

**THE HIGH COURT
JUDICIAL REVIEW**

[2021] IEHC 817
[2020 572 JR]

BETWEEN

**FM AND RM
(A MINOR SUING BY HER FATHER AND NEXT FRIEND, FM)**

APPLICANTS

AND

**THE INTERNATIONAL PROTECTION APPEALS TRIBUNAL AND THE MINISTER FOR
JUSTICE**

RESPONDENTS

JUDGMENT of Mr. Cian Ferriter delivered on the 21st day of December 2021

Introduction

1. In these Judicial Review proceedings, the applicants seek an order of *certiorari* quashing the decision of the first named respondent (“IPAT” or the “Tribunal”) dated 8 July 2020 affirming the recommendation of the International Protection Office (“the IPO”) that the applicants be given neither a declaration of refugee status nor a subsidiary protection declaration (“the Decision”). The case raises the question of the correct approach by a Tribunal to the application of the state protection test in s.31 International Protection Act, 2015 (“s.31”).
2. The applicants’ challenge to the Decision centres on the manner in which the Tribunal dealt with country of origin information (“COI”) in relation to the issue of whether or not state protection would be available to the applicants if they were returned to South Africa, in circumstances where the Tribunal had held that the applicants faced a real risk of persecution in the event they were returned to South Africa in light of the fact that non-South African nationals such as the first named applicant (who was originally from the Democratic Republic of Congo) faced xenophobic violence in South Africa.
3. The applicants essentially contend that the Decision was vitiated by an error of law in the application of the legal test as to whether or not state protection would be available to the applicants and/or that the Tribunal’s treatment of the available country of origin information was irrational and/or inadequately reasoned.

Background

4. The first-named applicant, FM (for ease the “applicant” or FM”), was born on 2 February 1962 in xxxx, Democratic Republic of Congo (‘DRC’). He lived in DRC until 1995, when he moved to South Africa as an asylum seeker. He was granted refugee status in South Africa. He married his wife, who is a South African citizen, on 19 December 1998. He became a South African citizen through marriage and is therefore a South African national.
5. The second-named applicant, RM, was born on 26 April 2007 in South Africa. She is FM’s daughter and a South African national.
6. The Applicants arrived in Ireland on 30 March 2018. FM applied for international protection on 10 April 2018 on behalf of himself and his daughter on the grounds that he

feared persecution in South Africa by reason of his race as an individual originally from DRC.

7. On 14 May 2018, FM completed an Application for International Protection Questionnaire. In his questionnaire, he explained that he had been subject to xenophobic threats and abuse in South Africa, as well as a violent xenophobic attack in March 2018, during which he was injured with a knife and after which he received further threats from his attackers. He told the IPO that he feared that he and his daughter would be killed by members of the local South African community if he returned to South Africa.
8. On 27 May 2019, FM was interviewed by an authorised officer of the IPO pursuant to section 35 of the International Protection Act 2015 ("the 2015 Act"). During this interview he again set out what had happened to him as a result of xenophobia in South Africa.
9. On 17 September 2019, the IPO recommended that the Applicants not be declared refugees or persons eligible for subsidiary protection by decision pursuant to section 39 of the 2015 Act.
10. By Notice of Appeal dated 21 October 2019, the applicants appealed the decision of the IPO to the Tribunal.
11. On 16 December 2019, written legal submissions dated 15 December 2019 together with country of origin information were furnished to the Tribunal by the applicants' solicitor.
12. The applicants' appeal against the IPO's recommendation was heard by the Tribunal on 7 January 2020.
13. The Tribunal, by decision dated 8 July 2020 (communicated to FM on 22 July 2020), affirmed the recommendation of the IPO that the applicants should not be granted refugee status or a subsidiary protection declaration.

The Tribunal's Decision

14. The Tribunal, in its Decision, accepted FM's account of xenophobic attacks. It accepted his personal circumstances and the fact that he was the victim of verbal abuse in March 2018 and a physical attack which was motivated by the fact that he was born in DRC. The Tribunal held (at paragraph 5.5 of its Decision) that *considering the appellant's experiences which have been accepted and the COI reports analysed below, relevant to the analysis, I find that there is a reasonable chance that if he and his dependant were to be returned to South Africa they would face a well-founded fear of persecution*". "
15. Given that the resolution of the issues in this Judicial Review depends on a close reading of the relevant parts of the Tribunal's Decision that deal with the question of state protection and the evaluation of the COI material tendered on behalf of the applicants to the Tribunal, it is worth setting out the relevant sections of the Tribunal's Decision in full, being paragraphs 5.10 to 5.25, as follows:

"[5.10] In written submissions dated 15 December 2019, it is submitted on behalf of the Applicant that 'objective country of origin information demonstrates that xenophobic attacks on immigrants are widespread and prolific in South Africa. Attacks against Africans, and notably refugees from DRC in particular, are reported as especially common.' The Tribunal is then referred to the South Africa 2018 Human Rights Report, and in particular to the following extract:

"Xenophobic violence was a continuing problem across the country. Although no official data existed on this subject, Xenowatch, an opensource system for information collection and interactive mapping that allows crowd-sourcing of xenophobia-related incidents, reported that 27 persons were killed, 77 persons were assaulted, 588 shops were looted, and 1,143 persons were displaced due to xenophobic incidents during the 18 months between February 2017 and August 2018. According to Xenowatch, during that period xenophobic related killings, assaults, and displacements declined, but the looting of foreign-owned or -managed shops increased. Xenophobic violence occurred against foreign nationals, often refugees from Somalia, Ethiopia, or the Democratic Republic of the Congo. They often owned or managed small, informal township grocery stores. In May, Durban police were on high alert after the North Region Business Association sent letters to foreign national shop owners advising them to shut down their businesses in Inanda, Ntuzuma, and KwaMashu townships.

[5.11] Further the Tribunal was directed towards the following extract from the 2018 report:

"Xenophobic attacks on foreign African migrants and ethnic minorities occurred and sometimes resulted in death, injury, and displacement. Incidents of xenophobic violence generally were concentrated in areas characterized by poverty and lack of services. Citizens blamed immigrants for increased crime and the loss of jobs and housing. According to researchers from the African Center for Migration and Society, perpetrators of crimes against foreign nationals enjoyed relative impunity. In August, Soweto and other Johannesburg-area townships saw a spate of looting and violence targeted against small foreign-owned convenience shops. SAPS confirmed that four residents died and at least 27 were arrested on charges of murder, possession of firearms, and public disorder in connection with violence. At year's end their trial date had yet to be set."

[5.12] The Appellant also relies on the contents of the Human Rights Watch Report for South Africa 2019 which states:

"African foreign nationals in South Africa, including refugees and asylum-seekers, continued to face xenophobic violence and threats of violence in 2018. In May, the KwaZulu-Natal Premier Willie Mchunu met with foreign shop owners after the Northern Region Business Association ordered them to

close their businesses or face attacks. The provincial government leadership promised to increase police protection to prevent another wave of xenophobic violence.

In August, at least four people died when xenophobic violence erupted in Soweto, south of Johannesburg. Mobs of protesting locals beat foreign nationals, mostly Somalis, and looted their shops. The protesters accused foreign nationals of selling fake and expired food products. A few days after the Soweto violence, a new anti-foreigner political group marched in Johannesburg, demanding the deportation of all undocumented foreigners in South Africa by the end of the year.

Virtually no one has been convicted over past outbreaks of xenophobic violence, including for the Durban violence of April 2015 that displaced thousands of foreign nationals, or the 2008 attacks, which resulted in the deaths of more than 60 people across the country. The government has yet to finalize the draft national action plan to combat racism, racial discrimination, xenophobia and related intolerance, or provide a mechanism for justice and accountability for xenophobic crimes.”

[5.12] In light of the above country of origin information, and in light of the Tribunal’s finding above that the Appellant has already been the victim of xenophobic violence in South Africa, the Tribunal finds that there is a reasonable chance that Appellant and or his dependant would face a well-founded fear of persecution in South Africa given the Appellant’s status as a person of foreign birth.

State Protection

[5.13] As set out above, it has been accepted that there is a reasonable chance that the Appellant and or his dependent would face a well-founded fear of persecution in South Africa. This fear of persecution arises as a result of the Appellant’s foreign birth and the documented occurrence of xenophobic attacks in South Africa.

[5.14] The issue whether state protection was available to the Appellant, and his dependent, was addressed at his Tribunal hearing. The Appellant was asked whether he had informed the police in South Africa about the incident where he was targeted. The Appellant gave evidence that he did not inform the police about the incident as he had previously made a report of a burglary in 2016 but that no action was taken.

[5.15] The availability of state protection to the Appellant and his dependent was addressed at the hearing and in written submission by Counsel for the Appellant. The said submission cites the United States State Department Report on South Africa 2018, which states:

“Security forces failed to prevent or adequately respond to societal violence, particularly in response to attacks on foreign nationals”

[5.16] The Appellant's submission goes on to cite the following passage from the same report:

"Local community or political leaders who sought to gain notoriety in their communities allegedly instigated some attacks. The government sometimes responded quickly and decisively to xenophobic incidents, sending police and soldiers into affected communities to quell violence and restore order, but responses were often slow and inadequate. Since 2013 the government significantly reduced the number of assaults and deaths by evacuating foreign nationals from communities affected by xenophobic violence, although little was done to protect their property. Civil society organizations criticized the government for failing to address the causes of violence, for not facilitating opportunities for conflict resolution in affected communities, for failing to protect the property or livelihoods of foreign nationals, and for failing to deter such attacks by vigorous investigation and prosecution of perpetrators."

[5.17] While the above passage is intended to support the Appellant's claim that state protection in South Africa is inadequate, and indeed does provide such support in part, the Tribunal notes that the report finds that

"The government sometimes responded quickly and decisively to xenophobic incidents, sending police and soldiers into affected communities to quell violence and restore order, but responses were often slow and inadequate. Since 2013 the government significantly reduced the number of assaults and deaths by evacuating foreign nationals from communities affected by xenophobic violence, although little was done to protect their property."

[5.18] While this evidences less than optimum response by the state authorities, it provides evidence that the authorities do take active, and effective steps to assist those at risk of xenophobic violence.

[5.19] The Appellant's written submissions at Part "I" states that extracts from the USSD 2018 report (cited at Part E of the written submission) demonstrate that the state is ineffective in protecting against xenophobic violence. While it is accepted that the relevant extracts do in fact show a high level of xenophobic attacks, and while it is accepted that this is a factor which supports the assertion that state action is ineffective, the number of attacks cannot be determinative of the issue.

[5.20] The Tribunal notes that where the relevant extracts address police action, they demonstrate a real effort on the part of the authorities to address xenophobic violence. The first extract (contained at paragraph 21 of the written submission) contains the statement:

"In May, Durban police were on high alert after the North Region Business Association sent letters to foreign national shop owners advising them to shut down."

[5.21] Similarly, at paragraph 22 of the written submission, the following statement is cited from the 2018 Report is

“... at least 27 were arrested on charges of murder, possession of firearms, and public disorder in connection with the violence. At year’s end their trial date had yet to be set.”

[5.22] While the relevant extracts contained within the written submissions clearly demonstrated the presence of xenophobic violence in South Africa, the above statements indicate that police action against such attacks and the perpetrators thereof has been effective.

[5.23] The Tribunal notes the contents of the extract cited at paragraph 23 of the Appellant’s written submissions, which states,

“Virtually no one has been convicted over past outbreaks of xenophobic violence, including for the Durban violence of April 2015 that displaced thousands of foreign nationals, or the 2008 attacks, which resulted in the deaths of more than 60 people across the country. The government has yet to... provide a mechanism for justice and accountability for xenophobic crimes.”

[5.24] The USSD 2018 Report states the following in respect of the South African police generally:

“Civilian authorities maintained effective control over the security forces, and the government had effective mechanisms to investigate and punish abuse. The government investigated and prosecuted security force members who committed abuses, although there were numerous reports of police impunity, including of high-ranking members. IPID investigates complaints and makes recommendations to SAPS and to the National Prosecution Authority (NPA) on which cases to prosecute. IPID examines all SAPS killings and evaluates whether they occurred in the line of duty and if they were justifiable. IPID also investigates cases of police abuse, although it was unable to fulfil its mandate due to inadequate cooperation by police, lack of investigative capacity, and other factors.”

[5.25] While the above information indicates that the level of state protection available to the Appellant and his dependants is less than perfect, it appears, on balance, to be effective protection for potential victims of violence. In light of the above analysis, the Tribunal finds that effective state protection is available to the Appellant.”

Applicable legal principles

16. There was no dispute as to the legal principles applicable to the evaluation by the Tribunal of a claim to the effect that the country of origin would not provide state protection.

17. Section 31 of the 2015 Act ("s. 31") provides as follows:

"(1) For the purposes of this Act, protection against persecution or serious harm can only be provided by—

(a) a state, or

(b) parties or organisations, including international organisations, controlling a state or a substantial part of the territory of a state,

provided that they are willing and able to offer protection in accordance with subsection (2).

(2) Protection against persecution or serious harm—

(a) must be effective and of a non-temporary nature, and

(b) shall be regarded as being generally provided where—

(i) the actors referred to in paragraphs (a) and (b) of subsection (1) take reasonable steps to prevent the persecution or suffering of serious harm, and

(ii) the applicant has access to such protection.

(3) When assessing whether an international organisation controls a state or a substantial part of its territory and provides protection as described in subsection (2), the Minister, the international protection officer or, as the case may be, the Tribunal, shall take into account any guidance which may be provided in relevant European Union acts.

(4) The steps referred to in subsection (2)(b)(i) shall include the operating of an effective legal system for the detection, prosecution and punishment of acts constituting persecution or serious harm."

18. Barrett J. in *BC v. IPAT* [2019] IEHC 763 ("BCI"), having quoted the terms of s. 31, stated (at paragraph 10) that s.31:

"yields the following questions for determination by IPAT when deciding whether or not state protection would be available:

(1) Does the State in question take reasonable steps to prevent the persecution or suffering of the serious harm feared by a particular applicant?

(2) Do such steps include the operating of an effective legal system for the detection, prosecution and punishment of acts constituting persecution or serious harm?

(3) Is such protection effective and of a non-temporary nature?

(4) *Does the particular applicant have access to such protection?"*

The parties' submissions

19. The applicants submit, in short, that the Tribunal applied the wrong test as to the existence or not of state protection and that the COI material before the Tribunal, and relied upon by the Tribunal, simply could not support a finding that state protection would be available for the applicants in the event they were returned to South Africa.
20. The applicants submit that the Tribunal asked itself the wrong question by failing to properly focus on the essential preconditions for a finding of effective state protection as set out in s. 31 which the applicants say led the Tribunal to fall into error in its ultimate conclusion, set out at paragraph 5.25 of the Decision, that:

"While the above information indicates that the level of state protection available to the appellant and his dependents is less than perfect, it appears, on balance, to be effective protection for potential victims of violence. In light of the above analysis, the Tribunal finds that effective state protection is available to the appellant."

21. The applicants further rely in aid of their case on the decision of Ms. Justice Tara Burns in *BA v. IPAT* [2020] IEHC 589 where Ms. Justice Burns held that a decision of IPAT to the effect that state protection would be available to the applicant in that case if returned to her country of origin (Nigeria) was erroneous as a matter of law and irrational in coming to the positive conclusion that state protection would be available to the applicant in circumstances where the country of origin information before the Tribunal in that case *"and the finding it makes regarding state protection is not reflective of the summary of the country of origin information it had itself compiled"*. Burns J. held that:

"The Court fails to see how the First Respondent's summary of the Country of Origin information, which is negative regarding the existence of domestic protection laws in the Applicant's region, negative regarding the implementation of such laws, where they exist; and negative of police investigation into allegations of domestic violence, is reflected in a positive finding that the Nigerian authorities are willing to provide protection to women facing gender-based violence, although women may face greater difficulties seeking and obtaining protection. In light of its summary of the Country of Origin material, which is negative regarding state protection, it is irrational that it has come to the positive conclusion that state protection is available to the Applicant."

22. Counsel for the respondents placed emphasis on a series of authorities to the effect that it was not for the court to interfere with the Tribunal's decision once there was some basis for the findings made by it in the material before it. The applicant cited dicta from authorities such as *HO v. RAT* [2007] IEHC 299, *EG (Albania) v. IPAT* [2019] IEHC 474 and *ED v. Refugee Appeals Tribunal* [2017] 1 IR 325 in support of the well-established principle that the court should not interfere with the findings of an expert body such as the Tribunal when the body had arrived at a finding which was open to it on the basis of materials before it. It was submitted that the Tribunal's finding of the likely existence of

state protection was open to it on the basis of the materials before it and cited by it and that the Court should not engage in second-guessing the Tribunal's determination in those circumstances.

Discussion

23. It is instructive to apply the questions identified by Barrett J. in *BC* (as set out earlier, at paragraph 18 of this judgment), in deciding whether or not state protection would be available, to the analysis conducted by the Tribunal in its decision in this case to see whether those questions were correctly addressed and applied by the Tribunal. In particular, it is instructive to analyse the extent to which the Tribunal properly addressed and applied the first three questions so identified to the facts here, i.e.:-
- a. Does South Africa take reasonable steps to prevent the persecution or suffering of serious harm in the form of xenophobic violence against people from DRC?
 - b. Do such steps include the operating by South Africa of an effective legal system for the detection, prosecution and punishment of such xenophobic violent acts?
 - c. Is such protection effective and of a non-temporary nature?
24. The key evidence and reasoning relied upon by the Tribunal in determining the question of the availability of state protection was as follows:
- a. That part of a passage from the US State Department Report on South Africa 2018, set out at paragraph 5.17 of the Decision (which stated "*the government sometimes responded quickly and decisively to xenophobic incidents, sending police and soldiers into affected communities to quell violence and restore order, but responses were often slow and inadequate. Since 2013 the government significantly reduced the number of assaults and deaths by evacuating foreign nationals from communities affected by xenophobic violence, although little was done to protect their property*") which led the Tribunal to conclude (at paragraph 5.18) that this was evidence "*..,that the authorities do take active and effective steps to assist those at risk of xenophobic violence*".
 - b. The Tribunal, while accepting that relevant COI material (in particular extracts from the US State Department 2018 Report) "*in fact show a high level of xenophobic attacks*", held "*the number of attacks cannot be determinative of the issue*" (paragraph 5.19 of the Decision).
 - c. That relevant extracts from the COI (being "*In May, Durban police were on high alert after the North Region Business Association sent letters to foreign national shop owners advising them to shut down*" (Decision, paragraph 5.20) and "*... at least 27 were arrested on charges of murder, possession of firearms, and public disorder in connection with the violence. At year's end their trial date had yet to be set*" (Decision, paragraph 5.21)) indicated "*that police action against such attacks and the perpetrators thereof has been effective*" (Decision, paragraph 5.22).

- d. That in answer to an extract from the Human Rights Watch Report for South Africa 2019 that stated that "*Virtually no one has been convicted over past outbreaks of xenophobic violence*" and that "*...the Government has yet to...provide a mechanism for justice and accountability for xenophobic crimes*" (Decision, paragraph 5.23), the Tribunal relies on a passage from the US State Department 2018 Report to the effect that civilian authorities in general maintained effective control over the security forces (Decision, paragraph 5.24).
25. The above matters, and related process of reasoning, led the Tribunal to conclude, at paragraph 5.25 of its Decision that:
- "While the above information indicates that the level of state protection available to the Appellant and his dependants is less than perfect, it appears, on balance, to be effective protection for potential victims of violence. In light of the above analysis, the Tribunal finds that effective state protection is available to the Appellant."*
26. In my view, the following errors are evident in the process of reasoning relied upon by the Tribunal, in light of the requirements of s.31.
27. Firstly, COI material to the effect that the Government "*sometimes*" responded quickly and decisively to xenophobic incidents but which also noted that "*responses were often slow and inadequate*" and which noted that the Government significantly reduced a number of assaults and deaths "*by evacuating foreign nationals from communities affected by xenophobic violence, although little was done to protect their property*" did not demonstrate that there was non-temporary and effective protection including by the operating of an effective legal system for the detection, prosecution and punishment of acts constituting persecution or serious harm as required by a combination of s.31(2) and s.31(4) and as reflected in questions 2 and 3 of the four questions identified by Barrett J. in *BC*.
28. Furthermore, the Tribunal laid emphasis in its Decision (at paragraph 5.17) on a part of the extract from the US State Department 2018 report which was quoted in paragraph 5.16 of the Decision while ignoring the rest of the quoted extract, which gave quite a different complexion to the meaning of the whole extract i.e. that part which said "*Civil society organizations criticized the government for failing to address the causes of violence, for not facilitating opportunities for conflict resolution in affected communities, for failing to protect the property or livelihoods of foreign nationals, and for failing to deter such attacks by vigorous investigation and prosecution of perpetrators*" (emphasis added). The state of affairs revealed in the extract as a whole (referring as it did to the failure to deter xenophobic attacks by vigorous investigation and prosecution of perpetrators) demonstrated a failure to satisfy the requirement that effective action be "non-temporary" in nature, as required by s.31 (2) (a), and that there be in operation "an effective legal system for the detection, prosecution and punishment of such acts" as required by s.31(4).

29. Accordingly, in my view, the finding at paragraph 5.18 of the Decision to the effect that *"while this evidences a less than optimum response for the state authorities, it provides evidence that the authorities do take active, and effective steps to assist those at risk of xenophobic violence"* was erroneous in law.
30. Secondly, the finding at paragraph 5.20 of the Decision that the COI material demonstrated *"a real effort on the part of the authorities to address xenophobic violence"* revealed an erroneous approach in law on the part of the Tribunal. It is clear that the test is not merely one of *"effort"*; effort must be matched by non-temporary effectiveness, including the operation of an effective legal system for the detection, prosecution and punishment of acts constituting persecution or serious harm. In my view, the point is well made on behalf of the applicants that effort or *some* effective response was not sufficient to satisfy the legal test: what s. 31 requires is that there is an effective system of protection in place which is non-temporary in nature and which involves the taking of reasonable steps to protect those who otherwise (as was found in respect of the applicant here) faced a real risk of persecution or serious harm, including through the operation of an effective legal system for the detection, prosecution and punishment of acts constituting persecution or serious harm. It is no answer that *"a state is doing its incompetent best if it never the less falls below the appropriate standard [of protection]"* (to adopt the phrase used by Baker L.J. in the English Court of Appeal in *R (Atkinson) v. Secretary of State for the Home Department* [2004] All ER (D) 14 at paragraph 22).
31. While there was some material before the Tribunal, which is cited by it in its decision, which could form the basis of a conclusion that there were some steps taken by the authorities to seek to address xenophobic violence, there was unequivocal evidence in the COI material that there was not an effective legal system in place in the sense required by s.31(4). The Human Rights Watch Report on South Africa for 2019 (quoted at paragraph 5.12 and again at paragraph 5.23 of the Tribunal's Decision) stated that *"virtually no one has been convicted for past outbreaks of xenophobic violence"* and that *"the Government has yet to provide a mechanism for justice and accountability for xenophobic crimes"*. The requirement that there be an effective legal system for the detection, prosecution and punishment of acts of persecution or serious harm (as set out in s.31(4)) could not be satisfied in the circumstances.
32. Finally, the extract from the US State Department 2018 Report cited at paragraph 5.24 of the Decision as an answer to the extract from the Human Rights Watch Report for South Africa 2019 (which had been set out paragraph 5.23 of the Decision) reveals a non sequitur which does not answer the position revealed by the extract at paragraph 5.23 of the Decision, i.e. that *"virtually no one has been convicted over past outbreaks of xenophobic violence"* and that *"the Government has yet to provide a mechanism for justice and accountability for xenophobic crimes"*. That extract supported the view that there was no such effective legal system in operation in South Africa as regards perpetrators of xenophobic violence. The extract quoted at paragraph 5.24 by way of apparent refutation focused on investigation and prosecution of security force members who had committed abuses; there was no reference at all within it to the question of

xenophobic violence and its effective detection, prosecution and punishment. The extract at paragraph 5.23 to which it sought to respond was dealing with whether, in substance, there was an effective legal system in operation in South Africa for the detection, prosecution and punishment of xenophobic violence. The material cited at paragraph 5.24 did not demonstrate that there was an effective legal system in operation in South Africa for the detection, prosecution and punishment of xenophobic violence; it did not address that question in terms at all.

33. In the circumstances, in my view, the Tribunal failed to ask itself the correct legal questions arising from the application of the provisions of s.31 to the issue of whether state protection would exist for the applicant and his daughter if returned to South Africa in light of their well-founded fear of persecution in the form of xenophobic violence against them by virtue of the applicant being from DRC. The COI material before the Tribunal, and relied upon by the Tribunal, demonstrated, in particular, that it could not be said that there was an effective legal system in place in South Africa for the detection, prosecution and punishment of xenophobic violent acts and certainly not one that could be said to be non-temporary in nature.
34. I might finally observe that it might be of assistance to the IPO and Tribunals dealing with questions of state protection in future decision-making processes to expressly set out in their decisions the four questions identified by Barrett J. in BC and to apply those questions to the material before them to assist in arriving at lawful decisions dealing with the state protection questions.

Conclusion

35. In the circumstances, I will make an order of *certiorari* quashing the Decision. I will hear the parties as to any consequential orders that might be required.