IN THE COURT OF APPEAL, CIVIL DIVISION
ON APPEAL FROM THE ADMINISTRATIVE COURT **Case ref: CA-2023-000726**

B E T W E E N:

R (KINGSLEY KANU)

Appellant

v.

SECRETARY OF STATE FOR FOREIGN, COMMONWEALTH AND DEVELOPMENT AFFAIRS

Respondent

APPELLANT'S SKELETON ARGUMENT FOR HEARING ON 22 JUNE 2023

References: "(*Judgment* §x)" *refers to the judgment of the 23 March 2023; "(CB/*)" refers to the Core Bundle; "(SB/[Tab]/*)" refers to the Supplementary Bundle; "DGC§" refers to the Appellant's Detailed Grounds of Claim; "DGR§" refers to the Respondent's Detailed Grounds of Resistance.*

I: SUMMARY

1. The Appellant ("**KK**") is appealing the judgment of Swift J dated 23 March 2023 dismissing his claim for judicial review (see Judgment **at CB/97-115**). The Order of Lewis LJ (**at CB/95-96**) granting permission observes the appeal *"raises important issues concerning the scope of the obligations on the respondent in relation to requests for consular assistance in respect of British nationals detained abroad"*. It concerns a British citizen Nnamdi Kanu ("**Mr Kanu**"), the Leader of the Indigenous People of Biafra ("**IPOB**"). Mr Kanu was abducted by Nigerian security services in Kenya on 19 June 2021, held incommunicado and tortured over several days in Kenya, and then without any access to due process or a court of law, forcibly removed across the border on a secret flight to Nigeria, where he was charged with criminal offences which carry the death penalty. He was, in short, the victim of a violent extraordinary rendition. Mr Kanu has been held, ever since, in the custody of the Nigerian Department of State Services ("**DSS**"), in long-term solitary confinement, as Lewis LJ's Order also noted.

2. Mr Kanu's torture and rendition was not the first time the Nigerian government had sought to harm Mr Kanu. In September 2017, the Nigerian military launched a violent raid on Mr Kanu's house in which they attempted to kill him, and succeeded in killing at least 28 members of IPOB. Mr Kanu consequently fled the country.

3. These are not simply allegations. They are findings of the Nigerian courts dated 19 January 2022, 13 October 2022 and 26 October 2022, and in July 2022 of the United Nations Working Group on Arbitrary Detention ("**UNWGAD**"). Mr Kanu nonetheless remains detained[1].

4. KK is Mr Kanu's brother. Since Mr Kanu's rendition, he has sought assistance from the Respondent ("**R**") to obtain Mr Kanu's release, to protect him from harm while in custody and to seek accountability for his ill-treatment. R has taken some of the steps sought by KK, but not others. R has, in particular, not acknowledged that Mr Kanu is the victim of extraordinary rendition, not put this to the Nigerian government privately or publicly, not called for his release nor imposed any sanctions on anyone responsible. When asked by KK to do so, R has refused, explaining that in deciding what steps to take:

   > *"…the Secretary of State has necessarily formed a provisional view, on the information available to her, as to whether the allegations are credible and as to whether they either do or may constitute a violation of international law. The Secretary of State is not compelled to share this view and does not consider it appropriate to do so.*" (see **Letter of 9 June 2022, SB/E/457**)

5. It is KK's case in his claim, which Swift J has rejected, that:

   (1) KK has a legitimate expectation that his requests will be *"considered",* and *"that in that consideration all relevant factors will be thrown into the balance"* (*Abbasi v Secretary of State for Foreign and Commonwealth Affairs* [2002] EWCA Civ 159, §99). Since to properly conduct that consideration R must "*at least start from a formulated view as to whether there is such a breach [of his rights], and as to*

[1] The Nigerian government has lodged an appeal to the Supreme Court, but it is an appeal which does not dispute the central fact of rendition without lawful process. Indeed, that rendition was effectively admitted in the Nigerian government's evidence- see Judgment §5 and §31).

the gravity of the resulting denial of rights" (*Abbasi,* §92) and since "*it is impossible for that balance to be properly conducted*" by R "*unless and until he has formed some judgment as to the gravity of the miscarriage*" (***Abbasi*, §100**), KK submits that R's refusal to reach a concluded view that Mr Kanu is the victim of extraordinary rendition breaches KK's legitimate expectation. KK accepts that R may have been entitled to keep that concluded view private, in the exercise of his discretion, but does not accept that R can properly assess <u>how</u> to exercise that discretion based on a provisional view.

(2) There is no reasonable basis for R to take a provisional position in this case. The evidence that Mr Kanu was the victim of extraordinary rendition is overwhelming.

(3) Fairness requires R to inform KK of what his provisional view is and/or at least to inform KK of the factors that have prevented him from reaching a firm view.

6. In dismissing KK's claim, Swift J rejected the argument that *Abbasi* means KK has a legitimate expectation that R will form a concluded view as to whether Mr Kanu has been the victim of extraordinary rendition. He stated that:

(1) The references in *Abbasi* to the need to start from a formulated view as to whether there is a breach of international obligations (***Abbasi,* §92**), and to form some judgment as to the gravity of the resulting denial of rights or miscarriage of justice (***Abbasi,* §§92, 100**) "*do no more than make it clear that the Secretary of State's consideration of any request of assistance must rest on an appreciation of relevant considerations*" (**Judgment §28**);

(2) In practice what is required is that R is "*sufficiently informed*", which is akin to the standard in *Secretary of State for Education v Tameside MBC* [1977] AC 1014 at page 1065 A-B, requiring R to take reasonable steps to acquaint himself with the relevant information (**Judgment §28**).

(3) "*[T]here is no 'first step' that the Secretary of State must form, ... his 'concluded' view on the circumstances affecting the relevant British national*" (**Judgment, §28**).

(4) R's refusal of KK's request to reach a concluded view "*does no more than reflect the Secretary of State's opinion on how best to conduct his affairs with the Nigerian*

authorities to give the greatest chance of providing practical assistance to Mr Kanu…" and "*is part of the conduct of international relations*" (**Judgment §29**).

7. As for KK's argument that it is irrational for R to maintain his '*provisional'* view, Swift J held that the refusal to 'state' the view "*reflects his opinion on what steps should be taken best to assist him"* and is part and parcel of R's assessment of how to conduct foreign relations. The distinction KK drew between reaching a view privately and stating it publicly was "*artificial*" (**Judgment §32**). Nor was there any requirement for R to act fairly: R "*is not exercising a power that attracts ….an obligation of procedural fairness* (Judgment §35). R was required to do no more than comply with his policy and explain to individuals and families "*what is being done, what is not being done, and why*," as set out in the Prisoner Policy Guidance (**Judgment §35**).

8. KK is appealing on the basis that Swift J erred in these conclusions, and that in doing so significantly undermined the carefully calibrated balance the Court of Appeal struck in *Abbasi* between the Court's supervisory jurisdiction and the rule of law on the one hand, and non-justiciable matters of foreign policy on the other. He is advancing three grounds of challenge, on all of which he has permission (see **Order at CB/95-96** and **Grounds of Appeal at CB/15-16**).

9. First, in rejecting KK's claim that he had a legitimate expectation that R's consideration of what steps to take to assist Mr Kanu would start from a formulated view of the breach of his rights and their gravity, Swift J has departed from the express wording of *Abbasi.* There is no basis either in *Abbasi*, or in any other case, for Swift J's conflation of *Tameside*-compliant gathering of relevant information with the separate exercise of assessing, once that information has been gathered, whether there has been a breach of international law rights and, if so, the gravity of that breach. On the contrary, as the Court of Appeal in *Abbasi* made explicit (see *Abbasi* §§92, 99-100), that assessment of breach is central to R's proper consideration of requests for assistance to British citizens being detained and/or prosecuted by foreign governments. That is why R's own officials described themselves as undertaking the very exercise KK submits is legally required i.e. seeking *"clear information on Kanu's arrest"* to inform an *"assessment as to whether human rights violations have occurred"* (**Ministerial Submission of 6 July 2021, §§3 and 9, SB/B/130-131**). (**Ground 1)**

10. Nor was Swift J right to conclude on the evidence that foreign policy considerations underpinned the provisionality of R's internal view of whether Mr Kanu was the victim of extraordinary rendition. R's evidence was to the effect that foreign policy considerations underlay his decision not to communicate such a view publicly, but that R's internal view remained provisional because of the *"evolving evidence"* and *"the constant inflow of new information"* (**Broughton §42, SB/B/65**).

11. Secondly, Swift J was wrong, in rejecting KK's claim of irrationality, to suggest that KK has drawn an artificial distinction between R's internal assessment as to whether there has been a breach of international obligations, and his subsequent exercise of discretion in deciding whether to make diplomatic representations or take other steps on the basis of that assessment. The extent of a court's ability to review R's internal decision-making is central to the Court of Appeal's intention to avoid a situation where the "*whole process is immune from judicial scrutiny"* (***Abbasi*** **§99**). That is why the Court stated that R's decision-making could be impugned as "*irrational"* (see ***Abbasi*** **§106(iii)**). Not only is the distinction KK draws not artificial, therefore, it is the critical component of the careful balance the Court of Appeal sought to achieve in *Abbasi* between the twin imperatives of the rule of law and foreign policy. (**Ground 2**)

12. Thirdly, the extent of the additional and unwarranted immunity from judicial scrutiny conferred on R by Swift J's judgment is highlighted by his final conclusion that R does not have an obligation to comply with the standards of procedural fairness when considering requests to assist British citizens whose fundamental rights are at serious risk abroad (see **Judgment §35**). While KK accepts that the content of the fairness obligation is context-specific (see ***R v Secretary of State for the Home Department ex parte Doody*** **[1994] 1 AC 531 at 560E-G**) and that in this context of foreign policy what fairness requires in practice may be more restricted than in other contexts, the conclusion that there is no obligation to act fairly at all finds no foundation in *Abbasi*, and cannot be reconciled with the applicable case-law. Swift J's approach reverses the principle that, the higher the stakes in the outcome of a discretionary decision, the more the common law demands by way of fairness towards the affected individual. (**Ground 3)**

13. For all these reasons KK submits that Swift J erred in rejecting his claim, and respectfully requests that the Court allow his appeal.

II: FACTS

(a) Mr Kanu's extraordinary rendition

14. As indicated above, Mr Kanu was abducted in Nairobi, Kenya on 19 June 2021 from the car park of Jomo Kenyatta Airport in 2021 where he had gone to collect a friend. At the time of his abduction and disappearance, Mr Kanu was living with his family in the UK and was visiting Kenya on his British passport. He had fled Nigeria in 2017 following what the High Court of Abia State, Nigeria, has described as a "military invasion" of his parents' residence in Nigeria, and an attempt on his life by the Nigerian military (***Kanu v Federal Republic of Nigeria and Ors,*** **High Court of Abia State, 19 January 2022, p.19**, **SB/C/279**). The State of Nigeria had "*wantonly or brazenly violated*" Mr Kanu's rights to dignity of the person and liberty and had "*brazenly threatened*" his right to life (**p.20, SB/C/280**). In the Court's view, the Nigerian military or its agents "*set out as pythons to terminate*" Mr Kanu's life (**p.21, SB/C/281**).

15. After Mr Kanu's abduction on 19 June 2021, he was held in an unknown location for 10 days, during which time he was chained to the floor, forced to urinate and defecate where he was chained, and beaten. When he fainted, cold water was poured over him to revive him. He was taunted by his captors who called him a "*separatist Igbo Jew"* and threatened that he would be "*expelled to Nigeria to face death*" (**Affidavit of Prince Emmanuel Kanu, SB/C/256**). On 27 June 2021 Mr Kanu re-appeared in Nigeria, in the custody of the DSS. Upon Mr Kanu's arrival in Nigeria, the Nigerian Attorney-General and Minister of Justice, Abubaker Malami, stated publicly that Mr Kanu was "*intercepted through the collaborative efforts of the Nigerian intelligence and security services*" **SB/C/252**).

16. Further detail of Mr Kanu's detention in Kenya and rendition to Nigeria was provided in judicial proceedings before the Federal High Court of Nigeria (Abuja). In a 'counter-affidavit' dated 31 May 2022, the Federal Republic of Nigeria and the Attorney-General of Nigeria confirmed that Mr Kanu was detained, in Nairobi, by members of the Nigerian security forces[2] (see **§5(f)-(g), SB/C/285**):

"f... upon his interception, the security agents of the Defendants took the plaintiff to their security facility where he was informed of the need for him to be taken back to Nigeria to go and continue facing his criminal trial.
g. ....the Defendants states that the plaintiff is not entitled to be shown any warrant of arrest or warrant of extradition on the ground that the plaintiff's entry into Kenya was not lawful but an attempt to escape or hide from justice over a criminal trial which he has already been facing here in Nigeria prior to his attempted escape from justice."

17. Evidence submitted in proceedings brought by KK in Kenya[2] by the Kenyan government and police equally confirmed that Mr Kanu had been extraordinarily rendered (**SB/D/393-396**). It stated that Mr Kanu arrived in Kenya on a flight from Kigali on 12 May 2021;[3] that there are no extradition proceedings so that the Government of Kenya is not in any sense responsible for Mr Kanu's extradition; that there is no record from any police station in Kenya that Mr Kanu was lawfully arrested and detained for the purposes of commencing extradition proceedings; and that there is no official record of Mr Kanu's exit from Kenya, following the last record of his entry into Kenya on 12 May 2021 (**Affidavit of Dr Karanja Kibicho, 10 February 2022, §§12-16, SB/D/395**; **Letter of the Kenyan State Department of Interior and Citizen Services, 29 September 2021, SB/D/387**).

18. On 20 July 2022, UNWGAD published its Opinion 25/2022 (**SB/F/507-523**). UNWGAD concluded that all the requirements of international law regarding the extradition procedure had been ignored in Mr Kanu's case, that Mr Kanu had been extraordinarily rendered from Kenya to Nigeria, in violation of international law, and that his detention is arbitrary (**Opinion 25/2022 at §§46-47 and §82, SB/F/513 and 518**). UNWGAD recorded its "*very serious concern for the well- being of Mr Kanu*", in the light of Mr Kanu's continued detention in solitary confinement since his arbitrary detention in Nigeria since 29 June 2021 (**Opinion 25/2022, §100, SB/F/521**). In the light of Mr Kanu's torture and ill treatment in Kenya and Nigeria, the UNWGAD has referred his case to the UN Special Rapporteur on torture and other cruel, inhuman and

[2] The respondents to the Kenya proceedings are: (i) the Cabinet Secretary, Ministry of Interior and Coordination of National Government; (ii) Director of Immigration Services; (iii) Director of Criminal Investigations; (iv) Officer Commanding Police Division Jomo Kenyatta International Airport; and (v) the Attorney General.
[3] Affidavit of Dr Karanja Kibicho, Principal Secretary in the State Department of Interior and Citizen Services, Ministry of Interior

degrading treatment or punishment (**Opinion 25/2022, §102, SB/F/521**). Underlining the urgency of the matter, UNWGAD called upon the Governments of Kenya and Nigeria to take immediate steps to remedy the situation, noting that the only appropriate remedy in this case would be Mr Kanu's immediate and unconditional release (**Opinion 25/2002, §107, SB/F/522**).

(b) Proceedings in Nigeria

(i) Criminal proceedings against Mr Kanu

19. The criminal proceedings against Mr Kanu have been the subject of adjournment and delay, during which time Mr Kanu has remained detained in solitary confinement at the DSS, in dire conditions that present a risk to his health and his life. Mr Kanu has made a number of applications for bail, all refused.

20. Mr Kanu was arraigned on charges of terrorism before the Federal High Court of Abuja on 29 June 2021, without the benefit of legal representation. Those charges are said to arise out of membership and leadership of IPOB, broadcasts allegedly made on Radio Biafra, from London, between 2014 and 2015, and 2018 and 2021, and alleged importation of a radio transmitter into Nigeria in 2015. Mr Kanu has pleaded not guilty to all charges.

21. On 7 January 2022, the prosecutor in the criminal proceedings proffered an amendment indictment consisting of 15 charges against Mr Kanu (**Ejimakor 1, §10, SB/B/158**). On Mr Kanu's preliminary objection to the validity of the indictment, the High Court dismissed 8 of those charges on the grounds they did not disclose an offence (**Ejimakor 1 §10, SB/B/158**). Mr Kanu then filed a Motion to dismiss the criminal proceedings against him on the ground that the manner in which he had been brought to Nigeria was unlawful and an abuse of process (**Ejimakor 1 §11, SB/B/159**). That Motion was dismissed, and Mr Kanu appealed the dismissal of the Motion to the Federal Court of Appeal.

22. On 13 October 2022, the Federal Court of Appeal ordered that Mr Kanu be discharged and released from custody (**SB/C/386**). It found that the Nigerian Government's evidence constituted an admission that Mr Kanu was abducted in Kenya and transferred to Nigeria without any formal extradition proceedings. The Court held, unanimously, that Mr Kanu

had been unlawfully and extraordinarily rendered to Nigeria, in "*clear and egregious violation*" of international law (at **p.32 SB/C/329**). As a consequence, Mr Kanu is "*prohibited from being detained, tried or otherwise dealt with in Nigeria for or in respect of any offence allegedly committed by him before his extraordinary rendition to Nigeria*", and the Nigerian courts have no jurisdiction to prosecute him (at **p.41, SB/C/338**).

23. Mr Kanu, however, remains in DSS detention, in solitary confinement. On 18 October 2022 the Prosecutor filed a notice of appeal, on domestic law grounds (**SB/C/185**), and, on 20 October 2022 applied to stay the effect of the judgment pending appeal to the Supreme Court (**SB/C/174**). The application for a stay was granted. The appeal is still pending. Notably it does not dispute the central fact of rendition without lawful process (which was effectively admitted in the Nigerian government's evidence- see Judgment §5 and §31).

(ii) Proceedings before the constitutional courts

24. On 19 January 2022, the High Court of Abia State considered a claim Mr Kanu had made arising out of the 'military invasion' of his residence in 2017. As outlined above at paragraph 14, it held that Mr Kanu's fundamental rights to life, dignity of the human person and personal liberty had been violated, and ordered the Nigerian Government to pay Mr Kanu compensation (at **pp.20-21, SB/C/280-281**).

25. On 26 October 2022 the Federal High Court (Umuahia Division) issued judgment on a claim Mr Kanu filed against the Federal Government of Nigeria, the President of Nigeria and the Attorney General that his arrest, detention and treatment in Kenya, his extraordinary rendition to Nigeria, and the resulting criminal proceedings against him, were unlawful and constitute a violation of his fundamental rights to a fair trial, the prohibition of arbitrary arrest and detention, and the prohibition of torture, as guaranteed by the Constitution of Nigerian and international law (**Judgment of Federal High Court, 26 October 2022, SB/B/212-251**). The respondents had stated that upon 'interception' of Mr Kanu he was taken by Nigerian security agents to a facility in Kenya, and "*was immediately flown back to Abuja, Nigeria*" where he was detained by the DSS (at **p. 35, SB/B/246**). The respondents denied the allegations of ill treatment (at **p. 35, SB/B/246**). The court found that the respondents' denials were "*mere evasive, loose and watery denial*", and held that Mr Kanu's arrest and detention in a private facility in Kenya

for 8 days where he was subjected to physical and mental torture, then forcibly expelled from Kenya, and his detention and torture in DSS custody in Abuja, were "*brazen*" violations of his fundamental rights to life and freedom from torture, inhuman and degrading treatment, and awarded Mr Kanu damages.

(c) Requests for assistance from the FCDO

26. Since 1 July 2021, shortly after Mr Kanu's appearance in Nigeria, KK has been seeking R's assistance to secure his safety and release, and to achieve accountability for his treatment. In correspondence with R, KK has highlighted the following concerns (**DGC, §§30-40, CB/218-221**):
    (1) that Mr Kanu had been extraordinarily rendered to Nigeria, and as a consequence was arbitrarily detained in Nigeria;
    (2) that Mr Kanu had been tortured in Kenya and was at ongoing risk of torture and ill treatment;
    (3) that Mr Kanu was being denied his right to a fair trial;
    (4) that there is ongoing risk to Mr Kanu's health and well-being due to his prolonged detention in solitary confinement, and lack of medical treatment in detention to address an underlying health condition.

27. In the light of a lack of progress in Mr Kanu's case, KK's solicitors have repeatedly requested R review his strategy and, in the light of evidence of Mr Kanu's torture and extraordinary rendition in breach of international law, consider taking certain steps, as a matter of urgency, including the imposition of sanctions on persons involved in Mr Kanu's torture and extraordinary rendition pursuant to the Global Human Rights Sanctions Regulations 2020; making diplomatic representations at Ministerial level raising concerns regarding Mr Kanu's continued detention in conditions amounting to torture; and submitting information to the UN Committee against Torture inquiry procedure under Article 20 of the UN Convention against Torture concerning Mr Kanu's torture and ill treatment (**Letter of 8 December 2021, SB/E/420, DGC §34, CB/219**).

28. In effort to assist R to assess what steps to take, KK's solicitors have been in continuous contact with R, and have provided R with the information and evidence that KK has been able to gather of Mr Kanu's extraordinary rendition, including the judgments of the Nigerian domestic courts, and the Nigerian Government's own admission in an

affidavit submitted to the Nigerian High Court that Mr Kanu had been detained and taken from Kenya to Nigeria without any form of judicial process.

29. In correspondence, R has acknowledged "*that there are a range of diplomatic tools which could be deployed in any case where a British National is detained in another jurisdiction*" and that R has "*given specific consideration to a range of alternative options, including those suggested by or on behalf of*" KK (**Letter of 14 April 2022, SB/E/436**). R has set out the occasions upon which Mr Kanu's case has been "*raised*" with the Nigerian authorities. Those representations concerned, primarily, Mr Kanu's treatment in detention and in solitary confinement (**Letters from GLD to Bindmans of 26 July 2021, SB/E/403; 24 September 2021, SB/E/418; and 12 January 2022 (misdated 2021), SB/E/429**). R has not escalated Mr Kanu's case beyond:
    (1) raising concerns for Mr Kanu's welfare at consular and Ministerial level;
    (2) seeking consular access to Mr Kanu (eventually securing visits on 19 November 2021, 29 April 2022, 23 August 2022, 25 October 2022 and 7 February 2023); and
    (3) raising the "*allegations*" regarding Mr Kanu's arrest and transfer and requesting a response (**Letters from GLD to Bindmans of 24 September 2021, SB/E/418**; **12 January 2022**; **SB/E/429** and **14 April 2022**, **SB/E/435**; **Broughton, §46, SB/B/69-71; Judgment §§9-13**).

(d) R's provisional view

30. On 23 March 2022, in the light of the failure of any action taken by R to accomplish any material change in Mr Kanu's circumstances since he was brought to Nigeria 8 months previously, R was invited to again reconsider his strategy to assist Mr Kanu and to set out what alternative actions he was prepared to pursue, including steps to escalate pressure on Nigeria.

31. Given the increasing clarity of the evidence, the lack of any response from Nigeria to the 'raising of allegations' and the importance of forming a view on the violations of international law in deciding what steps to take, KK's solicitors invited R to confirm that, in R's view, Mr Kanu's transfer from Kenya to Nigeria was unlawful, and constituted extraordinary rendition, and that his treatment constitutes torture, in violation of international law (**SB/E/433**).

32. On 14 April 2022, R responded that R "*acknowledges*" that KK has raised allegations that Mr Kanu's transfer from Kenya to Nigeria was unlawful and that Mr Kanu has been subjected to torture and mistreatment whilst detained but stated that R:

> *"does not consider that it would be appropriate to "confirm unequivocally" that Kenya and/or Nigeria's conduct was in breach of international law. Instead, the FCDO considers that the appropriate response is to continue to raise the circumstances of Mr Kanu's arrest, transfer and detention with the Governments of both Nigeria and Kenya."* (**SB/E/436**)

33. KK's solicitors sent a Letter before Claim to R on 25 May 2022, stating that R had failed to lawfully determine what further steps should be taken to assist Mr Kanu, because R had failed to reach a view on whether Mr Kanu has been subject to extraordinary rendition in breach of international law. R replied, on 9 June 2022, that diplomatic efforts were being made to provide Mr Kanu with consular assistance and to make representations to the Kenyan and Nigerian governments on his behalf. R further stated that:

> "*In deciding to take these steps, the Secretary of State has necessarily formed a provisional view, on the information available to her, as to whether the allegations are credible and as to whether they either do or may constitute a violation of international law. The Secretary of State is not compelled to share this view and does not consider it appropriate to do so.*"

34. This was 11 months ago. Swift J observed in an aside that (**Judgment §29**):

> *"No doubt the Secretary of State's approach will now also be informed by the conclusion set out in the judgments of the Court of Appeal of Nigeria, given on 13 October 2022, post-dating the evidence filed in these proceedings. I have seen reference in correspondence to a note verbale sent on 24 October 2022, presumably sent in light of the Court of Appeal's conclusions."*

35. Consequently by a letter of 2 May 2023, KK's solicitors asked R whether he had reviewed his approach in the light of the Nigerian Court of Appeal's conclusions. KK also asked R if his internal view of whether Mr Kanu was the victim of extraordinary rendition remained provisional and for disclosure of relevant documents in accordance with R's duty of candour (**SB/E/473**). R responded by a letter of 17 May 2023, stating that he continued to keep Mr Kanu's case under review and "*has determined that, at present, the most appropriate approach continues to be that recommended in the 10*

August 2022 Ministerial Submission" **(SB/E/475).** The 10 August 2022 Ministerial Submission (**SB/B/140-144**) recommended lobbying Nigeria to "*address human rights concerns including allegations of arbitrary detention, without calling for release*" (**SB/B/140**). R further indicated that on 26 April 2023 Nigeria had responded to a note verbale sent on 19 December 2022, but he neither disclosed relevant documents, nor gave any information about the content of Nigeria's response, nor answered KK's question about whether R's internal view remained provisional.

III: KK's CLAIM AND R'S DEFENCE

36. As indicated above, KK has challenged R's refusal to base his decision on what steps to take to assist Mr Kanu on a firm view as to the violation of international law to which Mr Kanu was subjected when he was transferred to Nigeria. It is KK's claim, based on the judgment of the Court in *Abbasi,* that this refusal, and the decision to maintain a provisional view[4], is a breach of Mr Kanu's legitimate expectation (see **DGC at §§63-68, CB/227-229**), and is irrational (**DGC at §§69-70, CB/229-230**). It is also KK's claim that R has acted unfairly (see **DGC §§71-72, CB/230**)

37. In his defence R has maintained that:
    (1) In the light of the engagement between the FCDO and Mr Kanu, his family and his legal representatives, R has "*considered and continually reassessed the appropriate steps to take in Mr Kanu's case*" and Mr Kanu's case "*is continually reassessed in light of developments*" (**DGR, §3, CB/118-119**; also **DGR §19, CB/125-126**).
    (2) R's consideration has "*included careful consideration of the legality of Mr Kanu's treatment."* However, R "*does not consider it appropriate to publish either that [sic] his provisional view or a 'firm, concluded view' on that subject*." (**DGR, §3, CB/118-119**).
    (3) In his assessment, R has had regard to factors including his "*provisional view as to the credibility of the allegations and the legality of his treatment"* and "*the constant inflow of new information"* (**DGR, §19, CB/125-126**).
    (4) There is no precedent requiring R "*to reach and publish a 'firm, concluded' view on the legality of acts of a foreign state".* (**DGR, §4, CB/119**)

[4] The term "provisional view" was first used by R in his letter of 9 June 2022, sent in response to KK's pre-action letter. The term is not of KK's formulation, as implied by the Administrative Court at §29.

(5) R's conclusions that "*it would not be appropriate either to reach or communicate a final view as to whether the Government considers that Nigeria has acted in violation of international law, were plainly within the broad discretion which he is entitled in the exercise of the foreign affairs prerogative"* (**DGR, §22, CB/126**).

38. As KK pointed out in his skeleton argument (see **§§6-7**), however, R's pleaded argument that his maintenance of a provisional view forms part of the 'forbidden area' of foreign policy is based on a persistent mischaracterisation of KK's claim as a challenge to R's refusal to 'publish' or to "reach and publish" a firm view of whether Mr Kanu was the victim of extraordinary rendition (**DGR, §1, §4 and §22 CB/118, 119 and 126**). KK's challenge is not to R's refusal to publish such a view; that stage has not yet been reached. KK's challenge is to R's failure to reach a firm view internally. KK's case is that this logical first step, as *Abbasi* makes clear, is the necessary precursor to deciding what action to take based on that view, including whether to publish that view (**DGC §9, §§66-68, CB/228-229**).

39. R's evidence suggests that R's own officials do consider it necessary to take this logical first step, and that their refusal to do so is not based on foreign policy considerations but on a belief that further material information may come to light in response to R's requests for it (a belief which KK submits is now irrational). Thus:

(1) The recommendation to R on 6 July 2021 was for "medium intervention", namely that UK Ministers and officials should raise the case in all appropriate meetings with their Nigerian counterparts "***until** we have consular access **and clear information on Kanu's arrest***" (**SB/B/130**) (emphasis added). That clear information was intended to inform the planned assessment of whether there had been a human rights violation (**Ministerial Submission of 6 July 2021, §§3 and 9**, **SB/B/130-133**).

(2) "*Maximum intervention*", which was not recommended at that stage, would have involved putting the case "*front and centre of all engagement*" with Nigeria, pressing the DSS on detention conditions, and the Minister of Africa releasing a statement on Mr Kanu's case.

(3) Ms Broughton's evidence confirms that R had already formed, by 8 July 2021, a provisional view as to the legality of Mr Kanu's transfer, detention and the likelihood of a fair trial (**Broughton §47(e), SB/B/72**).

(4) The 6 September 2021 advice and recommendation to R, meanwhile, did not

recommend consideration of sanctions, on the ground that the FCDO had not "*seen any evidence to substantiate the allegations*" of Mr Kanu's torture and mistreatment (**SB/B/139**), and instead recommended for R to *"follow up"* with Nigerian officials (**SB/B/134**).

(5) Ms Broughton's evidence explained that there has been "*a constant inflow of new information"* in Mr Kanu's case, that it would not be appropriate "*or aid*" Mr Kanu to form a concluded view "*in the face of evolving evidence",* and that reaching a concluded view would not change R's objectives or how R has approached the case (**Broughton §42, SB/B/65**).

(6) R's policy, "Prisoner Policy Guidance" (summarised at Judgment §20) states, under the heading "Intervention vs Interference":

> "*The UK Government can intervene on behalf of a British national under certain circumstances. This is usually when we have …concerns that they are being* ***unlawfully*** *or unjustifiability discriminated against.*" (**SB/B/78-79**) (emphasis added)

(7) R's Ministerial Submission of 10 August 2022 (**SB/B/141**) states:

> "*9. Long-standing consular policy is not to call for the release of British nationals detained abroad, as doing so might constitute interference in the judicial processes of another state. However, Ministers retain the discretion to depart from policy and call for release in exceptional circumstances, provided there is a rational basis for doing so.* ***The principal exceptional circumstances where Ministers have previously called for release in consular cases is where the FCDO has credible evidence to suggest that the detainee is arbitrarily detained*** *although to date that has only been done in very limited circumstances."* (emphasis added)

40. Consistently with R's evidence, there are a series of examples where the UK Government has formed and then published a firm view of the legality of individuals' treatment in past cases (see **Marker 2 §§8-26, SB/B/146-150**):

(1) In February 2021 then Foreign Secretary Dominic Raab stated publicly that the UK Government continues "*to press for the immediate and permanent release of all arbitrarily detained dual British nationals in Iran*" (**Marker 2 §21, SB/B/149**).

(2) On 22 March 2021 then Foreign Secretary, Dominic Raab, condemned the treatment of the Uyghur Muslims in Xinjiang Province, China, as "*egregious,*

industrial scale human rights abuses" (**Marker 2 §16, SB/B/148**).[5]

(3) On 1 October 2021, then Foreign Secretary Liz Truss confirmed her view that British-Iranian dual national Morad Tahbaz is arbitrarily detained in Iran, and called on Iran "*to immediately end its cruel treatment*" of Mr Tahbaz (**Marker 2 §23, SB/B/149-150**).

(4) On 16 October 2021, then Foreign Secretary Liz Truss called for the immediate release of British-Iranian dual national, Nazanin Zaghari-Ratcliffe (**Marker 2 §24, SB/B/150**).

(5) In July 2022 then Foreign Secretary Liz Truss condemned the death of British aid worker Paul Urey while in custody of "*a Russian proxy*" in Ukraine, stated that Russia must bear full responsibility, and that the Russian government and its proxies "*are continuing to commit atrocities*" in Ukraine (**Marker 2 §17, SB/B/148**)

(6) In June 2022 then Prime Minister Boris Johnson stated, in a letter to the leader of the Opposition, Sir Keir Starmer, that the Indian government is arbitrarily detaining British citizen, Jagtar Singh Johal.[6] (**Marker 2 §26, SB/B/150-151**)

V: THE JUDGMENT OF THE ADMINISTRATIVE COURT

41. Although Swift J in his judgment acknowledged and described the extensive and uncontroverted evidence of Mr Kanu's extraordinary rendition and ill-treatment at the hands of the Nigerian government (see **Judgment §§2-7**), including the findings of several Nigerian courts, he dismissed KK's claim for judicial review. He described KK's case *'[n]otwithstanding its apparent modesty'* as relying on*" a significant over-reading of the judgment of Abbasi*" (**Judgment §27**). He said that *Abbasi* was itself "*a modest approach to judicial intervention in the conduct of the United Kingdom's foreign relations*" (**Judgment §27**) and interpreted that judgment as follows:

(1) The '*relevant expectation'* was that requests for assistance would be considered.

(2) "*[T]here is no 'first step' that the Secretary of State must form, ... his 'concluded' view on the circumstances affecting the relevant British national*" (Judgment §28).

(3) The references in *Abbasi* to the need to <u>at least start from a formulated view as to whether there is such a breach of international obligations</u> (*Abbasi,* §92), and to

[5] https://www.gov.uk/government/speeches/xinjiang-foreign-secretary-statement-to-house-of-commons-22-March-2021

[6] BBC News, 'PM says Jagtar Singh Johal's detention in India is "arbitrary"', 2 July 2022.

form some judgment as to the gravity of the resulting denial of rights or miscarriage of justice (*Abbasi,* §§92, 99) "*do no more than make it clear that the Secretary of State's consideration of any request of assistance must rest on an appreciation of relevant considerations*" (**Judgment §28**);

(4) In practice what is required is that R is "*sufficiently informed*" which is akin to the standard in *Secretary of State for Education v Tameside MBC* [1977] AC 1014 at page 1065 A-B requiring R *"take reasonable steps to acquaint himself with the relevant information*" (**Judgment §28**).

(5) R's 'provisional view' is a properly informed one (**Judgment §29**).

(6) The refusal of KK's request to reach an unequivocal view "*does no more than reflect the Secretary of State's opinion on how best to conduct his affairs with the Nigerian authorities to give the greatest chance of providing practical assistance to Mr Kanu…*" and "*is part of the conduct of international relations*" (**Judgment §29**).

42. Swift J also rejected KK's argument that it is irrational for R to maintain a "*provisional view"* on whether Mr Kanu has been the victim of extraordinary rendition given the overwhelming evidence. In doing so the Court mischaracterised KK's submission as being that it is "*irrational for the Secretary of State to fail to state unequivocally, that Nigeria has acted in breach of international law*" (**Judgment §31**, emphasis added). Proceeding on this erroneous basis, the Court concluded that "*whether or not the Secretary of State states such a view is not any reflection of the degree of consideration he has given to Mr Kanu's case, rather it reflects his opinion on what steps should be taken best to assist him"* (**Judgment §32**), and further, that the way in which R "*chooses to express his opinion is part and parcel*" of R's assessment of how to conduct foreign relations. As for the way in which KK in fact pleaded his case, Swift J stated only that the distinction KK draws between reaching a view privately and stating it publicly is "*artificial*" (**Judgment §32**).

43. Swift J further rejected KK's submission that fairness requires R to inform KK what his provisional view is and/ or to inform KK of the factors that have prevented him from reaching a firm view. R "*is not exercising a power that attracts and obligation to act fairly – in the sense of an obligation of procedural fairness* (**Judgment §35**). In terms of informing families of the decision-making process, there was no obligation beyond

complying with R's Prisoner Policy Guidance, which states that the R should explain to individuals and families "*what is being done, what is not being done, and why*," (**Judgment §35**).

VI: *ABBASI*

44. In *Abbasi* the Court of Appeal held that while R exercises a broad discretion on whether to make diplomatic representations or take other steps to assist British nationals, those citizens nonetheless have a legitimate expectation that R will consider their requests for assistance and in doing so throw all relevant factors into the balance, including the "vital factor" of the nature and extent of the injustice they claim to have suffered. Thus the court stated at §§99-100:

    "99… ..*Whether to make any representations in a particular case, and if so in what form, is left entirely to the discretion of the Secretary of State. That gives free play to the "balance" to which Lord Diplock referred to in GCHQ. The Secretary of State must be free to* give *full weight to foreign policy considerations, which are not justiciable. <u>However, that does not mean the whole process is immune from judicial scrutiny. The citizen's legitimate expectation is that his request will be 'considered', and that in that consideration all relevant factors will be thrown into the balance."</u>*
    100. *<u>One vital factor, as the policy recognises, is the nature and extent of the injustice, which he claims to have suffered. Even where there has been a gross miscarriage of justice, there may perhaps be overriding reasons of foreign policy which may lead the Secretary of State to decline to intervene. However, unless and until he has formed some judgment as to the gravity of the miscarriage, it is impossible for that balance to be properly conducted</u>*". (Emphasis added)

45. To properly conduct the balancing exercise and meet the citizen's legitimate expectation that his request will be considered, R must "*at least start from a formulated view as to whether there is such a breach, and as to the gravity of the resulting denial of rights*" (***Abbasi* at §92**).

46. The Court summarised its views in the following way (**§106**):

    "iii) ....the Foreign Office has discretion whether to exercise the right, which it undoubtedly has, to protect British citizens. It has indicated in the ways explained what a British citizen may expect of it. The expectations are limited and the discretion is a very wide one but there is no reason why its decision or inaction should not be reviewable if it can be shown that the same were irrational or

contrary to legitimate expectation; but the court cannot enter the forbidden areas, including decisions affecting foreign policy.
iv) It is highly likely that any decision of the Foreign and Commonwealth Office, as to whether to make representations on a diplomatic level, will be intimately connected with decisions relating to this country's foreign policy, but an obligation to consider the position of a particular British citizen and consider the extent to which some action might be taken on his behalf, would seem unlikely itself to impinge on any forbidden area.
v) The extent to which it may be possible to require more than that the Foreign Secretary give due consideration to a request for assistance will depend on the facts of the particular case."

VI: SUBMISSIONS

Ground 1: Legitimate expectation

47. The Court of Appeal's judgment in *Abbasi* strikes a carefully calibrated balance between the freedom which R has to give "*full weight to foreign policy considerations"* (§99) and the requirements of the rule of law which strongly militate against R's whole decision-making process being "*immune from judicial scrutiny"*. The Court thus on the one hand recognises that "*Whether to make any representations in a particular case, and if so in what form, is left entirely to the discretion of the Secretary of State" (§99)* but equally on the other hand:
    (1) states that "*an obligation to consider the position of a particular British citizen and …the extent to which some action might be taken on his behalf would seem unlikely to impinge on any forbidden area*" (**§106(iv)**);
    (2) holds "*there is no reason why [the Foreign Office's] decision or inaction should not be reviewable if it can be shown that the same were irrational or contrary to legitimate expectation*" (**§106(iii)**) as long as the court does not enter the forbidden areas, including decisions affecting foreign policy; and
    (3) repeatedly emphasises that R's consideration of what action to take must start from "*the vital factor"* of an assessment as to whether the citizen has suffered a miscarriage of justice and if so the gravity of that miscarriage (**see §92, §99 and §100; see also §104**).

48. Swift J's conclusion that KK has **no** legitimate expectation that R will base his assessment of what steps to take on a firm view as to whether Mr Kanu has been the victim of extraordinary rendition, and that there is no such 'first step' is in clear conflict

with these conclusions, and undermines that careful balance. His suggestion that all that is meant by these critical passages in *Abbasi* is that R must rest his decision *"on an appreciation of relevant considerations*" and be "*sufficiently informed*" in a manner "*akin to the standard"* set in *Tameside* to *"take reasonable steps to acquaint himself with the relevant information*" is a gloss which finds no basis in any case-law, and consequently misapplies both *Tameside* and *Abbasi*.

49. The Court's repeated emphasis in *Abbasi* on the need, and expectation, for any lawful consideration of requests for assistance from a British citizen being detained by a foreign government to start from a clear view as to whether there has been a breach of international law and, if so, its gravity, is soundly based in both principle and practice. It is indeed difficult to identify any more "vital" relevant factor. The diplomatic, or legal, tools that are available to R to assist Mr Kanu largely depend upon R's assessment as to whether Mr Kanu's rights, as guaranteed by international law, have been breached, and the existence and/or gravity of the breach of rights will necessarily be relevant to the exercise of the foreign policy discretion. Thus:
    (a) Condemnation of Mr Kanu's ongoing detention, and calling for his release, whether in public or private, would require R to form a firm view that Mr Kanu's detention is arbitrary and contrary to international law. According to R's evidence, Ministers retain the discretion to call for the release of British nationals detained abroad "*in exceptional circumstances, provided there is a rational basis for doing* so" (**Ministerial Submission, 10 August 2022, §9, SB/B/141**). In past cases, an "*exceptional circumstance*" has been found where R has "*credible evidence to suggest the detainee is arbitrarily detained*" (**Ministerial Submission, 10 August 2022, §9, SB/B/141**).
    (b) R will only consider the imposition of sanctions under the Global Human Rights Sanctions Regulations 2020 where there is "evidence to substantiate" allegations of serious human rights violations (in Mr Kanu's case, of torture and mistreatment" (**Ministerial Submission, 6 September 2021, Annex A, SB/B/139**).
    (c) R's own officials describe themselves as seeking *"clear information on Kanu's arrest'* to inform an *'assessment as to whether human rights violations have occurred"* (**Ministerial Submission of 6 July 2021, §§3 and 9, SB/B/134 and 135**).

50. As the Court in *Abbasi* consequently recognises there are three broad stages to lawful decision-making:
    (1) Gathering of information on the circumstances of the British citizen detained abroad;
    (2) Assessment of "*the nature and extent of injustice"* that the British citizen claims to have suffered as a result of a breach of international law (***Abbasi,* §§92 and 100**); and
    (3) Consideration of whether to take steps to assist the British citizen, and if so, in what form, weighing in the balance all relevant factors, including whether there has been a breach of international law, and foreign policy considerations (***Abbasi* §99**).

51. There is therefore no proper basis for Swift J's conclusion that all the Court meant in *Abbasi* was that there was an expectation that R should "*take reasonable steps to acquaint himself with relevant information*" but that R was not required to go further and reach a conclusion on whether has been a breach of international law based on the information collected. Indeed the Court in *Abbasi* expressly stated that R's decisions could be impugned as "*irrational*" (**see §106(iii)**) which presupposes that conclusions are expected to be reached. Nor is such a limit on the court's intervention the *ratio* of *Tameside*. *Tameside* was a successful rationality challenge (**see 1064H-1065B**) which established that a reasonable approach to decision-making involved first asking the right question and then making reasonable enquiries to obtain relevant information so as to be able to answer it correctly. Neither *Tameside* nor *Abbasi* state, that once those enquiries have been made a decision-maker's responsibilities in law are exhausted so that an irrational or otherwise unlawful conclusion can be reached as long as the right question has been asked and relevant information considered.

52. Nor does a conclusive internal determination as whether there has been a breach of international law, and the gravity of injustice resulting from that breach, involve foreign policy considerations and Swift J was wrong to conclude otherwise (Judgment §29). There was no evidence to that effect from R, whose evidence in fact stated that the internal view remained provisional because of the "*evolving evidence*" and *"the constant inflow of new information*" (see **Broughton, §42, SB/B/65**). Deciding whether there has been a breach of international law involves the application of international human rights

law to the facts; it does not involve foreign policy concerns. Only the final stage in the approach taken by the Court of Appeal in *Abbasi*, R's consideration of whether to act and if so how, raises foreign policy concerns which might justify the Court declining to intervene.

53. In denying that KK has a legitimate expectation that R will base his decision-making as to what steps to take on a firm view as to whether there has been a breach of international law and if so, the gravity of the breach, Swift J's judgment has therefore significantly interfered with the carefully calibrated balance struck by the Court in *Abbasi* and erroneously and unjustifiably limited the court's ability to supervise the lawfulness of those parts of R's decision-making which do not engage foreign policy concerns.

Ground 2: Rationality

54. Swift J also erred, for similar reasons, in rejecting KK's argument that it was irrational for R to maintain his provisional view.

55. First, he addressed the lawfulness of R's refusal to state his view of whether Mr Kanu was the victim of extraordinary rendition, which was not in fact the target of KK's challenge (see **Judgment §31-32** and above). Swift J consequently failed to address KK's pleaded claim that, given the overwhelming evidence that Mr Kanu is a victim of extraordinary rendition in violation of his rights under international law, the passage of time since the allegations of Mr Kanu's rendition were first made, and the urgency of resolving the lawfulness of his ongoing detention given the risk to life and health, it was not reasonable for R to maintain as an ingredient of his internal decision-making a provisional view when deciding what action to take to assist Mr Kanu (**DGC §§69-70, CB/229-230/; KK's High Court skeleton, §56 and §60, CB/146**).

56. Had Swift J addressed KK's pleaded claim he could only have acceded to it. The already overwhelming evidence available when KK filed his claim on 14 July 2022 had been further solidified by the judgment of the Nigerian Court of Appeal of 13 October 2022 (**SB/C/298-386**), and the Federal High Court (Umuahia Division) of 28 October 2022 (**SB/B/193-211**), that both held Mr Kanu's arrest, detention and transfer to Nigeria was unlawful, and constituted a violation of his fundamental rights. While there was an appeal against those judgments, the appeal did not question the central facts underpinning the

findings of rendition, so that there was no realistic possibility of any further information emerging to contradict the findings of rendition. R nonetheless insisted on maintaining a 'provisional' view. In defending that stance R conflated the failure to reach a firm view on whether human rights violations have occurred, with the decision not to publish that view, arguing that "*[h]ow to react to and how to deal with a case such as this, including whether to publish any such view, falls squarely within [R]'s area of judgement in the exercise of foreign policy prerogative"* (**DGR, §4, CB/119**). R thus produced no evidence showing that foreign policy considerations underpinned the provisionality of his internal view. R's evidence was that the internal view remained provisional because of the "*evolving evidence*" and *"the constant inflow of new information*" (**Broughton, §42, SB/B/65**). R's High Court skeleton argument meanwhile suggested that he could maintain such a 'provisional view' indefinitely (see **§27, CB/158**). That approach was clearly irrational.

57. Second, Swift J was wrong to suggest that the distinction between reaching such a view (i.e. R's internal decision-making process) and stating that view (i.e. R's decision to make representations to a foreign government and/or express his position publicly) is an artificial one. The extent of a court's ability to review R's internal decision-making is central to the Court of Appeal's intention to avoid a situation where the "*whole process is immune from judicial scrutiny*" (***Abbasi,* §99**). Not only is the distinction KK draws not "*artificial*" (**Judgment §32**), it is the critical component of the careful balance the Court of Appeal sought to achieve in *Abbasi* between the twin imperatives of the rule of law and foreign policy.

Ground 3: Fairness

58. Swift J's conclusion that R had no obligation to act fairly in considering KK's requests for assistance is not rooted in *Abbasi* or any other case-law, and it directly conflicts with the House of Lords decision in *Council for Civil Service Unions v Minister for Civil Service* [1985] AC 374 *("**GCHQ**")*. In the *GCHQ* case the Court made plain that the obligations of fairness were not inapplicable simply because a minister was exercising a prerogative power (see **399F-400C**). The Court also held that unless there was evidence to that effect, ordinary standards of fairness were not disapplied on the basis of an assertion that national security required it (**402C-D**). The same reasoning necessarily applies to other non-justiciable areas of decision-making such as 'foreign policy'.

59. R did not, however, produce evidence that he could not, on foreign policy grounds, inform KK privately of his provisional view, still less did he produce evidence that he could not inform KK of the reasons why his view remained provisional. Swift J was therefore wrong to accept R's submission that the standards of procedural fairness did not apply to R's exercise of his discretion on whether and how to assist Mr Kanu. On the contrary given the gravity of the matters under consideration, R had such a duty. KK accepts that the content depended on the context (***R v SSHD ex parte Doody*** **[1994] 1 AC 531 at 560D-G**), but having wrongly concluded that R had no duty at common law to act fairly, the Court failed to consider KK's arguments as to what fairness required in the context of Mr Kanu's case.

60. KK submits that fairness requires R to inform KK what his provisional view is and/or to inform KK of the factors that have prevented him from reaching a firm view (***R (CPRE Kent v Dover District Council*** **[2017] UKSC 79; [2018] 1 WLR 108 at §51** ***per*** **Lord Carnwath applying** ***R v Secretary of State for the Home Department ex parte Doody*** **[1994] 1 AC 531 at p.560** ***per*** **Lord Mustill**). Any other approach would deprive KK of the information necessary to assess whether R was acting lawfully and would make the whole process *"immune from judicial scrutiny"* contrary to the conclusions of the Court of Appeal in *Abbasi* (at **§99**).

VI: CONCLUSION

61. For all these reasons KK submits that Swift J erred in dismissing his claim for judicial review, and respectfully requests that the Court allow his appeal and grant the relief sought (see **DGC §73 at CB/230-231**).

Charlotte Kilroy KC
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18 May 2023