Written evidence to the Joint Committee on Human Rights
Inquiry into immigration detention
Bhatt Murphy solicitors and Garden Court chambers

A. Introduction

1. Bhatt Murphy is a niche firm established to concentrate expertise in matters pertaining to detention: our focus is upon the treatment of individuals in the criminal justice system and immigration detention.[1] During the firm's 20 years, we have represented hundreds of individuals detained by the Home Office. Stephanie Harrison Q.C. and Shu Shin Luh are barristers at Garden Court Chambers[2] whose practices have a strong human rights and anti-discrimination focus and who are recognised as leading practitioners involved in key litigation on immigration detention is notable. Owing to capacity, time pressures, word limit, this submission focuses on effectiveness of policies[3] and adequacy of safeguards in the detention system.

2. Immigration detention engages individuals' constitutional right to liberty. Many detainees are vulnerable. Detention powers are broadly drawn, without time limit or automatic judicial oversight (save in narrowly prescribed circumstances).[4] Significant curtailment to legal aid also affects access to legal representation to challenge detention decisions.[5] Properly drafted and implemented, detention policies are key safeguards against abuse of executive powers in breach of the ECHR, EU law and common law 'Hardial Singh' principles[6]. Yet, the compelling evidence consistently presented over many years to Parliamentary Committees,[7] independent reviews,[8] and in court show demonstrates that this policy-based system is simply not robust enough to protect individuals from unlawful detention and breaches of human rights.

3. Two key problems - **deficiencies in policy and poor implementation** – can be best illustrated by the following: (1) Adults at risk; (2) separation of families; and (3) the mentally incapacitated.

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[1] Our website is at https://www.bhattmurphy.co.uk/ which includes further details of our work.
[2] Stephanie's profile (https://www.gardencourtchambers.co.uk/barrister/stephanie-harrison-qc/) and Shu Shin's profile (https://www.gardencourtchambers.co.uk/barrister/shu-shin-luh/) contain further details of their work.
[3] The questions we intend to cover are: *Are current legal and policy frameworks sufficient in preventing people being detained wrongfully and whether current practices in the detention system protect human rights; How far current policies ensure that people are only deprived of their liberty if it is necessary, rather than for administrative convenience.*
[4] Schedule 10, Immigration Act 2016 ("IA 2016"), paragraph 11 requires the Home Secretary to refer individuals who have been detained for four months, excluding those detained for the purpose of deportation, to be referred for consideration of bail by the First Tier Tribunal.
[5] LASPO removed all immigration cases including those based on Article 8 ECHR claims (i.e. those not involving asylum/ protection claims) from the scope of legal aid.
[6] These principles require that (i) immigration detention must only be used for the purpose of removal/deportation, (ii) any period of detention must not exceed a period that is unreasonable in all the circumstances, (iii) detention should not be used when it is apparent that removal is not possible within a reasonable period of time (iv) the Home Office must pursue removal/deportation with diligence and expedition.
[7] This includes the All Party Parliamentary Inquiry, this Committee and the Home Affairs Select Committee.
[8] Both reviews conducted by Stephen Shaw.

B. Adults at Risk

7. We adopt the significant concerns raised by ILPA's submissions to Shaw 2 regarding the drafting and implementation of the 'Adults at Risk' (AAR) policies[9]. Although intended to better protect vulnerable detainees and reduce the numbers in detention than previous policy,[10] the AAR policies in its terms and implementation fails to do so in the following ways:

   7.1. Whilst the concept of an adult at risk is wider than the categories of vulnerable persons under the previous policy,[11] improvements to reporting mechanisms have not been effective.[12]

   7.2. Critically, rule 35(3), Detention Centre Rules 2001 ("DCR"), the primary mechanism, remains directed only at identifying torture victims. Even the definition of torture is more restrictive than before.[13] Beyond Rule 35(3), there is no effective mechanism to *systematically* identify *all* potential AARs.[14]

   7.3. Furthermore even if identified as within the category of AAR this does not result in the strong presumption of release as it did under the previous policy. Only those with evidence from a professional[15] can benefit from a strong presumption against detention and then only if there is specific evidence that detention would be likely to cause harm.[16] Thus a person with professional evidence of torture such as a rule 35(3) report will not secure the highest level of protection unless that evidence additionally and explicitly addresses likely harm in detention. This is a significant departure from previous policy which was underpinned by the acceptance that torture victims are likely to be vulnerable to harm in detention.[17]

   7.4. Without in-built reporting mechanisms, the burden falls disproportionately and wrongly on detainees to obtain the necessary evidence despite facing significant hurdles by virtue of being detained, because of limits on legal aid funding, lack of availability of medical experts and time pressures, particularly in the Detained Asylum Casework ("DAC") process.

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[9] Including Statutory Adults at Risk Guidance, Caseworker's Adults at Risk Guidance and Detention Service Order 9/2016.

[10] Paragraph 55.10 of the Enforcement Instructions and Guidance ("EIG 55.10")

[11] EIG 55.10.

[12] We adopt the submissions made about the deficiencies of the Rule 34/35 process and the IS91RA Part C mechanism set out at paragraph 12 (d) and (e) of the ILPA Shaw 2 submission.

[13] The definition of torture, adopting the UN Convention against Torture and Other Cruel and Inhuman or Degrading Treatment or Punishment ("UNCAT"), introduced in September 2016, was declared to be contrary to the purpose of s. 59 IA 2016 in *R (Medical Justice) v SSHD* [2017] EWHC 2461 by Ouseley J. The new definition, introduced by an amendment to Rule 35 of the Detention Centre Rules 2001 and a revision of the AAR statutory guidance, is again under challenge by judicial review for being restrictive and excluding certain vulnerable detainees from being identified.

[14] The list of all those whose circumstances would indicate risk is listed at paragraph 11 of the AAR statutory guidance: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/721237/Adults_at_risk_in_immigration_detention_-_statutory_guidance__2_.pdf. This includes victims of sexual violence, FGM and trafficking, and those suffering mental illness or have post-traumatic stress disorder.

[15] This means one has to have Level 2 or Level 3 evidence of risk under the AAR policies.

[16] This is known as Level 3 evidence.

[17] See *R (D and Anr) v SSHD* [2006] EWHC 980 (Admin) and *R (EO and Ors) v SSHD* [2013] EWHC 1236 (Admin) and endorsed by the findings of Shaw 1 and Professor Bosworth's review of the medical evidence.

7.5. Even where detainees present professional evidence, there is a far greater discretion to maintain detention on grounds of 'immigration factors' and the strong presumption against detention has been significantly diluted. The Home Office no longer needs to show *'very exceptional circumstances'* to maintain detention for vulnerable persons; the AAR policies permit non-compliance such as previous breaches of immigration law and a refusal to leave voluntarily, to justify continued detention rather than serious criminal convictions which alone meet the " high hurdle" in the previous policy[18].

8. In passing s 59 of the Immigration Act 2016 parliament intended that the AAR Guidance was required to, but is not currently ensuring that those who are particularly vulnerable to harm in detention are properly protected. The threshold of "very exceptional circumstances" for detention is consistent with the statutory purpose of s. 59 IA 2016, to ensure those particularly vulnerable to harm from immigration detention are better protected from being detained at all or remaining in detention and suffering damage to their mental health and well being.

C. Separated Families

9. The legal and policy framework[19] for dealing with detaining families imposes clear safeguards intending to limit the impact of immigration detention on children whose parent is liable to detention and to avoid breaches of the right to family life under Article 8 ECHR for both child and parent. However judicial findings and evidence from NGOs demonstrates systemic and persistent failures by the Home Office to follow and apply these robust policies to safeguard families' rights.

10. Nearly a decade ago the High Court found that the Home Office had acted unlawfully by separating mothers from their children in two cases[20]. The Home Office was heavily criticised for the absence of adequate procedures to safeguard against a breach of s. 55 Borders Citizenship and Immigration Act 2009 ("BCIA 2009") and Article 8 ECHR in decision-making, resulting in prolonged separation of children from their primary carer. In both cases, advice to release the women, given by the Office of the Children's Champion ("OCC")[21], had been ignored. In one case, Mr

[18] *Das v Secretary of State for the Home Department* [2014] EWCA Civ 45.

[19] The key policies are: Family Separations (version 4); Criminal Casework, Detention of Families, (version 7, 29 July 2014); Criminal casework – Introduction to children and families, version 10, 28 July 2014; Deportation of family members of foreign national offenders, (version 11, 13 November 2014) Criminal Casework; Concluding Family Cases[19], (version 6, 11 November 2013); Criminal Casework, Managing the Return of Families with Children[19], (version 8, 13 November 2014). The general detention policy also acknowledges that detention of an individual family member may represent an interference with Article 8 rights and requires consideration of *"the needs and circumstances of each family member"* to determine whether detention is proportionate and necessary. Assessing whether the interference is proportionate involves balancing the legitimate aim in Article 8(2) against the seriousness of the interference with the person's right to respect for their family life: EIG Chapter 55.1.4.2.

[20] *R (MXL and Ors) v SSHD* [2010] EWHC 2397 (Admin) and *R (NXT and Ors) v SSHD, Children's Commissioner Intervening* [2011] EWHC 969 (Admin).

[21] The OCC is an office created by the Home Office in 2011 with the specific objective of advising the Home Office on individual immigration decisions concerning the separation of children from their parents (whether by deportation or detention) and leading on training for immigration officers on compliance with their s. 55 BCIA 2009 duty

Justice Blair noted that the mishandling of these complex cases was not an anomaly.[22]

11. Despite significant changes to policy improvements in practice were not made or sustained. In June 2018, the Home Office admitted in *AJS and AJU (a child) v SSHD* (CO/88/2018) to multiple unlawful breaches of human rights and policies in unlawfully detaining a father (AJS) for 3 months, who was separated from his 3 year old daughter (AJU), and in care. The Home Office did not even seek the advice of the OCC and more serious still ignored findings made by the Family Court and important views from the Local Authority in care proceedings that the child's best interests were for her to be cared for by her father. The Family Court directed that if AJS was not released by a certain deadline, the child could be placed for adoption. Instead of facilitating the reunion of father and child, the Home Office maintained AJS's detention, moved him to a detention centre far from the child's foster carers, cutting off contact ,and later released him on bail with conditions making it impractical for him to see his child. The judicial review proceedings were only conceded two days before trial, after a year-long battle.[23] Evidence presented in the case from BID[24] and Amnesty[25] show that as with the cases in 2010 this was not an anomaly or 'one off' case, but indicative of systemic failures to comply with published policies and the s. 55 BCIA duty in separating parents from their children including:

    11.1. failure to refer such cases for advice from the OCC and / or accept advice given;
    11.2. failure to consult with local authorities;
    11.3. prolonging family separation by maintaining the parent's detention despite there being no realistic prospect of deportation;
    11.4. failure to facilitate any or adequate contact between parent and child;
    11.5. failure at each juncture of decision-making to address and apply the policy restrictions on detention aimed at safeguarding the best interests of the child and rights under Article 8 ECHR.

[22] Per Blair J at para 138 of *R (NXT) v SSHD* [2011] EWHC 969 (Admin), : *'It is plain from the material from BID, the Children's Society, as well as the submissions of the Children's Commissioner, that such circumstances are not unique, and that the circumstances in which such detention continues has caused considerable concern'*

[23] We have annexed the Statement of Reasons settling the claim for the Committee's ease of refernce as this is a clear example of how the comprehensive policies, which on the face of them appear protective, do not work in practice.

[24] Detailed research published in 2013 by BID into family units separated by detention, found that detention decisions and reviews paid scant regard to the welfare of children when detaining or maintaining the detention of a parent, notwithstanding the acute effects for the children of separation and the requirements of policy and the s.55 duty. The full report is here http://www.biduk.org/posts/13-fractured-childhoods-the-separation-of-families-by-immigration-detention

[25] In December 2017 a report published by Amnesty International UK, entitled *A Matter of Routine: the Use of Immigration Detention in the UK* recorded similar concerns to BID above and cited case studies of the Home Office's approach to the welfare and best interests of children in the context of immigration detention. As with BID's research, the report found that the welfare and best interests of children were not being properly identified and then considered in detention decision making [p.31]. The full report is here https://www.amnesty.org.uk/resources/matter-routine-use-immigration-detention-uk-0

D. Mentally Incapacitated Detainees

12. Immigration detention cannot be used to detain someone for their own well-being.[26] Where there is a reasonable suspicion that someone may lack mental capacity "to participate" in decisions, the Home Office is, like other statutory authorities, required to arrange for a detainee to have a capacity assessment compliant with the Mental Capacity Act 2005. Yet, the AAR policies are silent on how mentally incapacitated detainees are to be protected when this cohort is perhaps the most vulnerable because they are able to access legal advice or other assistance about their treatment or the decisions to detain them. Nor are they able to seek and secure evidence from a professional to demonstrate their vulnerabilities so as to benefit from the protections of the AAR policies. This major lacuna in the detention policies and the system as a whole in respect of this cohort of detainees is stark and reflects the lack of protection overall for the mentally ill and the inhumanity which pervades the immigration detention system.

13. This was recognised recently by the Court of Appeal,[27] which found the lack of provision of advocates to assist mentally ill detainees to make representations about decision to detain, segregate and on medical treatment in detention put them at a substantial disadvantage compared to other detainees in breach of the duties under the Equality Act 2010. VC a man with severe mental illness was also found to have been unlawfully detained in breach of policy and the duty of enquiry for many months during which his mental health significantly deteriorated. In another case, [28] the Court found unlawful the Home Office failure to make inquiries into a detainee's capacity when medical records suggested that his erratic behaviour indicated a lack of capacity to make decisions about his welfare, treatment and ongoing detention. Again these cases are not anomalies. They contain the same errors that have resulted in 6 other cases in findings of a breaches of Article 3 ECHR arising for the unlawful detention of those with serious mental illness that was the subject of inquiry in Shaw 1. We continue to represent clients with similar profiles including ones where release from detention was done without any safeguarding plan to ensure their welfare and best interests are protected in the community. To date little appears to have been done to rectify the unlawful failures in the system identified in *VC* and *MDA*. There continues to be:

    13.1. failure to implement any system by which any or any adequate enquiries are made into the nature and severity of mental illness and the mental capacity of detainees in decisions relating to the detention and treatment, care and welfare, in detention;
    13.2. lack of provision of an advocate or other appropriate adult to assist mentally ill and / or incapacitated detainees;

[26] : *R (AA) v SSHD* [2010] EWHC 2265 (Admin) at [40]
[27] *VC v SSHD* [2018] EWCA Civ 57. Bhatt Murphy represented the appellant, VC.
[28] *R (MDA) v Secretary of State for the Home Department* [2017] EWHC 2132 (Admin)

13.3. failure to act fairly and reasonably to arrange suitable bail accommodation for a detainee for whom there is no longer a prospect of removal promptly or at all;

13.4. failure to comply with policies requiring multi-agency cooperation with health and social care to manage the safe release of vulnerable detainees into the community with appropriate accommodation, care and health input;

13.5. lack of arrangements for detainees to access necessary mental health assessments and treatment in detention.

E. Examples of Effective Reform

14. It is possible to operate a detention system with strict constraints to duration and conditions. This requires the system to move away from one solely governed by policy to one where the checks and balances are built into primary legislation which constrain the wide discretion to detain both in principle and in practice. This can be seen from the outcomes of campaigns and litigation to end detention of children, and pregnant women.

15. Despite compelling evidence of the abuse of detention powers in respect of both groups, the government resisted reform for many years, asserting that their ability to enforce immigration control would be significantly compromised if the approach to detention was not maintained. However we have seen no evidence that immigration enforcement is undermined by having an 'on notice' considered process for removal of families. The operational steps of the family returns process are contained in policy[29], which is notably drafted in a directive and non-discretionary way.[30] Critically, the time-limited detention and requirement for independent scrutiny[31] are now in primary legislation.[32] The process, if properly applied, gives families an opportunity to have an in-person discussion with the Home Office so they can make representations in respect of their immigration position which may affect removal (and detention), and requires the Home Office to make enquiries of the family's circumstances and obtain independent scrutiny of the decision to detain ahead of detention. Properly implemented, it should provide families who have reached the end of the line with an opportunity to put their affairs in order with some dignity and humanity.

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[29] The Family Returns Process is here: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/607683/Family-returns-process-v4.pdf; It is designed to engage with families who have been refused leave to remain in the community and enable them to take voluntary departure and thereby avoid detention for removal. It consists of three stages 'assisted return', 'required return', and if those fail 'ensured return' (enforced by way of arrest and time-limited detention). Prior to any ensured return, an Independent Family Returns Panel (IFRP) must consider individual return plans, taking full account of the welfare of the children involved

[30] See for example the instructions to caseworkers on time limits at page 27 – 28: "*Families can only be admitted to the PDA when removal directions have been set and all travel documentation is in place…If a family reaches 72 hours in the PDA and ministerial authority is not in place, Immigration Enforcement staff at the PDA will serve release paperwork, produced by the RP family returns team on the family. There is no provision to hold a family for longer than 7 days in any circumstances.*"

[31] Section 3, Immigration Act 2014.

[32] Families with children may be detained for a maximum of 72 hours, (rising to 7 days if sufficient reason can be made out and a Minister authorises that extension) at 'pre departure accommodation': s 6 Immigration Act 2014. This accommodation is currently at Tinsley House IRC.

16. Likewise in respect of pregnant women, there are now clear legislative restrictions on the detention power.[33] There is no requirement for independent scrutiny or enquiry in the same way as for families. No notice and repeated detentions of pregnant remain possible, which is a significant concern. However, the protection of a 72 hour time limit in statute has meant that significant numbers of pregnant women in detention and remaining for prolonged periods is now a thing of the past.[34]

F. Conclusion

17. Policies which should prevent unlawful detention and human rights breaches are regularly ignored, breached or interpreted and applied in such a way that dilutes their efficacy. From our experience, policy alone has not served to protect individuals at risk of unlawful deprivation of their liberty and very serious and prolonged breaches of their fundamental rights under the common law and the ECHR. Decision makers have far too wide a discretion to detain and to main detention on an indeterminate basis without any or any sufficient oversight. There is systemic failure in the application of the legal limits and safeguards in guidance, rules and policy. There is a fundamental lack of accountability for unlawful decision making even where Courts have made highly critical findings including at a systems level. No consequences have occurred for the individuals responsible at any level. There is an institutional culture operating within immigration enforcement, and the Home Office more widely, that clearly prioritises removal above respect for the rights of individuals and often at any cost. Officials clearly operate in a context where there is little if any political will to protect the rights of migrants. Indeed the threat and use of detention powers is an integral part of the hostile environment policy. In short over a sustained period the Home Office has proved itself to be institutionally incapable of ensuring that robust policies rare in place and applied by its staff. Primary legislation to introduce time limits, criteria and independent oversight to this broken system is long overdue. It must also be accompanied by measures to address the culture of disrespect that allows this disregard for the law and systemic failure to occur and continue in the first place.

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7 September 2018

[33] By section 60 (4) of the Immigration Act 2016 their detentions are time-limited again to a maximum of 72 hours (rising to 7 days if sufficient reason can be made out and a Minister authorises that extension); Bhatt Murphy and Stephanie Harrison QC acted for the test case PA v SSHD (CO/1978/2014) challenging the detention of pregnant women.

[34] See the report by Medical Justice - *Expecting Change: the case for ending the detention of pregnant women*, June 2013: http://www.medicaljustice.org.uk/about/mj-reports/2186-expecting-change-the-case-for-ending-the-immigration-detention-of-pregnant-women-11-06-13.html

Annex 1: Summary of Family Separation Policies

The key principles of the Family Separation Poilcies are as follows:

1. A child must not be separated from her parent (in a single-parent family) if the consequence of that decision is that the child is taken into care.[35]

2. Any such decision must treat the child's **best interests as a primary consideration**. The decision-maker must fully document how s/he has considered all factors.[36] The polices provide that there are 3 stages to the separation process:

3. Stage One: Identifying Family Life.[37] This requires case owners to consider *"all of the available information"*. If a genuine and subsisting family life exists, then the decision-making must move on to the second sage.

4. Stage Two: Whether separation is Lawful, Necessary and Proportionate.[38] The impact of separation **must** be considered, including on the child's emotional and identity development. Any separation should be for *"as short a time as possible"*, must consider the purpose and duration of detention.[39] Even where a child has lived with an alternative care giver for a short time, they may have significant ties with their primary caregiver and thus be impacted by separation

5. Where a local authority is involved in the care of any child, the case owner must obtain information from them about the family's circumstances relevant when considering family separation. In particular, the case owner *"**must request** OCC (Office of the Children's Champion) for advice on removal or separation"*[40] where it is intended to be permanent or the case involves a child in care.[41]

6. Where the conclusion is that separating the family would not be necessary and proportionate, the case owner *"must not continue pursue a family separation."*[42] Otherwise the case owner should proceed to the final stage.

7. Stage Three: Responsibilities, Review Points and Authorities.[43] Reviews are required at least when case owners are conducting a detention review or where

[35] Family Separation Policy (Version 4.0), p5
[36] Ibid, p5.
[37] Ibid, p8-12.
[38] Ibid pp13-20
[39] Ibid, p14..
[40] Ibid, p17
[41] Many of the policies refer to the need to refer to the Office of the Children's Champion (the 'OCC') for advice and professional input. The s55 statutory Code to provides: *There shall be a senior member of staff (the "Children's Champion") who is responsible to the Chief Executive of the UK Border Agency for promoting the duty to safeguard and promote the welfare of children throughout the UK Border Agency, for offering advice and support to UK Border Agency staff in issues related to children, and identifying and escalating areas of concern (para 2.9).* There is some confusion within the various policies as to when a referral to the OCC is optional and when it is mandatory, but it is clear that the policies intend for the OCC to play an important role in ensuring that individual decisions involving the detention of parents properly identify the best interests of the children who may be affected.
[42] Ibid p19

they have become aware of significant changes to the family's circumstances. The review must be recorded.

8. The stages of the decision making process must be recorded on the Family Separations Form ICD 5025.[44]

9. Significant changes in the family circumstances must prompt a review of the initial decision to detain[45].

[43] Ibid p21-25.
[44] Ibid pp9, 14, 19, 23-25.
[45] Ibid, p19, pp21-22

Annex 2: Statement of Reasons in AJU / AJS v SSHD

Statement of Reasons

1. In January 2017 the First Claimant (C1), an Indian national and family member of an EU national, was sentenced to 20 months imprisonment for unlawful wounding. During his sentence the Second Claimant (C2), his daughter who is an EU Citizen of Lithuanian nationality who was then 3 years old, was taken into the care of the local authority (LA).

2. C1 was detained by the Secretary of State for the Home Department (SSHD) in the purported exercise of immigration powers from the conclusion of the criminal sentence on the 21 June 2017 until the 21 September 2017.

3. C2 had regular contact with C1 in prison and the LA recommended she be given an opportunity to be reunited with him, which was the only viable alternative to C2 being placed for adoption and was, therefore, in C2's best interests and welfare. These facts were known to the Secretary of State for the Home Department (SSHD) prior to the decision to detain on 21 June 2017. In July 2017 the Family Court endorsed the LA's care plan recommending reunification and provided that if C1 had not been released by 2 October 2017, an application would be made for C2 to be placed for adoption.

4. C1 was detained by the SSHD at HMP Wormwood Scrubs from 21 June 2017 until 31 July 2017 when he was transferred to the Verne Immigration Removal Centre (IRC), 250 miles from his daughter. He was served with an 'interim' decision to deport on 31 July 2017, and immediately appealed. It was recorded that this decision had been drafted (though not served) on 20 June 2017 in an attempt to enlarge the SSHD's powers of detention. No removal directions were or could be set throughout the entirety of his detention.

5. No arrangements were made to enable C1 and C2 to maintain contact from 21 June 2017. C1 was transferred to the Verne IRC and the SSHD refused to relocate him nearer his daughter, despite repeated requests.

6. The SSHD twice opposed bail and when bail was granted in principle by the First Tier Tribunal (FTT) on the 21 August 2017 the SSHD failed to provide a section 4 bail address. C1 was not released until 21 September 2017, days before the deadline of 2 October 2017 for C2's proposed adoption. Upon his release SSHD imposed a residence condition, an electronic monitoring and curfew condition (7 pm–7 am), outwith the First-tier Tribunal order and which rendered the LA's care plan towards reunification impracticable.

7. The present claim for judicial review was issued on 20 December 2017. On 23 January 2018 electronic monitoring was removed. Permission was granted by Mr Justice Lewis on 23 February 2018 who directed that issues of liability and quantum should be heard at a full hearing. He also made an Order for anonymity.

Reasons for Order

8. The SSHD accepts that;
    a. C1 was unlawfully detained for the entirety of the detention in breach of the SSHD's published policy relating to detention and Family Separation, s55 of the Borders, Citizenship and Immigration Act 2009 and the Claimants' Article 8 ECHR family life rights.
    b. Electronic monitoring was unlawful and breached the Claimants' Article 8 ECHR rights.

9. The SSHD has agreed to pay the Claimants compensatory damages in the sum set out in the attached schedule in full and final settlement of the claim for damages for false imprisonment for C1 and just satisfaction for breaches of Article 8 ECHR for both Claimants.

10. The consent order and proposed settlement for C2 to be subject to the Court's approval.

11. The SSHD has agreed to the pay the Claimants' reasonable costs of the claim.