



Neutral Citation Number: [2025] EWCA Civ 1375

Case No: CA-2024-000740

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT
KING'S BENCH DIVISION,
ADMINISTRATIVE COURT
ACO-2023-LON-003353
MR DEXTER DIAS KC
(SITTING AS A JUDGE OF THE HIGH COURT)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 30 October 2025

Before:

LORD JUSTICE PHILLIPS
LORD JUSTICE LEWIS
and
LORD JUSTICE LEWIS

Between:

THE KING (on the application of NAGAPPAN SINGARAM)	<u>Claimant</u>
- and -	
THE SECRETARY OF STATE FOR THE HOME DEPARTMENT	<u>Defendant</u>

Zane Malik KC (instructed by KT Solicitors) for the Claimant
Robert Palmer KC and James Bourke (instructed by Government Legal Department) for the Defendant

Hearing date: 22 October 2025

Approved Judgment

This judgment was handed down remotely at 10.30am on 30 October 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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LORD JUSTICE LEWIS:

INTRODUCTION

1. This is a claim for judicial review of a decision of the defendant, the Secretary of State for the Home Department, given on 7 November 2023 cancelling the claimant's leave to remain in the United Kingdom with immediate effect. Permission to apply for judicial review was refused by the High Court but was granted, on two grounds, by Nugee LJ who also directed that the claim be retained in the Court of Appeal rather than remitted to the High Court for determination.
2. In brief, the claimant entered the United Kingdom on a student visa on 5 October 2022. That leave was subject to the condition that the claimant worked no more than 20 hours a week in term time. On 7 November 2023, he was encountered by immigration officers in an off licence called Lucky's. He was asked questions about his work pattern and said that he was training at Lucky's and also disclosed that he was working for 20 hours a week in Tesco. He was arrested and cautioned as the immigration officer suspected that he was in breach of a condition of his leave by working more than 20 hours. He was asked questions, including questions about his physical and mental health and whether he had a partner or dependants in or outside the United Kingdom. He was then taken into detention and interviewed and asked further questions about his work and his studies. The facts are set out in more detail below. The decision was then taken to cancel his leave with immediate effect as he had failed to comply with a condition of his leave as he was working more than the permitted 20 hours a week in term time.
3. The claimant was granted permission to apply for judicial review of the decision of 7 November 2023 on two grounds, namely,
 - (1) The defendant's decision was procedurally unfair and did not comply with the guidance given in *Balajigari v Secretary of State for the Home Department* [2019] EWCA Civ 673; [2019] 1 WLR 4647; and
 - (2) The defendant's decision was unlawful as the claimant had not worked in excess of 20 hours from 3 to 7 November 2023.
4. In essence, Mr Malik KC for the claimant submitted that the principles of procedural fairness required the decision-maker to give the claimant a clear indication of the suspicion that the claimant had breached a condition of his leave and that had not happened. He submitted that procedural fairness also required that the claimant be told that the defendant had a discretion to decide whether or not to cancel the claimant's leave, and whether that cancellation should take effect immediately or be deferred to a later date, and be given the opportunity to make representations on those issues. He submitted that that had not occurred. As there had been a breach of procedural fairness, he submitted that the decision was unlawful. On the second ground, he submitted that for the purposes of the Immigration Rules, a week is defined as a seven day period beginning with a Monday. He was at Lucky's on 6 and 7 November 2023 (a Monday and a Tuesday) but did not work at Tesco's on 10 and 11 November 2025 as he had taken time off and so had not worked more than 20 hours in that week.

5. Mr Palmer KC, with Mr Bourke, for the defendant submitted that the claimant had been told that the immigration officer suspected the claimant was working more than the hours permitted by the conditions of his leave, and that, together with the interview that was conducted, was sufficient to satisfy the requirements of procedural fairness. He submitted that procedural fairness did not require the claimant to be told about, or be invited to make representations on, the discretion to cancel the claimant's leave. Furthermore, he submitted that all the matters that the claimant sought to rely on had been elicited in the course of the interviews and any failure to inform the claimant that he could make representations on whether leave should be cancelled with immediate effect did not, on the facts, render the particular decision unlawful.

THE LEGISLATIVE FRAMEWORK

The Statutory Framework

6. Section 3 of the Immigration Act 1971 ("the Act") provides that a person who is not a British citizen may not enter the United Kingdom unless given leave to do so. Section 3(1) provides so far as material that:

"3(1) Except as otherwise provided by or under this Act, where a person is not a British citizen

(a) he shall not enter the United Kingdom unless given leave to do so in accordance with the provisions of, or made under, this Act;

(b) he may be given leave to enter the United Kingdom (or, when already there, leave to remain in the United Kingdom) either for a limited or for an indefinite period;

(c) if he is given limited leave to enter or remain in the United Kingdom, it may be given subject to all or any of the following conditions, namely—

(i) a condition restricting his work or occupation in the United Kingdom;

.....

(ii) a condition requiring him to maintain and accommodate himself, and any dependants of his, without recourse to public funds".

7. Section 3(2) provides for the Secretary of State to lay before Parliament statements of the rules, or any changes in the rules, or any practice to be followed for regulating the entry into, and stay in, the United Kingdom. The relevant rules are the Immigration Rules.

The Immigration Rules

8. The Introduction section of the Immigration Rules includes paragraph 6 which defines certain terms. A condition is defined as "a condition of leave to enter or remain under

section 3(1)(c) of the Immigration Act 1971, such as a prohibition on employment or study”. Permission to enter or permission to stay “has the same meaning as” leave to enter or leave to remain under the Act. A week is defined as meaning “a period of 7 days beginning with a Monday”. Work is defined as having the same meaning as employment (save for one immaterial exception) and employment is defined as including “paid and unpaid employment, paid or unpaid work placements, undertaken as part of a course or period of study, self-employment and engaging in business or any professional activity”.

9. Part 1 of the Immigration Rules contain general provisions regarding leave to enter. Paragraph 7 requires a person who is not a British citizen (or a person in certain other categories) to have leave to enter or remain. Paragraph 8 provides that an immigration officer giving limited leave “may impose” a “condition restricting employment or occupation in the United Kingdom”. The substantive criteria that a person must meet to obtain leave to enter or remain as a student are contained in an appendix to the Immigration Rules.
10. Part 9 of the Immigration Rules deals with grounds of refusal. Paragraph 9.8.8 provide that:

“9.8.8. Permission (including permission extended under section 3C of the Immigration Act 1971) may be cancelled where the person has failed to comply with the conditions of their permission.”
11. We were referred to guidance issued by the defendant. As that guidance was not in force at the time of the decision, it is not relevant and I say no more about that guidance.

THE FACTS

The Claimant

12. The claimant is a national of India and was born on 16 November 1990. He was granted leave to enter the United Kingdom as a student, that leave being valid until 19 September 2024. He entered the United Kingdom on 5 October 2022. He began studies for a Master of Science degree at Coventry University.
13. His leave to enter was subject to conditions. One condition was that he could work up to a maximum of 20 hours a week in term time. We were shown the claimant’s residence permit which states it is valid until 19 September 2024, that the claimant is a student and that he has leave to enter and notes under remarks “work 20 hours max in term time”.

The Immigration Enforcement Visit, the Arrest of the Claimant and the Interview

14. Information was received in the Home Office on 4 October 2023 to the effect that students who were Indian nationals were working in breach of their leave conditions at Lucky’s Off Licence in south London and were being paid in cash. On 7 November 2023 officers working in Home Office South London Immigration Compliance and Enforcement team went to the premises. One of the officers was Kathryn

Papanicolaou who has made a witness statement and provided copies of contemporary records of the actions that were taken and the interviews that were held. It is accepted in these proceedings that this court is to proceed on the basis that that evidence is correct (although it is fair to say that, in certain respects, the claimant does not accept the description of events).

15. The immigration officer says that she entered Lucky's at 14.39 on 7 November 2023 and saw a male walking from behind the counter into the main part of the shop. She says she introduced herself to him as an immigration officer from the Home Office, and she was wearing work clothes which showed that she was with immigration enforcement. She says that she explained to him that they were in the premises to talk to people about their working hours. She says that the male said his name was Nagappan Singaram, that is, the claimant, that he arrived in the United Kingdom on 22 October 2022 and that he had a student visa valid until September 2024. He accepted that he was only permitted to work 20 hours per week in term time. On asking him further exploratory questions to find out about his work pattern at Lucky's, the immigration officer learned that the claimant was also working 20 hours a week at Tesco.
16. In the light of all the information the immigration officer now had, she says that she decided at 14.59 to arrest the claimant as a person liable to detention. That arrest was recorded in her digital pocket notebook and a copy of the printout of the relevant entry was exhibited to her witness statement. She says that she explained to the claimant that he was under arrest, explained the reasons for the arrest, and explained that he was not free to leave but had to go with the enforcement officers. She said he would be able to speak to a lawyer later if he wished. She says that she cautioned him on arresting him, using the standard form of caution for arrests in such matters. The caution was expressed in the following terms:

"I am an Immigration Officer. I am arresting you on suspicion that you are a person liable to immigration detention. This is because I suspect that you have breached a condition of your leave by working more hours than you are permitted. This is not an arrest for a criminal offence. Do you understand?"
17. The immigration officer then asked the claimant about mitigating circumstances. At that stage, the claimant was under arrest and being considered for detention. The questions and answers were again recorded in the officer's digital notebook and a copy of the printout of the relevant entry was exhibited to her witness statement. The claimant was asked specific questions and answered "no" in response to questions about whether he had any medical condition, was on medication, was dependent on alcohol or drugs or had any suicidal thoughts. He was also asked if he had a partner or dependants in or outside the United Kingdom. He answered saying he had no partners or dependants in or outside the United Kingdom. He signed the digital record of that interview.
18. The claimant was then taken from the premises and taken to the holding room of the Home Office at Lunar House in Croydon. The immigration enforcement team stopped at his home en route to enable him to collect his Indian passport. He was interviewed at Lunar House and, again, a printout of the digital record was exhibited to the officer's witness statement.

19. The record shows that the claimant was asked specific questions and gave specific answers. The interview note shows that the claimant was asked about his studies. He confirmed that he was studying on a 21 month course for an MSC in management which was due to finish in May 2024. He had paid £19,350 for that course. Some was paid in India and some in the United Kingdom. He got the money for the course from his family and his savings.
20. He was asked about his activities at Lucky's. He had said at some stage that he was training there. One question was "You stated you were training [at] Lucky's off licence when did you start training?". The claimant is recorded as answering "October 15 2023". He said the training was stock filling. He said he heard about the training from a friend and went to see the boss who told him he could do training by filling shelves. He was asked "What days do you train at Lucky's?" He answered "Monday and Tuesday" and gave the hours he trained on a Monday as 9 a.m. to 6 p.m. and on Tuesday as again 9 a.m. to 6 p.m. He was asked about his work at Tesco and what hours he worked and answered "Friday night and Saturday night" and said the hours were 9 p.m. to 7 a.m. and said it was a total of 19 hours a week. He said that he had worked at Tesco since November 2022. He was asked what he would do after the training at Lucky's finished and he said he would get a job with his boss. He was asked if he was leaving Tesco and said "Yes, when I am trained for Lucky's as I do not want to do night shifts anymore".
21. At 19.05, after the interview had finished, the immigration officer asked the claimant if he would make a voluntary departure from the United Kingdom. He said did not wish to make a voluntary departure because he wished to remain in the United Kingdom to complete his studies. A record of that was also entered into the digital pocket notebook and a copy of the printout of that entry was exhibited to the officer's witness statement.

The Decision

22. The immigration officer decided on 17 November 2023 to cancel the claimant's leave with immediate effect. The reasons were set out. So far as material the decision said this:

"Reasons for cancellation

A decision has been made to cancel your permission to stay in the UK so that it expires with immediate effect. The reasons for this are:

You were granted entry clearance as a student valid between 13/09/2022 until 19/09/2024.

You are specifically considered a person who has failed to observe a condition of leave to enter or remain. On 07/11/2023 evidence was gathered to enable the Home Office to conclude, on the balance of probabilities, that you have been undertaking employment are in breach of your visa's conditions at LUCKY's.....

Immigration Rules state that a person's leave to enter or remain may be cancelled on the grounds of failure to comply with any conditions attached to the grant of leave to enter or remain.

It is not considered that the circumstances in your case are such that discretion should be exercised in your favour. The secretary of State therefore cancels your leave to enter the United Kingdom under Part 9, Paragraph 9.8.8 of the Immigration Rules to expire with immediate effect. **Next steps**

You must now do one of the following:

- Tell us any reasons you think you should be allowed to stay in the UK
- Seek help and advice on returning home
- Leave the UK

If you think there are reasons why we should allow you to stay in the UK

If you think you have a reason to stay in the UK that you have not yet told us, you need to complete form RED.0003, given to you with this notice, and send it to us.”

23. The form RED.0003 given to the claimant with the decision stated that the claimant could provide additional grounds as to why he thought he should be allowed to stay in the United Kingdom and not be removed.

The Claim for Judicial Review

24. The claimant applied for judicial review of, amongst other things, the decision of 7 November 2023. Permission was refused on the papers by a deputy High Court judge and again, following an oral hearing, by a different deputy High Court judge on 21 March 2024.
25. The claimant applied for permission to appeal to the Court of Appeal. Nugee LJ adjourned the application to an oral hearing. He granted permission to apply for judicial review (pursuant to CPR 52.8(5)) on two grounds, as set out at paragraph 3 above, and, subsequently, clarified that he was directing that the claim for judicial review proceed in the Court of Appeal rather than in the High Court as would normally be the case (see CPR 58(6)).

GROUND 1 – PROCEDURAL FAIRNESS

The Submissions

26. Mr Malik KC submitted that the decision to curtail the claimant's leave with immediate effect pursuant to paragraph 9.8.8 of the Immigration Rules involved three distinct decisions. These were, first, a decision that the claimant was in breach of a condition of his leave, secondly, that leave should be cancelled as a matter of discretion and thirdly, that it should be cancelled with immediate effect rather than at some later date. He submitted that that followed from the wording of paragraph 9.8.8 which provided a discretion - leave “may be

cancelled” - where the person has “failed to comply” with a condition of the leave.

27. He submitted that procedural fairness required that the claimant be given a clear indication of the suspicion that there had been a failure to comply with a condition and an opportunity to comment upon the suspicion. Further, the claimant had to be told that there was a discretion to cancel the leave and be given the opportunity to make representations as to why the discretion should not be exercised or why the leave should not be cancelled immediately but at some later date. He submitted that that analysis was consistent with the analysis of this Court in *Balajigari* dealing with an analogous situation under paragraph 322(5) of the Immigration Rules which provided that leave to enter or remain would normally be refused because of the undesirability of permitting the person to stay in the United Kingdom in the light of certain specified matters.
28. Mr Malik submitted that, on the facts, the immigration officer did not give a clear indication of her suspicion that the claimant was in breach of a condition of his leave and she should have probed the answers given. Further, he submits that the claimant was not told that the immigration officer had a discretion whether to cancel leave, or whether to do so with immediate effect, and he was not given the opportunity to make representations on those matters. Consequently, he submitted that there was a breach of the requirements of procedural fairness and the decision of 7 November 2023 was unlawful.
29. Mr Palmer KC, with Mr Bourke, for the defendant submitted that the claimant had been given a clear indication of the nature of the allegation. He was spoken to when officers entered the shop and asked about his work pattern. He was cautioned as the immigration officer had a suspicion that he was working in breach of a condition of his leave. He was asked specific questions about his work and was given the opportunity to address those issues.
30. Mr Palmer submitted that procedural fairness did not require the claimant to be told that the officer had a discretion as to whether to cancel the claimant's leave, or to do so with immediate effect, or to be given the opportunity to comment on those matters. In any event, the questions asked at various elicited times all the information that the claimant wished the defendant to consider. There had, therefore, been no breach of procedural fairness, or any such breach was not material, or it was a technical breach only.

Discussion

31. The issue in relation to ground 1 is whether the decision of 7 November 2023 is invalid because it was reached in a way that was procedurally unfair. That involves considering whether the principles of procedural fairness apply to the decision-making process in question, what those principles require in the particular case, whether the decision maker took the steps required and, if not, what are the consequences of the failure to do so.
32. First, I am satisfied that the immigration officer was obliged to act in a procedurally fair way when considering whether to exercise the power conferred by paragraph 9.8.8 of the Immigration Rules to cancel leave with

immediate effect. Such a decision has a significant effect on the individual concerned. He had permission to be in the United Kingdom to study for a Master's degree. He had paid a considerable sum of money to pursue that course. If leave were cancelled with immediate effect, he would no longer have leave to remain in the United Kingdom and should either leave or would be liable to be removed. The consequences are such that the principles of procedural fairness apply to that decision-making process.

33. Secondly, the requirements of procedural fairness will depend on a number of factors including the legislative framework, the nature of the decision-making process and the particular facts of the case. That is reflected in the opinion of Lord Mustill in *R (Doody) v Secretary of State for the Home Department* [1994] 1 AC 531 where he said at page 560:

“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.”

34. In the present case, I accept that there are two essential aspects to the exercise of the power conferred by paragraph 9.8.8 of the Immigration Rules. First, the individual has to have failed to comply with a condition of his leave to enter or remain. Secondly, there is a discretion as to whether to cancel leave, whether immediately or at some later date.
35. The requirement of procedural fairness applies to both aspects of that decision-making process although what will be required to ensure procedural fairness may differ, or be differently expressed in relation to each of those aspects. In

that regard, I consider that the position is analogous to that in *Balajigari*. That case also concerned a discretion to refuse leave to enter or remain given:

“the undesirability of permitting the person concerned to remain in the United Kingdom in the light of his conduct (including convictions which do not fall within paragraph 322(1C)), character or associations or the fact that he represents a threat to national security.”

36. The Court of Appeal considered that the correct analysis of the decision-making process was that it involved a two-stage analysis. The first was whether it was undesirable to grant leave given the matters specified in the rule. The second stage was whether leave should, as a matter of discretion, be refused on the basis of that undesirability (see paragraph 33 of the judgment). The Court noted that the first stage, the assessment of undesirability, itself had a number of distinct steps or limbs that had to be considered (see paragraph 34 of the judgment). The Court then considered whether procedural fairness applied to those two stages and if so, what was required. At paragraph 55 of the judgment, the Court said this:

“55. For all of those reasons, we have come to the conclusion that where the Secretary of State is minded to refuse ILR on the basis of paragraph 322(5) on the basis of the applicant's dishonesty, or other reprehensible conduct, he is required as a matter of procedural fairness to indicate clearly to the applicant that he has that suspicion; to give the applicant an opportunity to respond, both as regards the conduct itself and as regards any other reasons relied on as regards “undesirability” and the exercise of the second-stage assessment; and then to take that response into account before drawing the conclusion that there has been such conduct.”

37. I am satisfied that the Court decided that procedural fairness required both that the Secretary of State indicate clearly to the individual that he has that suspicion (i.e. that the individual's presence in the United Kingdom was undesirable) and to allow the individual an opportunity to respond to matters going to whether the discretion should be exercised.
38. Mr Palmer submitted that the Court was only deciding that there had to be an opportunity to comment on matters going to “conduct”, that is, to whether the individual's presence in the United Kingdom was undesirable, not matters of discretion. I do not accept that submission. Reading the judgment as a whole, it is clear that the Court considered that the principles of procedural fairness applied both to the first and the second stages of the decision-making process. The decision-making process had been described in paragraph 33 as involving a first stage, namely an assessment of the issue of undesirability, and a second stage, the issue of whether to exercise the discretion to refuse leave. The Court said in paragraph 55 that procedural fairness applied both to the first stage, assessment of undesirability and “the exercise of the second stage assessment”, that is consideration of the discretion to refuse. The reference at the end of

paragraph 55 to taking the responses into account before drawing the conclusion that there has been “such conduct” means conduct justifying refusal of leave under the rule, i.e. conduct which shows that the presence of the individual in the United Kingdom is undesirable and which justifies, as a matter of discretion, refusing to grant leave to remain or enter. Those words are not intended to limit the scope of procedural fairness to the first question of whether the presence of the individual in the United Kingdom would be undesirable. That the Court concluded that the obligations of procedural fairness applied to both stages of the decision-making process is put beyond doubt, as Mr Malik pointed out, by reference to paragraph 131 and 211 of the judgment. The Court’s conclusion was that an unlawful decision could be avoided by adopting a process which informed the individual of the Secretary of State’s concerns and gave the individual the opportunity to draw “attention to matters relevant to the “undesirability” or “discretion” issues”. The same applies in the present case. The principles of procedural fairness apply both to the question of whether the claimant had failed to comply with a condition of his leave and to whether the discretion to cancel leave with immediate effect should be exercised.

39. The next question is whether, on the facts, the claimant was treated procedurally fairly in this regard. What was required to ensure that the claimant had an adequate opportunity to put forward his representations on each of those two issues and whether that occurred depends upon the facts of the particular case.
40. I deal first with the question of the assessment of whether the claimant had failed to comply with a condition of his leave. I have no doubt whatsoever that all that could reasonably be required to ensure that the claimant was treated procedurally fairly was done. In particular, the claimant was told, and knew, that the issue was whether he had failed to comply with the condition of his leave that he work no more than 20 hours a week in term time and he was given ample opportunity to give his version of events.
41. The context needs to be borne in mind. The issue was a simple, straightforward one, namely whether the claimant had worked more than 20 hours a week in term time. The claimant knew, as he admitted to the immigration officers, that he was not permitted to work more than 20 hours a week. The immigration officer having entered the premises told him that she was there to ask questions of people working in the off licence about their working hours.
42. In the light of the answers the claimant gave, the immigration officer arrested the claimant and cautioned him. That caution says that the immigration officer was arresting him because “I suspect that you have breached a condition of your leave by working more hours than you are permitted”. The reason why the claimant was being arrested and being interviewed was clearly and straightforwardly identified.
43. The questions asked gave the claimant every opportunity to explain what he was doing, and when he began working both at Tesco and at Lucky’s. It gave him every opportunity to explain when he began working and what hours he worked at each. There was no procedural unfairness in relation to this aspect of the matter.

44. The position in relation to whether the discretion to cancel leave, whether immediately or at some later date, is more nuanced. The claimant was asked various questions about matters relevant to that issue. But, as was accepted, the claimant was not expressly told that he had the opportunity to comment to say why it was that the discretion to cancel his leave should not be exercised. In context, probably all that would have been necessary would be a simple question at some stage asking whether the claimant wanted to say anything about why his leave should not be cancelled, or not cancelled with immediate effect, if the officer did find that he had failed to comply with a condition. That was not done before the decision was made.
45. However, that is not the end of the inquiry. Mr Malik was asked what matters, on the evidence, the claimant would have wanted to refer to as being reasons why the discretion to cancel the leave immediately should not be exercised. He submitted that there were these matters: (1) the claimant was a genuine student; (2) he had spent more than £19,000 on his course; (3) the last few months had been difficult as he was working at night and studying by day (although, as his witness statement made clear, he had passed his modules and no one was suggesting otherwise); (4) he had made good progress and was about to complete his degree and (5) the level of non-compliance.
46. As it happens, the claimant had been asked questions which had in fact enabled him to provide all the information he wished to in relation to those matters. The immigration officer had asked him during interview what the course was, when it began and when it would be completed. She asked him about the cost and he told her it was £19,350 provided partly with help from his family and partly from his savings. The officer knew he wanted to remain in the United Kingdom to finish his degree – he told her so, when she asked if he wished voluntarily to depart from the United Kingdom. The officer knew the level of non-compliance – the claimant told him. From 15 October 2023, until she took her decision on 7 November 2023, he was working from 9 a.m. to 6 p.m. on a Monday and a Tuesday at Lucky's and from 9 p.m. to 7 a.m. on a Friday and Saturday night in Tesco. He was working somewhere around 38 hours a week – nearly double the maximum 20 hours a week that was permitted in term time. It is difficult to see the relevance of the fact that things were difficult because the claimant was working at night and during the day and having also to study. That had not in fact prevented him passing his modules (and no one suggested it had) and, in any event, it resulted from the fact that he failed to comply with the condition of his leave. Further, the immigration officer knew that he wanted to stop working at Tesco at some stage in the future and work in Lucky's – he told her that. Furthermore, the officer asked, and knew, that factors that might be relevant to discretion were not present– the claimant told her that he had no physical or mental health conditions, and that he had no partner or dependants in the United Kingdom.
47. In all the circumstances, therefore, the interviews that were carried out, and the information that the claimant was able to provide, ensured that the immigration officer was in fact informed of all the matters that the claimant wanted the immigration officer to consider.

48. The question therefore is whether the decision of 7 November 2023 was vitiated by a failure to make it clear that the claimant could make representations about whether the discretion should be exercised immediately or at a later date. That question arises in circumstances where, assessing the matter objectively, the claimant had provided all the information to the decision-maker during the course of the decision-making process. It is not a case where the claimant had not had the opportunity to make any representations and where the decision-maker was unaware of what the claimant wanted to say (where different considerations might arise).
49. The underlying purpose of the principle of public law that has been said to have been violated needs to be borne in mind and consideration should be given to whether that purpose has in fact been achieved. Here the underlying purpose was to enable the claimant to have the opportunity to make representations as to why he should not have his leave cancelled and, in substance, that was achieved on the facts of this case. In those circumstances, the courts have in similar circumstances taken the view that there has been no breach, or no material breach, of the principles of procedural fairness or certainly none that renders the decision unlawful. By way of example, it has long said that there is “no such thing as a technical breach of natural justice” and a court should not find a breach of natural justice (now more commonly called procedural fairness) in the absence of substantial prejudice to the individual as a result of the procedural failing (see *George v Secretary of State for the Environment* (1979) 38 P & CR 608, per Lord Denning MR at 517). Alternatively, the courts may, depending on the circumstances, find that the decision was vitiated by a breach of the principles of procedural fairness but have refused to grant a remedy to quash the decision either as a matter of the discretion of the court or the operation of section 31(2A) of the Senior Courts Act 1981.
50. The matter was considered recently by this Court in *R (Save our Stonehenge World Heritage Site Ltd) v Secretary of State for Transport* [2024] EWCA Civ 1227; [2025] PTSR 726. There it was said that a judge had erred by considering whether there had been any material prejudice suffered as a result of alleged procedural unfairness. It was said that the position was that if there had been a breach of the principles of procedural fairness, the decision was unlawful and the only question was whether a remedy had to be refused because of section 31(2A) of the Senior Courts Act 1981. That subsection placed a burden on the decision-maker to show that it was highly likely that the outcome for the individual would not have been substantially different if the conduct complained of had not occurred. The Court rejected that argument. At paragraph 75, it said this:
- “75. We consider that submission mistaken. The common law principles of procedural fairness are intended to ensure an individual is treated fairly. What procedures are required to ensure fairness will, as we have said, depend on a number of factors including the nature of the decision, the decision-making process, and the facts. And there will be no breach of the principles of procedural fairness even if a particular step has not been taken where that has not resulted in any

prejudice to the individual (see *George v Secretary of State for the Environment and another* (1979) P. & C.R. 609). It is clear that the judge was doing no more at [115] and the following paragraphs of his judgment than summarising and applying the principles of procedural fairness, and that he did so accurately in the light of the case law.”.

51. That is the position in the present case. Any failure to comply with the principles of procedural fairness by not making it clear to the claimant that he had an opportunity to make representations as to why his leave should not be cancelled immediately, or at a later date, did not in fact result in any prejudice. As a result of the questions that were asked during the decision-making process, the claimant did, in fact, provide the information that he wanted the decision-maker to consider when deciding whether to cancel his leave immediately. In the circumstances, there was no, or no material, breach of the principles of procedural fairness and certainly none that vitiated the decision.
52. For completeness, even if the decision had been flawed (which it is not) I would in any event have refused a remedy. Section 31(2A) of the Senior Courts Act 1981 provides that the court must refuse relief where it is highly likely that the outcome for the claimant would not have been substantially different if the conduct complained of had not occurred. The outcome here was the cancellation of leave with immediate effect. The conduct complained of was that the defendant did not make it clear to the claimant that he could make representations about whether the leave should, as a matter of discretion, be cancelled with immediate effect. The proper approach is set out in *R (Bradbury) v Brecon Beacons National Park Authority* [2025] EWCA Civ 489; [2025] 4 WLR 58 especially at paragraph 71, and *R (Greenfields (IOW) Ltd) v Isle of Wight Council* [2025] EWCA 488, [2025] 2 P & C.R 16 especially at paragraph 73. The court is concerned with evaluating the significance of the error on the decision-making process. It considers the decision that the public body has reached and assesses the impact of the error on that decision in order to ascertain whether it is highly likely that the outcome (the decision) would not have been substantially different if the error had not been made.
53. In this case, the decision was to cancel the claimant’s leave with immediate effect because he had failed to comply with a condition of leave. The conduct complained of was not telling the claimant that he could make representations about whether, as a matter of discretion, the immigration officer should decide not to cancel the leave with immediate effect. However, the claimant was asked a number of specific questions, and, in fact, provided all the information that he wished to provide before the decision was reached. The immigration officer reached the decision on the basis of all the information that the claimant wanted to be considered. In those circumstances, any error did not impact on the decision-making process. For those reasons, if the decision had been flawed because of a breach of procedural fairness, I would have refused a remedy.

GROUND TWO – BREACH OF CONDITION

54. This ground can be dealt with relatively shortly. Mr Malik submits that the claimant did not work more than 20 hours in the week beginning 6 November

2023 as he did not work at Tesco on the Friday and Saturday of 10 and 11 November 2023.

55. The short answer is that the decision – which was reached on 7 November 2023 – was not based on a failure to comply with the condition during the week of 6 to 12 November 2023. The claimant's own admission made to the immigration officer in interview was that he started work at Lucky's on 15 October 2023 and worked for 9 hours on a Monday and 9 hours on a Tuesday. He admitted he had worked at Tesco since November 2022 and worked 10 hours on Friday and 10 hours on Saturday. On the claimant's own admissions in interview, he therefore worked more than the permitted 20 hours in the weeks beginning 16 October, 23 October and 30 November 2023. He was working 38 hours a week. The immigration officer was entitled to conclude that the claimant had failed to comply with the condition that he work a maximum of 20 hours a week in term time.
56. Mr Malik suggested that the claimant was traumatised by the process of being arrested and interviewed and that the claimant's admissions in interview were unclear or required further probing. He drew attention to subsequent witness statements of the claimant saying that his first day at Lucky's was 6 November 2023.
57. The claimant was asked a simple and straightforward question: when did he start at Lucky's? He answered "October 15 2023". There was no lack of clarity in the question or the answer. He said he started on October 15 2023. He did not say he started work on 6 November 2023, or that his first day of work was the previous day, or that the day he was arrested was his second day at Lucky's. There is no suggestion that the claimant did not understand the question (he had confirmed to the immigration officer whilst still in the premises that he understood English and he was, of course, studying for a Master's degree at a university in England).
58. In those circumstances, the immigration officer was entitled to conclude, on the evidence before her, that the claimant had failed to comply with a condition of his leave in that he was working more than the permitted 20 hours a week during term time.

CONCLUSION

59. I would dismiss this claim. The immigration officer was entitled to conclude that the claimant had failed to comply with a condition of his leave. The decision to cancel the claimant's leave with immediate effect was not vitiated by any procedural unfairness in the decision-making process. The decision of 7 November 2023 cancelling the claimant's leave with immediate effect was lawful and valid.

LORD JUSTICE ZACAROLI

60. I agree.

LORD JUSTICE PHILLIPS

61. I also agree.