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IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

**QUEEN'S BENCH DIVISION
(JUDICIAL REVIEW)**

**IN THE MATTER OF AN APPLICATION BY "TS"
FOR JUDICIAL REVIEW**

and

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT (HMPO)
Respondent**

**Ms Fionnuala Connolly (instructed by James Strawbridge Solicitors) for the Applicant
Mr Philip Henry (instructed by the Crown Solicitor's Office) for the Respondent**

COLTON J

Introduction

[1] I am obliged to counsel for their helpful oral and written submissions in this matter.

[2] The court has decided to grant the applicant anonymity in these proceedings on the basis that they are inextricably linked to his daughter. It would not be possible to make sense of the judgment without referring to his daughter. For that reason the title has been amended to refer to the applicant as "TS" and he shall be identified in that way throughout this judgment. His daughter shall be referred to as "HS."

[3] The applicant is an Iraqi Kurd and a British citizen who resides at an address in Belfast. By this application he seeks to challenge by way of judicial review a decision made by Her Majesty's Passport Office ("HMPO") on 3 December 2020 by which his British passport was revoked.

Factual Background

[4] The factual background is not straightforward. On significant occasions throughout the events which give rise to these proceedings the parties were at cross purposes.

[5] The applicant is a Kurdish Iraqi national. He first entered the UK in 2002 and claimed asylum on 7 May of that year. He applied in a different name, Ibrahim Rashid Ali, due to his concern about his personal safety. He avers:

“The reason why I did not use my true name is that I was afraid that if my real identity was disclosed, this would lead to a real risk of harm to my own personal safety and/to my family who were back in Iraq at that time ... I was extremely concerned that if I was identified as a person who had fled the region, that might place my family in danger. That is why I provided a different name when I applied for asylum ... I want to make clear that the steps that I took to conceal my true identity were taken out of genuine fear and concern for my own personal safety and for the safety of my family in Iraq.”

[6] The applicant contends that he was granted asylum, however the records from the Home Office indicate that initially he was refused asylum and granted exceptional leave to remain on 11 June 2002. That was valid until 11 June 2006. From 2006 onwards he was granted indefinite leave to remain.

[7] In July 2008 he applied for naturalisation as a British Citizen in the name of Ibrahim Rashid Ali. He was granted British citizenship on 16 July 2008.

[8] A British passport was issued to the applicant on 22 September 2008 in the name of Ibrahim Rashid Ali. He married his wife in 2013 and his daughter HS was born in Iraq on 17 August 2015.

[9] On 15 October 2015 the applicant changed his name in the UK by deed poll to TS, which he says is his true identity.

[10] Shortly thereafter on 27 October 2015 a second British passport was issued to the applicant in the name of TS.

[11] The circumstances in which he changed his name and obtained the second passport were very much in dispute at the substantive hearing of this case.

[12] In his affidavit evidence the applicant described the process in the following way:

“11. In or around 2014/2015 I applied to have my name changed by deed poll back to [TS].

12. Unfortunately, I don't have the paperwork relating to the name change process from in or around 2014/2015. I did seek legal advice from a firm of solicitors in London near the Edgware Road. My current solicitor requested the documentation from my former solicitors in London in December 2020. However, the London firm of solicitors did not reply to Mr Strawbridge and I am not sure if they are still in business.

13. During the name change process, I submitted an application to the Secretary of State for the Home Department to change my name and to change my British passport to reflect my true identity. I lived in London at this time. As part of the process, I recalled that I was instructed to attend at interview with the Home Office or HM Passport Office near Victoria in London. I was interviewed by an official at that time in the presence of my former solicitor. I was asked the reason for the name change. I provided my reasons and explained that I wished to revert to my original Iraqi name. I made this known and I was clear on this issue. I gave a full explanation for the reason for the change in name and I completed forms. It is my belief that the Home Office or HM Passport Office should have the records to show proof of this name change process. I note that my solicitor advised the proposed respondent about this name change process in the pre-action protocol letter in judicial review and that no response was provided on this particular matter.

14. The outcome of this meeting with the Home Office was positive. My name was duly changed and the name on my British passport was also changed. The new British passport issued to me in 2005 in my true name, [TS]. I believed that the matter had concluded.”

[13] At this stage it should be noted that this averment was an important factor in the court deciding to grant leave in this case on the papers.

[14] This account was challenged by the respondent in its rejoinder after leave had been granted. Put simply it is asserted that the process was not how the applicant described it to this court in his affidavit. In relation to the deed poll these changes are dealt with via a statutory declaration form in England which is registered with an office of the High Court and in Northern Ireland the form is sworn by a Justice of the Peace and lodged with the General Registrar Office. It is an administrative process whereby the applicant is permitted to change his or her legal name upon

payment of a fee and lodging the relevant forms. None of the deed poll documents were retained by the applicant or exhibited to his affidavit.

[15] The respondent has disclosed the relevant deed poll change documents in response to the applicant's affidavit. The only reference within the documents as to why he changed his name is recorded as follows:

"Prefer the new name."

[16] More importantly, a different picture emerges as to the circumstances of the "interview" referred to by the applicant on the occasion in which he was issued with his second passport. In fact, the applicant applied for this passport on a "fast track" basis. According to the affidavit of Ms Elizabeth Larson ("EL"), on behalf of the respondent, "fast tracked" applications incur an additional fee to have the application processed on an expedited basis. It involved the applicant attending a HMPO public counter in London for a face-to-face appointment on 27 October as part of the application process. This appointment was not a formal interview.

[17] In response to this rejoinder from the respondent the applicant swore a further affidavit on 18 May 2021 in which he avers as follows:

"4. ... However, I recall attending HMP Office in London and answering questions from a member of staff when I applied for my new British passport. This process involved a member of staff (female) asking a series of questions. Again, this was all in October 2015. I also wish to clarify that my former solicitor was not present with me when I attended HMPO at that time. I did not intend to mislead the court in my first affidavit about the attendance by my former solicitor. It is the case that I was assisted by a former solicitor for the process for the name change (deed poll) but he did not attend with me at the HMP Office in 2015 for the passport application."

[18] Mr Henry on behalf of the respondent says that the applicant was untruthful and misled the court in his original affidavit. What occurred in October 2015 could not be described as an interview. Rather the applicant now adopts the language of the respondent that this was a "face-to-face counter appointment" and that his solicitor was not present when this fast track application was processed.

[19] Understandably, the applicant's solicitor placed significant emphasis on the account given by the applicant when the leave application was issued. At paragraph 17 of the supporting affidavit Mr Strawbridge says:

"17. ... I respectfully consider that this is highly significant. It indicates that the applicant provided an explanation to the authorities prior to the issuance to him of a British passport in

his true identity and had post-dated his naturalisation in the UK. I respectfully consider that the proposed respondent was satisfied that it was appropriate to issue a British passport in 2015 and that they were satisfied with his identity."

[20] The court accepts Mr Henry's submission that what took place was entirely different from that described by the applicant. This was not an interview and did not involve a formal interrogation with respect to the identity of the applicant. This was an administrative process carried out by a clerk without any formal interview. The applicant's solicitor was not present at this process nor in the court's view did he give "a full explanation for the reasons for change in name." When the applicant received the affidavit from the respondent he, in effect, retracted his original account. Thus, he has sought to redact a substantial portion of his original Order 53 Statement which originally included the following:

"5(i) That prior to the issuance of the British Passport X in the name of [TS], the proposed respondent was provided with an application directly from the applicant and with the assistance of his former solicitor as to his name change and the reasons for it. ...

5(i)(v)(a) The issue of the applicant's identity had been resolved in 2015 ...

5(i)(v)(d) The applicant having advised the authorities of the reasons for his change in name –

5(ii)(a) And candid explanations to the proposed respondent on his identity ...

5(ii)(b) And candid explanation to the authorities as to the reasons why he had previously relied on a different identity."

[21] I return now to the chronology. In 2016/2017 the applicant had moved back to Iraq to live with his wife. In 2019 he applied for a Duplicate Naturalisation Certificate which was issued on 1 August 2019. On 1 May 2019 he applied for a British passport for his daughter HS. On 13 February 2020 the applicant's case was referred to EL to investigate potential identity fraud committed by the applicant. On that date, EL wrote to the applicant at an address in Swindon and emailed him a copy of a letter advising him that it was necessary for him to attend an interview under caution. This is an important letter. The letter:

- (a) Advises that an investigation is being conducted regarding criminal offences related to fraud, false representation and the Identity Documents Act as it is suspected that the applicant 'may have provided false details when you naturalised as a British citizen.'

- (b) Advises that EL would like to interview the applicant in connection with this criminal investigation and that *“if you attend, you will be interviewed under caution.”*
- (c) Advises that the interview would take place in Durham but offers the possibility for it to take place in one of the regional offices including Belfast.
- (d) Advises the applicant of telephone numbers to contact to make the appointment for him to be seen.
- (e) Advises what the caution means.
- (f) Advises the applicant that:

“Depending on what you say criminal proceedings may be brought against you. However, failure to attend may not prevent criminal proceedings being brought against you. You will be provided with more information about the investigation on attendance at the interview. You will need to bring confirmation of your identity.”
- (g) Advises that the interview will be conducted on a formal basis in accordance with the PACE Act 1984 and that it will be recorded on CD.
- (h) Advises that the applicant may wish to seek legal advice and invites the applicant to contact the Durham office to arrange the interview.

[22] Bizarrely, this letter was not provided to his solicitor whom he subsequently contacted to advise him in relation to these proceedings. The applicant has sought to explain this by saying he did not understand the precise remit and context of the letter and that he did not give it priority over subsequent emails with EL. The court was not persuaded by this explanation. Failure to provide the letter to his instructing solicitor had significant consequence for subsequent events and has, in the court's view, contributed to significant miscommunication between the applicant's solicitor and EL. I will refer to the subsequent correspondence shortly.

[23] As will be seen the applicant criticises EL for her purported failure to make the contents of this letter clear to the applicant's solicitor but, in the court's view, the blame for this lies squarely on the shoulders of the applicant.

[24] Returning to the correspondence the applicant replied to EL on 4 March 2020 stating that he was on vacation in Iraq and that he would *“do my best and follow all you mentioned through the attachment file.”*

[25] On the same day EL wrote to the applicant enquiring whether he wished to attend an interview in Baghdad or wait until his return to the UK.

[26] On 8 March 2020 the applicant replied stating that he preferred to be interviewed in the UK and asked which office he would have to attend.

[27] On 20 March 2020 the applicant sent an email to EL indicating that he was still in Iraq due to Covid restrictions but he indicated that he would prefer for the interview to take place in Belfast.

[28] It appears that around April 2020 EL reviewed the file periodically. Nothing substantive had been directed due to the restrictions arising from the Covid-19 pandemic. It was decided that following the lifting of lock-down measures further contact would be made with the applicant.

[29] In August 2020 the applicant instructed his solicitor, Mr Strawbridge, asking him to liaise with the respondent regarding the application lodged by him for a British passport for his daughter.

[30] Thus, on 27 August 2020 Mr Strawbridge emailed the respondent making an enquiry in relation to the child's application. The email states:

"... There was email correspondence referencing a meeting with your offices possibly in the UK or Iraq.

The father is presently residing in Belfast UK. The child remains in Iraq at present time with her mother. The father would be happy to meet your officer(s) in Belfast? Could you kindly advise of the next steps?"

[31] It will be clear from this email that Mr Strawbridge was under the impression that the reference to a meeting with the applicant related to the application for the passport for his daughter as opposed to a criminal investigation in relation to potential fraud as per the letter of 20 February 2020.

[32] Mr Strawbridge subsequently points out that had he been aware of the contents of the letter of 20 February 2020 he would have provided different advices to the applicant. No doubt this is true. Mr Strawbridge has acted with his customary efficiency on behalf of the applicant. The significance of this misunderstanding is clear from subsequent correspondence. On 27 August 2020 EL responded to Mr Strawbridge to the effect that HMPO *"is unable to conduct interviews at the moment due to the Covid-19 guidelines."* She indicated that as soon as they would be able to proceed with an interview she would arrange this with the applicant at the Belfast Office.

[33] Mr Strawbridge acknowledged the email on 27 August 2020.

[34] On 10 September 2020 EL advised Mr Strawbridge that due to the Covid-19 guidelines HMPO was not in a position to conduct an interview with the applicant

about HS's passport application, but said that after review of the case the respondent was happy that HS's entitlement to a British passport had been confirmed. She advised of the respondent's concern that the applicant had naturalised on a false name and place of birth and stated that the respondent needed to refer his details to the United Kingdom Visas and Immigration authorities who may wish to review his status.

[35] She requested that the applicant provide "*a written signed statement explaining why he had naturalised in the name of Abraham Rashid Ali, born on ... in Mosul, Iraq, when all of his Iraqi documents show he was born [TS] born, ... in Duhok, Iraq.*" She also asked that he send her his current British passport.

[36] On 22 September 2020 EL reiterated the request for the applicant to provide a statement and his passport and stated that if a reply was not received by 10 October 2020 "*we will consider the revocation of his British passport.*"

[37] On 5 October 2020 the applicant filed a note with the respondent explaining the reasons why he had not used his real name and identity for the asylum application. The note in full is as follows:

"Hello Mrs Larsson

I am writing in connection with my application passport for my daughter reference (Y). You have written a request that shows your concern about my name and birth place prior to my naturalisation as a British citizen, I understand the concern this issue has raised and am happy to explain.

I fled Iraq in 2002, due to fear of my life from Ba'athist government they are in power there. As I settled in Britain, I was concerned about the potential for reprisals from that regime in addition to those Iraqi people who around me, somewhat, in my own case, but even more the case of my family remaining in Iraq. As such, I sought asylum under the assumed name Ibrahim Rashid Ali.

Regarding my birth place, I am confirming my birth place was in Mousel and all other documents belonging to Duhok Governorate for its directorate [sic] of general citizenship (personal card), Iraqi nationality card, marriage contract and portrait of registration for the year 1975. We are in Iraq, your documents must be issued according to your parents' birth place.

These are the only information I use for official purposes in the UK until I became a British citizen. At that point, the Ba'athiste regime had fallen and Saddam Hussein having being

deposed and executed in April 9, 2003, I consider that the issue of reprisals to my family and me was no longer a concern, and applied to change my name back to the original of [TS].

As you know I have mentioned in the application that I have changed my name officially as well as I was born in Mousel. It simply did not occur to me, as it is some 10 years since I have used or ever had to think about that information.

I trust this will be sufficient to account for the issues your office has raised concerning my name and birth place. Please let me know if you require any further details. Thank you for your attention to this matter."

[38] On 8 October 2020 his solicitor wrote to EL confirming that they would post the applicant's British passport to the respondent's offices and included the letter from the applicant setting out his explanation. The email concluded by saying that the applicant "is content to be interviewed about these issues, even on a remote basis from our offices."

[39] On 3 December 2020 the respondent granted a British passport to HS, valid from 3 December 2020 to 3 December 2025.

[40] On the same date EL emailed the applicant and his solicitor advising that his British passport had been revoked. This is the impugned decision.

[41] At a date subsequent to 3 December 2020 the applicant sent a status referral to UKVI in respect of the applicant's British citizenship and entitlement.

[42] On 18 December 2020 the applicant's solicitor wrote to his former solicitors in London seeking information about the name change in 2014/2015. Mr Strawbridge never received any reply to this email. In the course of the hearing the court pursued this matter further and at its request Mr Strawbridge sent further information to the court on this issue. The applicant showed Mr Strawbridge a short text exchange with an "Eamonn Solicitors" on 17 December 2020. This was viewed on the applicant's mobile phone by Mr Strawbridge on 15 June 2021. The response from Eamonn Solicitors to the applicant's mobile on 17 September 2020 advised:

"Dear Mr [TS], thanks for the text. I am unable to find any record of you ... on my way to airport ... will come back to office on 12 January."

[43] Mr Strawbridge rang the mobile number for "Eamonn Solicitors" around midday 15 June 2021, the number dialled and eventually went to voicemail. Mr Strawbridge left a message regarding the previous email he sent in December

2020 relating to Mr TS. Mr Strawbridge has so far not received a return call or replying email.

The Impugned Decision

[44] It will be seen that the impugned decision is that of 3 December 2020 in which the respondent revoked the applicant's British passport.

[45] It is necessary to refer to the detail of that decision. The letter of 3 December 2020 sent to both the applicant and Mr Strawbridge is as follows:

"... Passports issued to TS

Dear Mr [TS]

Following review of the documentation received with the passport application for your daughter, Her Majesty's Passport Office is not satisfied that your claim to British citizenship has been correctly obtained.

*Your claim, as presented to the United Kingdom Visas and Immigration (UKVI), shows that you entered the UK in the identity **Ibrahim Rashid Ali born on 1 January in Mosul, Iraq**. You were granted British citizenship status on 16 July 2008 under section 6(1) of the British Nationality Act 1981 in that identity.*

On 22 September 2008, you were issued a British passport in that identity.

*Documentation and information supplied by yourself in support of a passport application for your daughter confirm that you were born [TS]: **HAJANI ... in Duhok, Iraq**.*

It is noted that these details differ from those you provided to UKVI during the naturalisation process and do not appear to have been disclosed to them prior to your obtaining British citizenship status.

As a result of the above we are now aware that the following passport should not have been issued:

- *British Passport 110572907 in the name of Ibrahim Rashid **Ali**, born 1 January 1975 in Mosul, Iraq, issued on 22 September 2008.*

- *British Passport 533079107 in the name of [TS], born on ... in Mosul, Iraq, issued on 27 April 2015.*

There is no entitlement to a passport and no statutory right to have access to a passport. The decision to issue, withdraw, or refuse a British passport is at the discretion of the Secretary of State for the Home Department (the Home Secretary) under the Royal Prerogative. Passports are issued when the Home Secretary is satisfied as to:

- (i) The identity of an applicant;*
- (ii) The British nationality of applicants, in accordance with the relevant nationality legislation; and*
- (iii) There would be no other reasons for refusing a passport.*

Acting on behalf of the Secretary of State for the Home Department I can confirm that the above passport has been revoked on identity grounds by HM Passport Office. The passport is no longer valid. You can contact UKVI to review the position of your claim to British citizenship. They may be contacted via address ..."

[46] Although the text refers to passport singular the court is proceeding on the basis that, in fact, both passports have been withdrawn although obviously it is the passport of 27 October 2015 which is the key one for the purposes of this application.

The Applicant's Grounds

[47] The applicant argues that the revocation decision is vitiated by several breaches of public law, including breaches of procedural fairness, irrationality, inconsistency, breach of expectation based on the respondent's passport policy, a lack of sufficient cogent reasons and a breach of the applicant's human rights.

[48] The procedural fairness argument is based on a failure to interview the applicant. It is argued that an interview was anticipated from the outset as an essential element of the process. It is submitted that an interview was a crucial part of the investigation in relation to the revocation decision. Added to this it is further submitted that the respondent failed in its basic duty to take reasonable steps to acquaint itself with the relevant material, namely the reasons why it was deemed appropriate to issue the applicant with his British passport in what is purported to be his correct identity on 27 October 2015.

[49] The rationality ground is based on an alleged failure to take into account relevant material considerations which are identified as the granting of the passport

on 27 October 2015 subsequent to the applicant's change of name to his true identity by deed poll and a failure to carry out a proper investigation.

[50] It is alleged that the decision is inconsistent because by granting a passport to the applicant's daughter the respondent accepted his true identity as TS. The applicant's legitimate expectation argument is based on an assertion that the respondent acted in breach of his legitimate expectation that the grounds of identity had been resolved when his name was changed to his true identity by deed poll prior to the issuance of his 2015 passport. It is further alleged that the respondent acted in breach of its policy, but it is difficult to see the basis for this assertion. The real issue remains an alleged lack of investigation.

[51] As to reasons the court considers that properly analysed this resolves again to an alleged failure to provide the applicant with an opportunity to be interviewed to alleviate the concerns which were clearly identified in the decision letter.

[52] The breach of human rights is based on the grounds of a failure to interview the applicant which was described as "*the very centre piece of the respondent's first approach in its letter dated 20 February 2020.*" In this regard it must be remembered that the interview referred to in the letter of 20 February 2020 relates to a separate but related issue of an alleged criminal offence based on identity fraud.

The Respondent's Case

[53] The starting position of the respondent is that this application should be dismissed by reason of lack of candour on behalf of the applicant. It is submitted that he misled the court in his original application by presenting an account which suggested that the respondents had already formed a fully informed view of the applicant's identity by reason of the process that took place in October 2015. For the reasons set out above this was not the case.

[54] Turning to the decision itself, it is submitted that the respondent was entitled to come to the view that the applicant secured his immigration statuses, his citizenship and his passport on a fraudulent basis. He initially provided a false name and place of birth which he maintained on a persistent basis up to October 2015. Mr Henry argues that there are obvious grounds for concern about the applicant's identity. Thus, he says the decision to revoke based on a concern about the applicant's identity is within the range of reasonable and rational decisions open to a decision maker on the facts of this case.

[55] He points out that there is no legal support for the submission that the applicant is entitled to an interview. Mr Henry points to the well-known principles set out in the case of *R v Secretary of State for the Home Department ex p Doody* [1994] 1 AC 531 to the effect that whether a procedure is deemed to be fair depends on the context and the particular facts of the case. As Lord Mustill said in that case:

“What does fairness require in the present case? My Lords, I think it unnecessary to refer by name or to quote from, any of the often-cited authorities in which the courts have explained what is essentially an intuitive judgment. They are far too well known. From them, I derive that:

- 1. Where an Act of Parliament confers an administrative power there is a presumption that it will be exercised in a manner which is fair in all the circumstances.*
- 2. The standards of fairness are not immutable. They may change with the passage of time, both in the general and in their application to decisions of a particular type.*
- 3. The principles of fairness are not to be applied by rote identically in every situation. What fairness demands is dependent on the context of the decision, and this is to be taken into account in all its aspects.*
- 4. An essential feature of the context is the statute which creates the discretion, as regards both its language and the shape of the legal and administrative system within which the decision is taken.*
- 5. Fairness will very often require that a person who may be adversely affected by the decision will have an opportunity to make representations on his own behalf either before the decision is taken with a view to producing a favourable result; or after it is taken, with a view to procuring its modification; or both.*
- 6. Since the person affected usually cannot make worthwhile representations without knowing what factors may weigh against his interests fairness will very often require that he is informed of the gist of the case which he has to answer.”*

[56] The respondent says the applicant has been given an adequate gist of the concerns of the decision maker. He was given an opportunity to explain his version of events which was done by way of the short statement he made on 5 October 2020. There is nothing in the affidavit evidence which points out what the applicant was unable to say in his written statement that he would not have said in an oral interview. The absence of an interview has avoided his immediate exposure to any criminal charge and could therefore be viewed to his advantage.

[57] Furthermore, he also points out that the court should consider the nature of the decision that has been made. This is an administrative decision. As was observed by Lord Mustill in *Doody*:

“The court must constantly bear in mind that it is to the decision maker, not the court, that Parliament has entrusted not only the making of the decision but also the choice as to how the decision is made.”

Clearly therefore the respondent enjoys a margin of appreciation in terms of the decision making process. The withdrawal of his passport does not affect his citizenship, which is a separate matter and subject to a separate process. Indeed, the respondent points out that this application could be rendered entirely academic if the applicant’s British citizenship is removed under that separate process. In summary the respondent says that these proceedings should be dismissed as an abuse of process and on the basis that the applicant has misled the court for the purposes of the leave application.

[58] Turning to the substance of the complaint the respondent points out that there is no legal authority to say that an interview was essential for procedural fairness in the circumstances of this case and that the requirements of fairness were satisfied by the process undertaken, bearing in mind the restrictions arising from the Covid-19 pandemic.

[59] Essentially, it is submitted that the decision was entirely rational and one within the range of reasonable decisions open to the decision maker.

Consideration

[60] The court understands that the following propositions are not controversial. The grant or withdrawal of a British passport is an exercise of the Royal Prerogative, in the discretion of the Secretary of State. Whilst the grant or withdrawal of a British passport is an exercise of the Royal Prerogative the High Court has jurisdiction to review such a decision. Such a review lies under conventional public law grounds.

[61] The policy guidance in relation to the exercise of the discretion is set out in a Written Ministerial Statement entitled “**The Issuing and the Withdrawal or Refusal of Passports**” made on 20 April 2013 laid in the House of Commons by the then Secretary of State, Theresa May, and in the House of Lords by Lord Taylor of Holbeach. It provides relevant guidance on the discretion of the Secretary of State for the Home Department under the Royal Prerogative. The document includes the following:

- (a) A decision to refuse or withdraw a passport must be necessary and proportionate.
- (b) The decision to withdraw or refuse a passport and the reason for that decision will be conveyed to the applicant or passport holder. The disclosure of

information used to determine such a decision will be subject to the individual circumstances of the case ...

- (c) Operational responsibility for the application of the criteria for issuance or refusal is a matter for the Identity and Passport Service (IPS) acting on behalf of the Home Secretary. The criteria under which IPS can issue, withdraw or refuse a passport is set out below.
- (d) Passports are issued where the Home Secretary is satisfied as to:
 - “(i) The identity of an applicant;*
 - (ii) The British nationality of applicants, in accordance with the relevant nationality legislation; and*
 - (iii) There being no other reasons (as set out below) for refusing a passport. IPS may make any checks necessary to ensure that the applicant is entitled to a British passport.”*
- (e) A passport application may be refused or an existing passport may be withdrawn. A defined list of persons who may be refused a British passport or who may have their existing passport withdrawn are set out in the MS – e.g. a minor whose journey was known to be contrary to a court order, to the wishes of a parent or other person or authority in whose favour a Residence of Care Order had been made or who had been awarded custody; or care and control.

[62] In October 2020 the Home Office issued guidance to HMPO on withdrawing passports and passport facilities. The document includes the following:

“We must be satisfied with a customer’s identity (see Royal Prerogative Guidance). We may refuse an application to renew (or replace) a passport or withdraw a live passport, when we:

- *Suspect the customer applied fraudulently or have doubts about their identity;*
- *Do not have fraud concerns or doubts but cannot confirm the customer’s identity, for example using:*
 - *The documents they gave us;*
 - *Other evidence to support their identity (for example), counter-signatories*

- *You may suspect a customer fraudulently obtained their passport when they send:*
 - *An application to renew (or replace it);*
 - *It is part of another application (for example their child's passport application)."*

[63] It will be noted that nowhere in the policy is there any reference to "revocation", rather the policy refers to "withdrawal."

[64] Turning to the decision under challenge in this case the court bears in mind the nature of the decision being made. The issuing or withdrawal of a passport is a separate matter from that of citizenship. Clearly, the respondent enjoys a wide discretion under the Royal Prerogative, subject always to review on public law grounds.

[65] Nonetheless, the issuing or the withdrawal of a passport is a significant and important decision which has important implications for an applicant.

[66] Turning to the facts of this case, properly analysed, the court's view is that the only potential meritorious grounds relate to procedural unfairness.

[67] In terms of irrationality without going into any further detail for reasons which will become obvious the court's view is that the applicant does have questions to answer and the respondent is entitled to raise issues in relation to his identity. Again, it is not controversial that the issue of "identity" is a relevant ground for issuing or withdrawing a passport. The respondent has explained the issue in relation to alleged inconsistency and has explained that the decision to issue the daughter's passport was taken on the basis of the applicant's British citizenship. As to legitimate expectation and lack of reasons these actually reduce to a question of procedural fairness in terms of the nature and extent of the investigation carried out in this case. Any alleged breach of the applicant's human rights under Article 6 and 8 of the ECHR turn on the question of the extent of the investigation carried out here.

[68] In the application and in the course of the hearing the applicant focused on the lack of an interview. It is argued that he was entitled to an interview on the basis of the original letter of 20 February 2020 and that he had a legitimate expectation that such an interview would take place. As should be clear from the history which has been set out in detail earlier in this judgment that interview related not to the issuing/withdrawal of his passport but to the question of a criminal investigation in relation to identity fraud. The applicant is critical of the respondent's failure to draw this to the attention of Mr Strawbridge but, in the court's view, that criticism should be directed at the applicant. There is nothing in the correspondence between Mr Strawbridge and EL which suggests that EL had committed to an interview for the purposes of her decision in relation to the passport.

[69] The court is also conscious of the applicant's lack of candour in relation to what took place back in 2015 when the second passport was issued. Lack of candour can be justification for dismissing an application for judicial review in its own right. The court bears this in mind in considering this application for judicial review.

[70] Bearing in mind the principles to which the court has referred and looking at the requirements of procedural fairness in this case the court does have a concern about the impugned decision. That concern relates to an apparent failure by the respondent to engage with the explanation that was provided by the applicant in his note of 5 October 2020. That lack of engagement has to be seen in the context where the applicant's solicitor indicated that the applicant was available for interview.

[71] The court considers that procedural fairness in this case required the respondent to specifically address the reasons put forward by the applicant for the use of the original identity when he obtained his first passport and his explanation for the subsequent application. I make it clear that the court accepts that there are issues of substance here to be considered by the respondent. Those are not matters for this court.

[72] Equally, the court is not saying that as a matter of law the applicant should have been interviewed in this case, although it seems to the court that an interview would be an obvious and logical way to test the explanation that was put forward by the applicant on 5 October 2020. There is nothing in the decision letter of 3 December 2020 which indicates that the respondent has engaged or considered the explanation provided by the applicant. The decision maker does not say that the explanation has been rejected. The decision maker has not taken the opportunity to follow up the explanation by way of further questions, either in writing or by way of interview. In fact there is no reference at all in the decision to the explanation which was specifically sought. The court also bears in mind that there is no right of appeal from this decision. In those circumstances the court has come to the conclusion that there has been a significant procedural unfairness in the way the decision has been taken. And in the manner in which it has been communicated to the applicant.

[73] The court has decided that that procedural unfairness is sufficient to vitiate the decision of 3 December 2020. Accordingly, the court quashes the decision of 3 December 2020 and directs that the respondent make a fresh decision by a different decision maker. The decision maker should ensure that he/she fully engages with the applicant's explanation and adopts a procedure by which that explanation can be considered. The final decision should deal with the applicant's explanation and explain what impact it has had on the final determination.