

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT
BETWEEN:

CO/1978/2014



THE QUEEN

On the application of

PA

Claimant

-and-

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Defendant

CONSENT ORDER

UPON the Secretary of State for the Home Department agreeing to review the policy in respect of the detention of pregnant women contained in Enforcement Instructions and Guidance Chapter 55.10 and 55.9 and Chapter 45.

AND UPON the Secretary of State for the Home Department agreeing to issue a new draft Detention Service Order

AND UPON the Secretary of State for the Home Department carrying out a targeted consultation in respect of the revised draft Enforcement Instructions and Guidance and draft Detention Service Order

AND UPON the Secretary of State for the Home Department agreeing as part of the said consultation and review, to take account of the general public sector equality duty under section 149 of the Equality Act 2010 in respect of the impact of arrest and detention on foreign national women and the treatment and conditions for pregnant women during detention.

AND UPON the above consultation and review taking place after the publication of the Shaw review (expected in Autumn 2015, absent special circumstances) into the welfare of immigration detainees

AND UPON the parties agreeing to the attached statement of reasons.

AND UPON the parties having agreed to the terms set out in the schedule hereto;

IT IS DECLARED THAT:

1. The Claimant was unlawfully detained from the outset on 3 February 2014 and at all material times until her release from detention on 4 March 2014. Her detention was contrary to and in breach of the said current policy and/or the practice followed in purported pursuance of that policy was unlawful on the facts of this case.
2. The said unlawful detention constituted a false imprisonment for which the Claimant is entitled to substantive damages.
3. The said detention of the Claimant was also incompatible with Article 5 of the ECHR.

IT IS ORDERED THAT:

4. The claim for judicial review of the decision to detain the Claimant is granted and all other claims ^{brought by this Claimant,} including those relating to the legality of the said policy and/or practice of the detention of pregnant women and its compatibility with the Equality Act 2010 are withdrawn.
5. Upon payment of damages and costs and the giving of an apology to the Claimant by the Defendant referred to in the attached schedule all further proceedings be stayed except for the purposes of carrying the terms of this order and schedule into effect.

6. The Defendant do pay the Claimant's reasonable costs of the claim to be assessed if not agreed.

IT IS FURTHER ORDERED THAT:

7. There be a detailed assessment of the costs of the Claimant's publicly funded costs
8. There be liberty to apply as to carrying the terms set out in the schedule annexed hereto into effect.

Bhatt Murphy

Bhatt Murphy Solicitors
27 Hoxton Square
London
N1 6NN
DX: 36626 Finsbury
Claimants Solicitors
Ref: JR/2524/1

Signed: *Jane Ryan*
Dated: *18.9.15*

Treasury Solicitor

Treasury Solicitor
Government Legal Department
One Kemble Street
London
WC2B 4TS
DX: 123242 Kingsway 6
Defendant's Solicitors
Ref: Z1411579/NIH/B1

Signed: *[Signature]*
Dated: *17.9.2015*

ADMINISTRATIVE COURT OFFICE
BY CONSENT ORDER AS ASKED

01 OCT 2015

[Signature]
S. LOVETT
ACO LAWYER

By the Court

Statement of Reasons

1. The Claimant is a national of the Democratic Republic of Congo. At the time of the events giving rise to this claim the Claimant was 5 months pregnant and this was known to the Secretary of State for the Home Department (SSHD).
2. The SSHD authorised the no notice arrest and detention of the Claimant in purported exercise powers contained in schedule 2 paragraph 16 of the Immigration Act 1971 on 3 February 2014. The specific purpose of the detention was to facilitate interview of the Claimant by the DRC authorities as part of a request for an emergency travel document. The SSHD did this with the ultimate objective of removing the Claimant.
3. No removal directions were or could be set throughout the entirety of the Claimant's detention.
4. The Claimant was detained for 10 hours at Cardiff Bay police station. She was then transferred to Yarl's Wood IRC in a journey that took 8 hours.
5. The Claimant informed the SSHD that she was scheduled to have her 20 week anomaly scan. This did not take place throughout the period of the detention and the Claimant did not have her 20 week anomaly scan until 10 March 2014. In the 4 week period of her detention she was seen on one occasion by a midwife.
6. The Claimant was released after a letter before action on 4 March 2014 was served threatening these proceedings.
7. The policy that applied to the exercise of the discretion to detain pregnant women is contained in Chapter 55.10 EIG, Chapter 55.9 and Chapter 45. Chapter 55.10 states that:

*The following are normally considered suitable for detention in only very exceptional circumstances, whether in dedicated immigration detention accommodation or prisons:
Pregnant women, unless there is the clear prospect of early removal and medical advice suggests no question of confinement prior to this (see 55.4 in relation to detention during early stages of pregnancy on fast track).*

8. Chapter 55.9.1 states that:

Pregnant women should not normally be detained. The exceptions to this general rule are where removal is imminent and medical advice does not suggest confinement before the due removal date, or, for pregnant women of less than 24 weeks gestation at Yar's Wood as part of the fast-track asylum process.

9. The present claim was issued on 1 May 2014. It challenged on 4 Grounds:
 - i) ground 1: unlawful arrest, detention and treatment of the Claimant;
 - ii) grounds 2 and 3: unlawful policy and implementation of the policy; and
 - iii) ground 4: incompatible with EA 2010.
10. In response to the claim, the SSHD proposed that the parties explore settlement to include all four grounds of the claim and this was agreed.
11. The SSHD has agreed that this Claimant was unlawfully detained in breach of the terms and purpose of the published policy relating to pregnant women and was consequently detained also in breach of Article 5 ECHR.
12. The SSHD also agrees that the ante-natal care available to the Claimant in detention did not meet the standards expected and in particular it was unacceptable that the Claimant did not have the 20 week anomaly scan.
13. The SSHD has agreed to pay the Claimant the sum set out in the attached schedule in full and final settlement of the claim for damages for false imprisonment and breaches of her human rights (ground 1) and to apologise to the Claimant as set out in a Schedule attached to this Order.
14. The SSHD has agreed to review the policy of detaining pregnant women, to carry out a targeted consultation, issue revised Enforcement Instructions and Guidance and DSO taking into account the duty under s149 of the Equality Act 2010 (grounds 3 and 4).
15. The SSHD is taking the measures set out in paragraph 14 above in order to improve practice in respect of the detention of pregnant women, with the intention of maintaining the right balance between, on the one hand, the interests of firm and fair immigration control and, on the other hand, the importance of avoiding detention of

pregnant women save in exceptional circumstances or for a very short period prior to removal.

16. The Claimant has, therefore, agreed to withdraw her claim based on the challenge to the legality of the policy and practice and its compatibility with s 149 of the Equality Act 2010 (grounds 2, 3 and 4).
17. The Secretary of State has agreed to pay the Claimant's reasonable costs of the claim.
18. For these reasons the claim is granted in respect of ground 1 and withdrawn in respect of grounds 2-4.

Terms of Apology

Dear Ms PA

The Home Office accepts that your detention was in breach of the policy on the detention of pregnant women. Furthermore, the Home Office accepts that your detention at Yari's Wood Immigration Removal Centre between 3 February 2014 to 4 March 2014 was unlawful. Accordingly, I apologise on behalf of the Home Office for unlawfully detaining you whilst you were pregnant.

Yours sincerely

Assistant Director, Judicial Review & Litigation Team
UK Visas and Immigration
On Behalf of The Secretary of State for The Home Department