

Case No: JR-2025-MAN-000121

IN THE UPPER TRIBUNAL (IMMIGRATION AND ASYLUM CHAMBER)

Before HHJ Sephton KC, sitting as an Upper Tribunal Judge

IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW

Between

14 Oct 2026

The King on the application of Carlton Victor Russell

Applicant

- and -

Secretary of State for the Home Department

Respondent

Charlotte Kilroy KC and Rowena Moffatt instructed by Greater Manchester Immigration Aid Unit for the Applicant

Joshua Yetman instructed by Government Legal Department for the Respondent

JUDGMENT

1. In this application, the Applicant challenges one of the Respondent's policies relating to the granting of leave to remain in the UK and he also challenges decisions made by the Respondent's officials under that policy to refuse the Applicant's application for indefinite leave to remain ("ILR"). In this judgment, I shall refer to the Applicant as "Mr Russell".

The Immigration Context

2. A person who is not a British Citizen and who does not have permission to remain in the UK is liable to detention and removal. They may not access public services, including (save in limited circumstances) support under the Care Act 2014 and accommodation under the Housing Act 1996. They may not rent a private home. They are not entitled to welfare benefits. They may not lawfully be employed or self-employed. They may not hold a bank account. They may not drive on a road or public place. Successive governments have sought to create a hostile environment for such people, whom I shall describe as "undocumented".
3. Section 3(1)(b) of the Immigration Act 1971 confers on the Secretary of State power to grant a person leave to remain in the United Kingdom either for a limited or for an indefinite period. The exercise of the broad statutory power conferred by section 3(1)(b) has been modulated by Immigration Rules which are laid before Parliament and which therefore have a significant degree of democratic legitimacy.
4. This case involves Appendix PL to the Immigration Rules. Appendix PL prescribes a framework for those who wish to settle in the UK on the basis that they have developed a private life here. So far as relevant, Appendix PL contains 2 key requirements:
 - (1) A person who seeks permission to stay in the UK will be granted 30 months' permission to stay. (This is referred to as "limited leave to remain" ("LLTR"). Section 3(1)(c) of the Immigration Act 1971 permits the Secretary of State to impose numerous conditions upon LLTR.)
 - (2) An applicant must have lived in the UK for a continuous qualifying period of 10 years in order to qualify for settlement. (This is referred to as "the 10-year route to settlement" or "10YRS". "Settlement" and "indefinite leave to remain" are equivalent. For relevant purposes, an applicant must have leave to remain if the period is to count as "qualifying".)

It follows from this that an applicant who seeks indefinite leave to remain must have 4 uninterrupted, consecutive periods of limited leave to remain before they can apply for indefinite leave to remain.

5. Mr Nick Beales is employed by Refugee and Migrant Justice (formerly Refugee and Migrant Forum of Essex and London Limited), a not-for-profit company limited by guarantee which provides advice, support, legal representation and advocacy services to asylum seekers, vulnerable migrants and refugees in relation to immigration issues, housing and homelessness. His witness statement dated 28 July 2025 describes the application process for seeking ILR on the Private Life Route:

11. The process is as follows:

- a) The applicant submits the online application form. Upon submission an automated Home Office email is received, confirming receipt of the application. They also receive an email confirming that all supporting evidence should be submitted online through a portal, with a link to the portal provided.
- b) The applicant must then separately book a biometric enrolment appointment. This is either booked at a Home Office managed Service and Support Centre (SSC) or via TLS, a private company contracted by the Home Office to manage biometric appointments.
- c) In either case, the applicant must upload all supporting evidence to the aforementioned online portal. The Home Office states this must be done within 10 working days of submitting the online application form. Whilst impossible to give an exhaustive list of evidence required, as it inevitably depends on the specific facts of the application, invariably the following are required: current and expired passports; biometric residence permit(s); proof of living situation, such as tenancy agreement and council tax bills; extensive evidence of the applicant's financial circumstances, including 6 months' worth of payslips, 6 months' worth of bank statements and documentary evidence of any and all benefits received; proof of any ongoing course of study/education; and any evidence confirming familial relationships, such as birth certificates, marriage certificate, ID documents and proof of cohabitation with these family members.

12. Once all of the above steps have been completed and biometrics enrolled, the Home Office will consider and process the application. Requests for further information/evidence are often made, and it is common for information/evidence that has already been provided to be requested anew. Assuming though that nothing further is required, applicants then essentially just wait for the Home Office to process the application, with no updates provided in the interim. As of July 2025, the Home Office advises that it takes on average 12 months to process a FLR application on the 10-year route (discounting time take to process any associated fee waiver request).

...

16. The leave to remain application fee is currently £1,258.00 per applicant with an immigration health surcharge (IHS) of £2,587.50 (equivalent to £1,035.00 per year for a 30-month visa) per applicant. The total cost is therefore £3,845.50 per adult applicant. The IHS for children is £776.00 per year, so the total cost for per child applicant is £3,198.00 (£1,940.00 IHS + £1,258.00 application fee).

17. If an applicant cannot afford the fees... they can request a fee waiver. To request a fee waiver, the applicant must again submit an online application ahead of the substantive leave to remain application.

18. Once submitted, they will have 10 working days to submit all of their supporting evidence via the online portal. The evidence that must be provided is extremely rigorous, with 6 months' annotated bank statements for all accounts held a minimum requirement, even when the accounts have long sat dormant and contain no funds. Requests for additional information/evidence are consequently very common, especially as applicants often do not even realise that bank accounts remain open and it can be difficult to get banks to issue statements for long dormant accounts. Assuming no further information/evidence is requested though, the Home Office tends to process fee waiver requests in 6-8 weeks, though in early 2024 a backlog had grown so big that these applications were taking 8 months to process.

19. No biometric enrolment is required for fee waiver requests, and if the request is approved, the Home Office will issue a letter containing a 6-digit code that is valid for 10 working days. This code allows the applicant to bypass payment when completing Forms FLR(FP) and FLR(M), but otherwise the process outlined at paragraphs 10-12 is identical. If the fee waiver is rejected, then the applicant will have 10 working days to make a paid for application.

20. Crucially, for those applying for FLR, they must submit their application – be it a fee waiver or paid-for FLR(FP) application – within the 28 days before their existing period of leave expires. If they do not do so, and apply even 1 day late, they will not benefit from section 3C Immigration Act 1971 leave whilst awaiting processing of their application (this leave guarantees continuation of existing leave rights, such as the right to work, pending a decision on the application for further leave).

21. For anyone who does not comply with the application deadline for 3C leave to apply, this means for the 12-month+ period they may await a decision on their application, they will lose all existing rights, including to work and if permitted receive public funds.

22. Those who secure a fee waiver but submit their FLR application after the 10-working day period (i.e. 10 working days or more after the fee waiver is decided) will be considered to have applied late and will lose the benefit of 3C leave protection.

23. For those on the 10-year route to settlement, this process must be completed several times before accruing 10 years' "continuous lawful residence". If they

ever apply late, the 10- year period may also be reset, with the clock effectively restarting. Only after completing this 10-year period, will people on this route qualify for ILR.

6. I was shown some statistical evidence from Rivka Shaw, an employee of Greater Manchester Immigration Aid Unit (“GMIAU”). In her witness statement dated 24 July 2025, she explains that she helped to conduct a survey of some 300 people on the 10YRS. She states that a third of respondents to the survey had a gap in their LLTR on the 10YRS with the result that their ILR clock re-started; a substantial proportion of those had made a mistake on the application form so that the application was refused. Ms Shaw and Mr Beales gave anecdotal evidence of the bitter experiences of some of the applicants who had “fallen off” the 10YRS. A person who has “fallen off” the 10YRS becomes liable to the consequences of being undocumented outlined above.
7. The evidence of Mr Beales, Ms Shaw and Ms Nicola Burgess (a solicitor and Head of Legal Strategy at GMIAU) demonstrates that qualified assistance to help an applicant for LLTR and ILR is expensive and difficult to come by. Most applications are outside the scope of Legal Aid. The availability of legal advisers is decreasing and the problem is particularly acute in the North West of England. The services of Mr Russell’s current legal representatives, GMIAU, are oversubscribed; at present GMIAU can only accept 10% of the referrals made to it. Ms Burgess states that it is highly unlikely that GMIAU would be able to assist Mr Russell in the future.
8. From time to time, the Respondent publishes guidance concerning a person’s right to enter or remain in the UK on the basis of their family life or exceptional circumstances. This case concerns versions 21.0 and 25.0 of that guidance. I am here concerned with the guidance relating to the granting of shorter or longer periods of permission than those prescribed by the Immigration Rules. The provisions that are relevant to this case are identical in both versions, and I shall refer to the relevant provisions as “the Guidance”. It provides as follows:

Settlement (also known as ‘Indefinite Leave to Remain’ – ILR) in the UK is a privilege, not an automatic entitlement. Unless there are truly exceptional reasons, the expectation is that applicants should serve a qualifying period of limited permission before being eligible to apply for settlement and should make a valid application for settlement in order to be considered. However, there may be rare cases in which either a longer period of leave or a grant of settlement outside the rules is considered appropriate because there are other particularly

exceptional or compelling reasons to do so. There is discretion to grant a longer period of permission or settlement outside the rules on this basis.

There must be sufficient evidence to demonstrate the individual circumstances are not just unusual but can be distinguished to a high degree from other cases to the extent that it is necessary to deviate from a standard grant of 30 months' permission to stay under Appendix FM. The absence of a fee waiver for a settlement application is not, on its own, a sufficient reason for granting settlement outside the rules. The expectation is that a valid application for settlement should be made.

Reasons to grant settlement outside the rules are likely to be easily identifiable on their individual facts, for example, where it is considered that the precariousness of limited permission would create such serious distress as to have a disproportionately detrimental effect on the person's health or welfare that it would prevent recovery or development. The threshold is high and concerns the direct effect on the person concerned.

An example of where it would not normally be appropriate to grant settlement might be because the person would like to qualify for a student loan to go to university and isn't currently eligible. This would not normally be regarded as sufficiently exceptional or compelling circumstances, absent additional factors.

Where granting a non-standard period of permission to the applicant, because it is accepted that there are exceptional reasons for doing so, this permission will have to be granted outside the Immigration Rules as there is no provision within Appendix FM for granting permission for a period of more than 30 months. This also applies to settlement, where this is granted outside of a valid settlement application or where the requirements of the rules are not met. If there are exceptional reasons to grant settlement, this should be granted outside the rules.

The Background

9. Mr Russell is a national of Belize who was born on 27 September 1936. He is thus 90 years of age.
10. Mr Russell entered the UK on 9 July 1994 on a 6-month visa. Mr Russell never left the UK, but lay low until he was evicted from the house in which he was living in 2022. His case was brought to the attention of Home Office officials who on 29 June 2022 served him with notice of liability for removal.
11. In August 2022, Mr Russell was diagnosed with prostate cancer. Liverpool City Council assessed Mr Russell as destitute and having care needs as a result of which he was moved to Woolton Grange Care Home in October 2023.
12. On 3 April 2024 Mr Russell, then represented by Merseyside Law Centre, applied for leave to remain in the UK. In a submission dated 24 October 2024, Mr Russell's

lawyers made clear that he was seeking indefinite leave to remain. By a decision dated 27 November 2024, the Home Office granted Mr Russell leave to remain on the private life route “until 27 May 2027 on a 10-year route to settlement”. He was allowed access to public funds, which means that he can claim benefits and is entitled to support under the Care Act 2014.

13. Mr Russell’s lawyers – now GMIAU – complained that he required indefinite leave to remain outside the rules (“ILROTR”) and not the LLTR that had been sanctioned in the decision of 24 November 2024. They argued that Mr Russell’s case was truly exceptional and justified the grant of ILR. They submitted that requiring Mr Russell to pursue the 10YRS was irrational:

Given our client’s unique circumstances, there will never be a point at which he could be removed from the United Kingdom. It was previous Home Office policy, since withdrawn, that those 65 years of age or over, would not be removed from the United Kingdom. Our client is 88 years of age and in ill health, his length of residence has been accepted by the SSHD in order to give rise to the grant of limited leave to remain. All things being equal, he will continue to meet the requirements of the rules. There can be no rational purpose of requiring our client to undergo a 10-year probationary route to settlement to test his ties to the United Kingdom when he has resided here for 30 years and to facilitate his integration when due to his care needs and ill health he is accommodated in a care home following an assessment under the Care Act 2014.

14. On 29 April 2025, the Home Office refused the application for ILROTR (“the First Decision”). The relevant features of the decision are these:

- (a) The Respondent’s officer identified the Guidance and stated that they were following it.
- (b) The Respondent’s officer cited the Guidance at some length.
- (c) In answer to the specific points raised, the Respondent’s officer said:

Whilst it is acknowledged that if your circumstances remain the same and you do not engage in any activity that would affect your suitability to be here, the reasons why you were considered for LTR (and granted a period of LTR) on this occasion would continue to apply to any future application for a further grant of LTR. However, you would still be expected to serve a probationary period of LTR before being eligible to apply for ILR if you meet the requirements. It is not considered an exceptional or compelling reason to grant ILR because someone anticipates meeting an immigration route for LTR in future applications.

It is claimed that you will be eligible to apply for ILR in 2034, at the earliest, by which time you would be 98 and would have spent 40 years in the UK. We have considered your length of residence in the UK along with your age and medical

conditions and you have been granted LTR accordingly. It is noted that you entered the UK in 1994 on a visit visa and then remained in the UK as an overstayer. Although it is understandable that you have concerns about having to wait until you are 98 years old to apply for ILR it is considered that you could have made an immigration application at any time during your 30 years here but instead you remained here illegally.

You have been granted LTR in the UK with a condition of stay permitting a recourse to public funds. It is therefore considered that you will have appropriate access to sources of benefits and accommodation as your entitlements permit and are therefore at no disadvantage compared to a person with ILR. As a person with LTR in the UK you would also be able to access treatments and services via the NHS as necessary and will not therefore be disadvantaged as a result of having LTR as opposed to ILR.

It is claimed that because of your inability to utilise technology, there would be a real risk that you would fall off the 10-year route by being unable to make an in-time application to extend your leave. You have been a resident of Woolton Grange care home since 2023 so it is considered they would be able to assist you with any future immigration applications.

15. Mr Russell's medical condition deteriorated. In June 2025, he was admitted to hospital. It was found that he had developed diffuse prostatic metastases. He was discharged back into the care of Woolton Grange for palliative care and with a directive that he should not undergo resuscitation.
16. Laura Madigan of Woolton Grange wrote on 2 July 2025 that the care home could not help a resident with an immigration application. She added that giving Mr Russell ILR would give him the most secure and stable status in the UK in the light of his age and health needs. On 3 June 2025, Rebecca Jones, his social worker, stated that Mr Russell was very frail and required a significant amount of support to ensure that his care needs were being met.
17. On 29 July 2025, Mr Russell filed this application for judicial review challenging the First Decision. The application was supported by the witness statements of Mr Beales and Ms Shaw referred to above and by a witness statement from Mr Russell. Mr Russell explains that he could not cope with making an online application for LLTR on his own. He does not have a smart phone. He does not know who to turn to for help. He feels uncomfortable asking the staff at Woolton Grange for help because making an application would require him to disclose a lot of personal and sensitive information and it is not their job. He states:

19. I don't know how long I have got left or how many applications I would need to make to the Home Office before it is my time, but I do know that given my

health and circumstances I won't ever be able to leave the UK – it is my home. I would like however long I have left, to be as comfortable and pain free as possible, despite my failing health. I just can't cope with the need to worry about my precarious immigration status on top of this. What happens if I'm in hospital when my current leave expires so I can't make an application? Or what happens if I can't find a solicitor to help me? I simply can't do this process on my own.

20. I would ask that the Home Office exercise their discretion in my case and provide me with the right to stay here indefinitely without conditions for however long I have left. Without this, I don't think I will ever get the right to settle here, as it is inevitable that I will be forced off the 10 year route when I am unable to find help to make a future application or I will pass away before I meet the required 10 years. I don't want to die with precarious status, or be classed as an overstayer and given a pauper's burial.

18. On 15 September 2025, UTJ Mahmood gave Mr Russell permission to seek judicial review.
19. The parties had discussions with a view to settling the issues, but as I understand it, they did not reach agreement.
20. On 19 December 2025, the Respondent's officer reconsidered the application for ILR and once again refused it ("the Second Decision"). The relevant features of the Second Decision are these:
 - (a) The Respondent's officer identified the Guidance and stated that they were following it.
 - (b) The Respondent's officer cited the Guidance at some length.
 - (c) In answer to the points made in these proceedings, that Respondent's Officer stated:

You have told us that you have prostate cancer for which you are receiving treatment and you are currently accommodated at Woolton Grange Care Home in Liverpool following an assessment under the Care Act 2014. You are reliant on the care home staff to help you to meet your daily and essential living needs and to manage your health condition. You feel that given your age, and ill health, this is not a situation which will improve in time, in fact you feel your condition and ability to care for yourself will only deteriorate with the passing of time.

You state that inevitability (*sic*) you would be able to continue to meet the requirements of the Immigration Rules to warrant further grants of limited leave to remain. However, you would still be expected to serve a probationary period of LTR before being eligible to apply for ILR if you meet the requirements. It is not considered an exceptional or compelling reason to grant ILR because someone anticipates meeting an immigration route for LTR in future applications. Any decision on any future application for further LTR would be taken by the SSHD in the light of the circumstances at the relevant time.

You claim it is unfair and irrational requiring you to have to complete the 10-year route having to apply to extend your leave on 3 occasions before being able to apply for ILR. This would result in you being able to apply for ILR in 2034, at the earliest, by which time you would be 98 and would have spent 40 years in the UK. Although it is understandable that you have concerns about having to wait until you are 98 years old to apply for ILR it is considered that you could have made an immigration application at any time during your 30 years here but instead of doing that you remained here illegally. You claim that if you had made an application earlier is likely that you would have secured ILR through the now withdrawn 14-year rule under the Immigration Rules. Whilst that may be the case, you did not make an application. We can only consider applications that are submitted and not speculate on a theoretical application that were not made.

You have told us that due to your age, your reliance on others, and inability to utilise technology, there would be a risk that you would fall off the 10-year route by being unable to make an in-time application to extend your leave which would break the continuity of your lawful residence and make you an overstayer and at risk of losing access to vital services including healthcare. You have been a resident of Woolton Grange care home since 2023 so it is considered they would be able to assist you employing the services of an immigration advisor or other such support to apply for further LTR when required.

21. The Respondent applied to dismiss Mr Russell's claim on the grounds that the Respondent had re-taken the decision and his application (which was focussed on the First Decision) was now academic. By order dated 15 January 2026, UTJ Lodato gave Mr Russell permission to amend his grounds of claim "to include a challenge to the decision of 19 December 2025", but directed that the argument that the claim is now academic might be pursued in written and oral submissions.

The Issues

Is this an academic claim?

22. Mr Yetman reminded me that the *Administrative Court Judicial Review Guide* dealt with academic issues and rolling review. He drew my attention to paragraphs 6.3.4.1 and 6.10.4 of the 2026 edition of the Guide. He drew my attention to the postscript delivered by the Court of Appeal in *R(Dolan) v Secretary of State for Health and Social Care* [2020] EWCA Civ 1605 at paragraphs [116] – [121] and to the decision of Fordham J in *Badger Trust and Wild Justice v Natural England (No.2)* [2026] EWHC 1573 (Admin) at paragraph [19]. He submitted that the claim was now academic and that I should refuse to grant judicial review on that basis.
23. I adopt the definition of an "academic" claim proposed in §6.3.4.1 of the current *Administrative Court Judicial Review Guide*: "there is no longer a dispute to be decided which will directly affect the rights and obligations of the parties to the claim."

24. The present claim mounts a challenge to the Guidance issued by the Respondent which the Respondent resists. That, it seems to me, is a dispute that directly affects the rights and obligations of the parties to the claim since it is the basis for the decisions the Respondent has made in this case and any decisions that might be made in the future. A successful challenge to the Guidance would require the Respondent to reconsider her decision.
25. UTJ Lodato gave permission for a challenge to the Second Decision. In my view, it is too late now to complain that Judge Lodato's decision allowed the proceedings to be treated as rolling or evolving: the decision was not appealed. The claimant challenges the lawfulness of the Second Decision and that issue remains live between the parties. In these respects there is a dispute to be decided that will directly affect the rights and obligations of the parties to the claim.
26. In the light of the Respondent's decision to reconsider the First Decision, I accept the submission that the challenge to the First Decision on Grounds 2 – 5 is academic.

Ground 1

27. The challenge to the Guidance is expressed in these two extracts from the Statement of Facts and Grounds:

The requirement in the Family Policy that ILR outside of the Immigration Rules may only be granted on the narrow test of "true exceptionality" is unlawful insofar as it applies to those, such as the Applicant, who are certain to satisfy the test of private and/or family life in the future.

The application of a "truly exceptional" circumstances test which relies on the principle of a probationary period to direct decision-makers to refuse the applications for ILR of those whose private and/or family life in the UK is so strong that they are guaranteed, all else being equal, to be granted further leave to remain, is unlawful as it so restrictive as to authorise irrational, and therefore unlawful, conduct by those to whom it is directed.

28. The circumstances in which a policy may be found to be unlawful because of what it says or omits to say about the law when giving guidance to others were expounded authoritatively in *R(A) v Home Secretary* [2021] UKSC 37 at paragraphs [46] and [47]:

46 In broad terms, there are three types of case where a policy may be found to be unlawful by reason of what it says or omits to say about the law when giving guidance for others: (i) where the policy includes a positive statement of law which is wrong and which will induce a person who follows the policy to breach their legal duty in some way (i.e. the type of case under consideration in *Gillick* [1986] AC 112); (ii) where the authority which promulgates the policy does so

pursuant to a duty to provide accurate advice about the law but fails to do so, either because of a misstatement of law or because of an omission to explain the legal position; and (iii) where the authority, even though not under a duty to issue a policy, decides to promulgate one and in doing so purports in the policy to provide a full account of the legal position but fails to achieve that, either because of a specific misstatement of the law or because of an omission which has the effect that, read as a whole, the policy presents a misleading picture of the true legal position...

47 In a category (iii) case, it will not usually be incumbent on the person promulgating the policy to go into full detail about how exactly a discretion should be exercised in every case. That would tend to make a policy unwieldy and difficult to follow, thereby undermining its utility as a reasonably clear working tool or set of signposts for caseworkers or officials. Much will depend on the particular context in which it is to be used. A policy may be sufficiently congruent with the law if it identifies broad categories of case which potentially call for more detailed consideration, without particularising precisely how that should be done...

29. In *R(BF (Eritrea)) v SSHD* [2021] UKSC 38, the Supreme Court explained further the nature of lawful guidance falling within category (iii) cases. At paragraph [51] the Court explained that the proper approach

involves comparing two normative statements, one being the underlying legal position and the other being the direction in the policy guidance, to see if the latter contradicts the former.

The court is not required to compare the underlying legal position with what might happen in fact if the persons to whom the policy guidance is directed are given no further information; this

would transform the obligation from one not to give a direction which conflicts with the legal duty of the addressee into an obligation to promulgate a policy which removes the risk of possible misapplication of the law on the part of those who are subject to a legal duty. There is no general duty of that kind at common law.

The Court pointed out at paragraph [52]:

Whenever a legal duty is imposed, there is always the possibility that it might be misunderstood or breached by the person subject to it. That is inherent in the nature of law, and the remedy is to have access to the courts to compel that person to act in accordance with their duty.

30. Ms Kilroy KC rightly accepted that the Respondent was entitled to manage the progression of immigrants to permanent settlement by adoption of a probationary period which allowed her to review their circumstances to determine whether a further grant of leave was appropriate. She submitted, however, that where there was no

reasonable room for doubt that a person would be granted a further period of LLTR, there is nothing for the probationary period to test. She submitted that it would be irrational in those circumstances to grant merely LLTR because there was nothing to be achieved by it. She submitted that the Guidance, in requiring decision makers to apply the “truly exceptional” test, resulted in irrational, and therefore unlawful, decisions. She submitted that the Guidance was a policy that fell within category (iii) as described in *R(A)* and it was unlawful because it presented a misleading picture of the true legal position.

31. I do not accept that the Guidance requires decision makers to reach an irrational conclusion. The purpose of the Guidance is to underline the point that the Immigration Rules establish the general run of cases and only exceptional cases justify an exceptional grant of leave to remain outside the rules.
32. In my view, the Guidance would not prevent a decision maker, properly taking into account all relevant facts, from taking the view that a person who was terminally ill and who would almost inevitably be granted periods of LLTR in the future, was in a truly exceptional position such as to justify ILR. The Guidance does not compel a conclusion that is unlawful because it is irrational.
33. In my judgment it is unnecessary to make special provision in the Guidance for such a situation or for other exceptional situations: those situations are by definition exceptional, and setting out a policy for such various exceptional contingencies would make the policy unwieldy and difficult to implement. The common law does not require the Respondent to promulgate a policy which removes any risk of misapplication: see *BF* at paragraph [51].
34. It follows that I am not persuaded that Ground 1 is made out.

Ground 2

35. The second ground complains that the Respondent’s officer misapplied her Guidance in Mr Russell’s case because they failed to heed material evidence that demonstrated that the “precariousness of limited leave would create such serious distress as to have a disproportionately detrimental effect on the person’s health or welfare that it would prevent recovery or development.” This ground focusses on the decision-maker’s conclusion that because Mr Russell had been a resident at Woolton Grange since 2023

“they would be able to assist you employing the services of an immigration advisor or other such support to apply for further LTR when required.”

36. Mr Yetman submitted that the decision-maker rationally applied the relevant evidence to reach their conclusion. He submitted that there was insufficient evidence to suggest that Mr Russell would fall off the 10YRS and/or that the precariousness of limited leave would create such serious distress as to have a disproportionately detrimental effect. He submitted that the pleaded considerations were not gamechangers in the sense referred to by Lewis LJ in *Keep Chiswell Green v SSHCLG* [2025] EWCA Civ 958 at paragraph [82]. He drew my attention to *R(CPH) v SSHD* [2025] EWHC 848 (Admin).
37. The first issue for decision is whether the decision-maker’s conclusion on this issue was rationally open to them. I have no doubt that it was not. This is because:
- (a) The evidence shows that making the necessary online application to renew his LLTR personally is beyond Mr Russell’s technical competence and he does not have the equipment to do it. There is no evidence to the contrary.
 - (b) The letter from Laura Madigan dated 2 July 2025 stated in terms that Woolton Grange “would be unable to assist Carlton in making a future application”. I reject Mr Yetman’s submission that Ms Madigan’s letter indicated that Woolton Grange would support Mr Russell in any application he might make to seek LLTR; on the contrary, the letter made clear that Woolton Grange could not help, but supported the notion that Mr Russell should have ILR.
 - (c) The evidence of Mr Beales, Ms Shaw and Ms Burgess demonstrated that obtaining professional help to pursue an immigration application is extremely difficult, particularly for somebody who is destitute, as Mr Russell is. This evidence was before the Respondent when the Second Decision was made.
 - (d) The erroneous conclusion that Mr Russell would obtain help from Woolton Grange precluded the decision maker from considering what would happen in the event that he did not make a timely and effective application for continued leave to remain. Those consequences, particularly the probable loss of access to the NHS support, would be devastating to a man who would be over 90 years old and dying of cancer.
 - (e) Mr Russell’s witness statement made clear that he could not cope with the need to worry about having to apply for LLTR on top of all his other problems.

38. In my judgment, the only rational conclusion that could be drawn from the material before the Respondent was that there is a real and significant risk that Mr Russell would not mount an effective application to extend his leave to remain, with the consequence that he would become undocumented and lose the care and support necessary for his existence. These issues troubled Mr Russell, who was already beset by his serious health issues. The decision-maker's erroneous conclusion on this issue prevented them from considering how great the risk was and what effect it had upon Mr Russell's condition.
39. In the Detailed Grounds of Resistance, the Respondent refers to *R(Alladin and Wadhwa)* [2014] EWCA Civ 1334 at paragraph [58] in support of the proposition that the error complained of must be a material one. The discussion in *Keep Chiswell Green* relied upon by Mr Yetman concerned whether a decision-maker acts unlawfully by not taking a particular matter into account in making a decision. As Lewis LJ pithily put it, "it is not enough that the new matter might be capable of causing a decision-maker to reach a different conclusion. It must be a gamechanger." It seems to me that these are slightly different points: *Keep Chiswell Green* addresses whether an issue should be considered at all; *Alladin* addresses whether the decision complained of would have been different if the error complained of had not been made.
40. In my opinion, neither of these authorities assists the Respondent. The decision maker *in fact* took into account the question whether Mr Russell would have difficulty in seeking LLTR (though they reached a perverse factual conclusion that he would have little difficulty). It seems to me that the decision maker rightly recognised that this issue was highly relevant to the question whether to grant ILR.
41. The issue for the decision-maker ought to have been whether this conclusion constituted an exceptional or compelling reason to grant ILR. In my judgment, the decision-maker's irrational conclusion about whether there was any risk that Mr Russell might not obtain LLTR in the future vitiated the decision about whether that risk constituted an exceptional ground justifying grant of ILR outside the Rules. The decision cannot stand and must be quashed.

Ground 3

42. This ground asserts that Mr Russell's rights under Article 8 of the European Convention on Human Rights are engaged; it is said that those rights have been

breached and the decision was not in accordance with the law or disproportionately interferes with his right to private life.

43. Article 8 states:

1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

44. The Respondent's Detailed Grounds of Resistance submit that Mr Russell's Article 8 rights are not engaged, that the decision does not interfere with his private life and that any interference is justified. Mr Yetman's skeleton argument drew my attention to a number of "healthcare" cases in which applicants sought to resist removal from the UK on the grounds that removal would jeopardise treatment of a medical condition in the UK in circumstances where the applicant could not rely upon Article 3.

45. In *GS(India) v SSHD* [2014] EWCA Civ 40, Laws LJ considered the authorities and concluded at paragraph [45]:

These and other passages tell us that the core value protected by article 8 is the quality of life, not its continuance...

46. In *R(Razgar) v SSHD* [2004] UKHL 27, Lady Hale said at paragraph [59]

Although the possibility cannot be excluded, it is not easy to think of a foreign health care case which would fail under article 3 but succeed under article 8. There clearly must be a strong case before the article is even engaged and then a fair balance must be struck under article 8(2). In striking that balance, only the most compelling humanitarian considerations are likely to prevail over the legitimate aims of immigration control or public safety...

47. Ms Kilroy KC accepted that the Respondent's refusal to grant ILR does not inevitably engage the applicant's Article 8 rights. She referred me to a number of authorities in which Article 8 was engaged. She submitted that in the circumstances of this case, Mr Russell's Article 8 rights were engaged and that the Respondent could not justify her interference with them.

48. It is important to analyse this case carefully in order to identify accurately the issues at stake.

49. The context of the Respondent's decision is an application based on Mr Russell's right to a private life. The Respondent appears to have recognised this fact, because her decision was to grant LLTR on the Private Life 10YRS.
50. This is not a "healthcare" case in the sense that the applicant complains that the Respondent's decision endangers his access to healthcare. As the Respondent points out, Mr Russell's LLTR allows him recourse to public funds (including the NHS and support under the Care Act 2014), and he will likely enjoy the same benefits if he renews his LLTR. Rather, the gravamen of Mr Russell's case is that the Respondent's decision has exposed him to the risk that he will "fall off" the 10YRS and concern about the risk poses an intolerable worry on top of his other concerns.
51. The core value for consideration (see *per* Laws LJ in *GS(India)*) is the quality of Mr Russell's life. In my view, it is clear that the Respondent's decision has had a significant negative effect upon Mr Russell's quality of life. The decision has affected and continues to affect Mr Russell's quality of life.
52. I conclude that Mr Russell's Article 8 rights are engaged.
53. The Respondent's decision was not made in accordance with the law because her decision-maker reached an irrational conclusion on the facts: see the treatment of Ground 2 above. It follows that the decision cannot be justified under paragraph 2 of Article 8.
54. It is unnecessary to consider whether a different decision could be justified as a proportionate interference with Mr Russell's Article 8 rights. It would be inappropriate to do so, for that truly would be the consideration of an academic issue.

Grounds 4 and 5

55. In the light of my conclusion on Grounds 2 and 3, it is unnecessary to consider these grounds.

Conclusion

56. I conclude that it is unnecessary to consider the lawfulness of the First Decision. The Respondent's officer re-made the decision, so the question whether the First Decision was correct is academic.
57. I conclude that the challenge to the Guidance in Ground 1 is unsuccessful.

58. I conclude that the Second Decision was vitiated by an irrational conclusion that Mr Russell would obtain assistance to complete an application for renewed LLTR. The decision-maker failed to recognise that there was a real and substantial risk that Mr Russell would not be able to make a successful application for LLTR and that this was an intolerable worry for him because the consequences of not obtaining LLTR were profound to a man who is destitute and terminally ill.
59. I conclude that Mr Russell's Article 8 rights were engaged. The Respondent's decision was not made in accordance with the law. Mr Russell's Article 8 rights have been infringed.
60. In the light of my conclusions on Grounds 2 and 3, I have not considered Grounds 4 and 5.
61. I am minded to quash the Second Decision and to order the Respondent to re-make her decision consistently with this judgment. I will take submissions on the form order if counsel are unable to agree on it.

**IN THE UPPER TRIBUNAL
(IMMIGRATION AND ASYLUM CHAMBER)**

JR-2025-MAN-000121

IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW

BETWEEN:



THE KING

on the application of CARLTON RUSSELL

Applicant

-and-

SECRETARY OF STATE FOR THE HOME DEPARTMENT

JR-2025-MAN-000121

Respondent

ORDER

BEFORE the HHJ Sephton KC, sitting as an Upper Tribunal Judge

UPON hearing counsel for the Applicant and counsel for the Respondent at a hearing on 29 September 2026

AND UPON the Tribunal determining that it was unnecessary to consider Grounds 4 and 5

IT IS ORDERED THAT:

- 1) Ground 1 is dismissed.
- 2) The Applicant's claim for judicial review succeeds on Grounds 2 and 3.
- 3) The Respondent's decision of 19 December 2025 is quashed.
- 4) The Respondent's decision of 19 December 2025 was unlawful in public law terms and breached the Applicant's rights under Article 8 of the European Convention on Human Rights.
- 5) The Respondent shall before 4pm on 11 November 2026 remake the decision on the Applicant's application for indefinite leave to remain consistently with the Tribunal's judgment, absent special circumstances.

- 6) The Respondent shall pay the Applicant's reasonable costs of these proceedings on the standard basis, to be assessed if not agreed.
- 7) Pursuant to Upper Tribunal Procedure Rule 10(10):
 - (i) Within 28 days of being served with a schedule of costs, the Respondent shall make a payment in the sum of 60% of the schedule unless within 14 days of service she has filed and served notice of particularised objection.
 - (ii) If notice of particularised objection has been filed and served, the Applicant shall within 14 days file and serve any response, after which (absent agreement between the parties) the Tribunal will decide on the papers whether to confirm or revise the amount.
- 8) There shall be detailed assessment of the Applicant's publicly funded costs.

Dated 14 October 2026