R (Bluefin Insurance Services Ltd) v Financial Ombudsman Service Ltd [2014] EWHC 3413 (Admin) [2015] Bus LR 656.

    iv) It is not just in the formulation of the victim test that age can be a factor in the determination of whether the individual is a victim of human trafficking. If, for example, there are criteria which deal with credibility and the timing of disclosure, these may need to be applied differently to a person who is a child than to a person who is an adult. Whether I am disbelieved because I am an adult who disclosed something late is age operating as a factor in the determination of whether I am a victim of human trafficking. Not because of the victim test. But because of the decision-making approach in deciding whether I am a person who meets it. This is also accepted by the SSHD:

    v) Ms McGahey KC drew my attention to s.59 of the 2022 Act, because of the reference-point which it provides. She posited as a premise this provision being brought into force, to test the legal logic. On that premise, she accepted that "person aged 18 or over" in s.59(1)(a) would attract the correctness standard if it relevantly featured in in a RG decision, as where credibility was materially damaged because of late disclosure (s.59(2)): see §15iv above. I think that is correct.

vi) That brings into sharp focus the position which applies at present, where s.59 of the 2022 Act has not been brought into force. Parliament has required the SSHD to make appropriate provision in statutory guidance under s.49 of the 2015 Act. The relevant provision is in §§14.21 to 14.23 of the Statutory Guidance (§15viii above). There are three key points. **First**, this is statutory guidance, issued under a statutory duty. **Second**, it is an important part of the domestic provisions for giving effect to an international instrument, Art 10(1) of which requires that identifying victims must take "due account" of the "special situation" of child victims (§15xi above). **Third**, when Parliament referred to guidance about "the sorts of things which indicate that a person may be a victim of slavery of human trafficking" (s.49(1)(a)), this must be interpreted and understood as contemplating identification factors applicable to the position of child victims. Otherwise, there would be no "due account" of the "special situation" which Art 10(1) requires.

vii) In light of the special combination of these three key points, I have been persuaded by Ms Harrison KC that §§14.21 to 14.23 of the Statutory Guidance (§15viii above) constitutes the use of "child" in statutory guidance which would attract the correctness standard if it relevantly featured in a RG decision. This is not simply policy guidance. It is statutory guidance. It is not simply a question about language and structure of the policy guidance. It is distinct from the situation addressed in the First Judgment at §48iii-v. Here, there is a statutory provision; indeed a statutory duty. I think the s.49 statutory duty to issue Statutory Guidance is to be interpreted as Parliament making provision for criteria which address the special situation of child victims, capable of attracting a correctness standard, where the lawfulness of the application depends on correctness and not reasonableness. The focus on the statutory duty means there is a reference-point from Bluefin approach to the regulations made under s.226(6) of the Financial Services and Markets Act 2000 (see Bluefin §§13 and 67).

viii) The position can be tested in this way. Suppose s.49(1)(a) of the 2015 Act said this (the words underlined have been added by me):

> ***49. Guidance about identifying and supporting victims. (1)The Secretary of State must issue guidance to such public authorities and other persons as the Secretary of State considers appropriate about – (a) the sorts of things which indicate that a person may be a victim of slavery or human trafficking, including children so that the special situation of child victims is duly taken into account; (b) arrangements for providing assistance and support to persons who there are reasonable grounds to believe are victims of slavery or human trafficking or who are such victims; (c) arrangements for determining whether there are reasonable grounds to believe that a person is a victim of slavery or human trafficking.***

If Parliament had said this, it would mean "child" would appear on the face of the primary legislation. The SSHD has accepted a correctness standard where child appears on the face of secondary legislation (reg.3). Parliament did not spell this out in s.49(1)(a). It did add one mandatory content requirement for statutory guidance, but it was not this (see s.49(1A)). It could have included the words which I have included. I accept all of that. But I think the words I have used reflect the correct interpretation of the duty. It would not have been lawful for the SSHD to issue statutory guidance which failed to include identification indicators for child victims. That would have failed to implement ECAT Art 10(1).

ix) It follows from what I have said that the question of child and adult attracts the same judicial scrutiny in the context of credibility and late disclosure under the Statutory Guidance (§§14.21 to 14.23) as it would do under the statutory provision which is not yet in force (s.59 of the 2022 Act). It would be the same if the criteria to which regard must be had under the Statutory Guidance were instead found in regulations. It has been accepted that the regulations can, and the 2022 Regulations do, contain criteria attracting a correctness standard of review. Given the special combination of features to which I have referred, I am unable to accept Ms McGahey KC's submissions that a different conclusion is justified because of (a) the difference between legislation and statutory guidance or (b) the difference between the design of the credibility/ disclosure provision within the Statutory Guidance and the design of s.59.

x) This same legal logic must, in my judgment, apply to the other child indicators set out in the Statutory Guidance. Their flavour can be seen from what I have set out (§15viii above). The same combination of features applies. Here too, age can be a factor in the determination of whether the individual is a victim of human trafficking. Here too, the lawfulness of an adverse finding that the individual is an adult – or was an adult at a relevant earlier time – would attract a correctness standard.

17. The consequence is this. Where the Statutory Guidance, in implementing Article 10(1) of ECAT, identifies an important distinction between the approach which is needed for a "child" case by contrast with an "adult" case, the decision-maker will have to decide whether to adopt that approach. If they treat the individual as an adult, for the purposes of that important distinction in that approach, and if it is material to a negative decision, well then the individual is entitled to ask the Court to approach that element on a correctness standard. That is not a startling proposition. It is exactly what the SSHD accepts would follow if an adverse credibility finding arose from late disclosure in making a negative RG decision, by reference to s.59(2) of the 2022 Act, if that provision were in force. It is also exactly the approach which already applies to questions about "adult" and "child" under the reg.3 victim test.

18. It follows that I accept Ms Harrison KC's submissions, insofar as they were based on the Statutory Guidance, s.49(1)(a) of the 2015 Act, and ECAT Article 10(1). That leaves two things.

i) I do not accept Ms Harrison KC's broader contention that "child" will inevitably and always attract a correctness standard, wherever the legality of any child-related question arises at any stage in a trafficking context. That has not been my path of analysis. Nor is the broader contention necessary in order to answer the question which has arisen.

ii) Nor does the analysis turn on any question arising from the statutory presumption in s.51 of the 2015 Act. As to that, Ms McGahey KC clarified that the SSHD's position (see First Judgment §§21, 57(2)(b)) is that the "age … determined" under s.51(2) would attract a correctness standard only if otherwise applicable to that age determination function. I think that is correct. The function of s.51 is to impose a temporally-linked age presumption. The reference to a local authority age assessment or other determination (s.51(2)) is identifying a factual point in a temporal sequence, where the presumption ceases to apply. It is not purporting to govern, or to transform, the legal analysis which would apply when testing the lawfulness of that determination. That legal analysis arises externally, and not as a function of s.51(2).

Next steps

19. The next steps in this case will be for the Court to consider the substantive merits, and any procedural arguments, as to the Claimant's challenges to: (a) the SSHD's decisions to treat him as an adult for the purposes of the inadmissibility declaration and inclusion within the UFT scheme; and (b) the negative RG decision. There is also a remaining issue about compliance with the duty of candour. I am anticipating a further hearing, which it may be possible to schedule for 17 September 2026.

Order

20. Following receipt and consideration of this judgment in draft, the parties were agreed as to the terms of the Order which it would be appropriate for me to make.

21. The agreed Order has the following recitals. Upon the following: (R1) The handing down of the Judgment EXR No.1 [2026] EWHC 1568 (Admin) on 25 June 2026. (R2) That Judgment identifying four relevant remaining issues as to the legally correct approach to the reasonableness standard of review when it governs the lawfulness of a decision about whether an individual is to be treated as an adult and not a child in the context of proposed removal of an unaccompanied individual to France under the UK-France Treaty 2025 (UFT). (R3) Those issues being addressed at a hearing on 2 July 2026. (R4) The Court additionally determining after that 2 July 2026 hearing, as a preliminary issue of law, whether consideration of age as part of a decision-maker's assessment of the evidence in a Reasonable Grounds decision is reviewable on a correctness basis, that issue also having been addressed at that hearing. (R5) The Court handing down Judgment in EXR No.2 on 10 July 2026 without determining any application for permission to appeal that may arise from the Judgments in EXR No.1 and EXR No.2 or making a Final Order in respect of this part of the Claimant's claim. (R6) The Court directing the listing of this part of the Claimant's case for a further hearing, if possible on 17 September 2026, which will determine (i) the reasonableness of the Defendant's decisions to treat the Claimant as an adult for the purposes of the inadmissibility declaration and inclusion within the UFT scheme; and (ii) the Defendant's compliance with the duty of candour. (R7) The parties agreeing that the Claimant's age is material to the negative Reasonable Grounds Decision dated 5 June 2026, and that therefore (subject to any appeal) his challenge to that Decision is to be transferred to the Upper Tribunal (Immigration and Asylum Chamber), in line with the Order of Butcher J dated 26 March 2026, to proceed to a fact-finding hearing to determine his age and date of birth and any consequential matters.

22. The agreed Order then has these operative paragraphs: (1) The Claimant has permission to amend his claim to rely on his Supplementary Statement of Facts and Grounds dated 24 June 2026, to challenge the negative Reasonable Grounds Decision dated 5 June 2026. (2) It is declared that judicial review of the Defendant's decision to treat an individual as an adult for the purpose of decisions on inadmissibility under ss.80A and 80B Nationality Immigration and Asylum Act 2002 and removal under the UK-France Treaty attracts the reasonableness standard of review. (3) It is declared that: (a) Section 49 of the Modern Slavery Act 2015 in implementing Article 4 and 10(1) of ECAT, requires the provision of criteria which address the special situation of child victims. (b) Where (i) statutory

guidance, issued under section 49 MSA 2015, identifies an important distinction between the approach which is needed for a "child" case by contrast with an "adult" case, (ii) the decision maker treats an individual as an adult for that purpose, and (iii) that treatment is an element which is material to a negative Reasonable Grounds or Conclusive Grounds decision, the Court on an application for judicial review of that decision will review that element on a correctness standard rather than a reasonableness standard.

23. The operative paragraphs then continue: (4) If possible, a hearing shall be listed on 17 September 2026, with a time estimate of one day, to determine the lawfulness of the Defendant's decisions to treat the Claimant as an adult for the purposes of the inadmissibility declaration and inclusion within the UFT scheme, and the Defendant's compliance with the duty of candour. (5) The hearing is adjourned pursuant to PD52A paragraph 4.1(a) so that any applications for permission to appeal can be made on paper. Any application to this Court for permission to appeal in respect of the Judgments in EXR No.1 [2026] EWHC 1568 (Admin) (25 June 2026) and/or EXR No.2 [2026] EWHC 1726 (Admin) (10 July 2026) ("the Two Judgments") should be made on paper, to be filed and served by 4pm on 17 July 2026, with any response to such application to be filed and served by 4pm on 24 July 2026. (6) All other consequential matters arising out of the Two Judgments, including the question of costs, be reserved and adjourned for consideration after, or as part of, the order to be made by the Court following the hearing on 17 September 2026. (7) The time for filing an Appellant's Notice for any appeal, if so advised, against the Judgment in EXR No.1 and/or the Judgment in EXR No.2 and/or this Order, is extended to 21 days after this Court makes a determination on any application for permission to appeal. (8) Liberty to apply, in writing on notice, to vary paragraphs (4)-(7) above.