

## PRESS RELEASE

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### HOME OFFICE ADMITS UNLAWFUL DETENTION OF MENTALLY ILL MAN

The Home Office has yet again had to concede a legal challenge to the lawfulness of prolonged immigration detention of a mentally ill and highly vulnerable man by agreeing to regularise his status and pay £100,000 in compensation in a settlement agreed by the High Court today in a test case.

AKE, an Iranian national who cannot be named for legal reasons, suffers from bipolar affective disorder with psychotic symptoms and Post-Traumatic Stress Disorder. He presented as highly vulnerable but received no treatment for his serious mental illness despite being detained for two lengthy periods between 2015 to 2018. Instead, the Home Office used segregation as a means to manage his disturbed behaviour. AKE's mental health deteriorated in immigration detention to the point of his losing mental capacity. In breach of the Home Office's duties under the Equality Act 2010, he was offered no assistance to seek help for his medical condition or to secure his release from immigration detention until a volunteer from an immigration detainee support group visited. When AKE was finally released from immigration detention, he was not provided with safe accommodation or support for his mental health. His mental ill-health spiralled and he was arrested by police under emergency protection powers and sectioned in hospital under the Mental Health Act 1983. On discharge from hospital, the Home Office imposed bail conditions on AKE even though they had no lawful power to do so and he continued to lack mental capacity to understand and comply with them. When AKE predictably failed to comply with conditions of bail, the Home Office threatened to re-detain him despite knowing about the severity of his mental illness and the fact that he AKE could not be lawfully detained.

The High Court's approval today of the Home Office's settlement brings to an end years of failure to safeguard AKE's fundamental rights. However, the settlement of this claim means that important legal issues relating to whether conditional bail powers can be exercised when a person cannot be lawfully detained or where he lacks mental capacity to comply with the conditions will not be resolved despite the Court recognising an urgent need to do so.

AKE's case is yet another case in which the Home Office has had to admit to the unlawful use of immigration detention powers on a mentally ill detainee. In February 2018 the Court of Appeal<sup>1</sup> declared that the Home Office was in breach of its duties under the Equality Act

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<sup>1</sup> R (VC) v Secretary of State for the Home Department [2018] EWCA Civ 57.

2010 in respect of mentally ill or incapacitated detainees by failing to take any measures to identify and provide assistance to such people in seeking to secure release or challenge the use of segregation. In May of this year, the Court of Appeal found in two further cases<sup>2</sup> that the Home Office still had not taken the steps necessary to remedy the unlawful failure to protect the most vulnerable detainees.

A government-commissioned report produced by Stephen Shaw in July 2018 found that thousands of vulnerable people are being locked in “*unacceptable conditions*”, often for “*deeply troubling*” lengths of time, warning that detention itself could seriously damage the mental health of immigration detainees. This is despite commitments made by the then Home Secretary Theresa May and subsequent Immigration Ministers to improve the situation. The report warned that the Adults at Risk policy, designed to ensure those with mental illness were not detained, had made “*no difference*” to the number of vulnerable detainees. In some cases numbers were increasing.

In January of this year, the Joint Committee on Human Rights published a highly critical report on the Home Office’s indiscriminate use of immigration detention powers and the absence of mechanisms for ensuring that detainees are not subject to ill-treatment or abuse in immigration detention centres. The monitoring bodies, Her Majesty’s Inspectorate of Prisons and the Independent Monitoring Board told the JCHR of their serious concern about the open-ended nature of detention being a key cause of distress and anxiety. The JCHR called for a time limit of 28 days to be imposed on immigration detention and for judicial oversight over any extension of that time limit.

The UK is the only country in Europe that does not impose time limits on immigration detention. Without such a time limit, there is little incentive for Home Office officials to progress cases quickly, as is demonstrated in AKE’s case, so that individuals can have their status resolved swiftly either by being removed or their status regularised. The JCHR report expressed concerns that without clear limits on the detention powers and effective safeguards to secure prompt release, the detention power is at serious risk of abuse.

The Bar Council has joined over 50 organisations in identifying the abuse of immigration detention powers as a failure in the rule of law and have called for a 28 day time limit on immigration detention.

**Hamish Arnott of Bhatt Murphy said:**

*“It was only by luck that AKE obtained legal assistance toward the end of nearly three years of immigration detention. Without the intervention of a charity, he would have languished in detention for an even longer period, unable to access the help he desperately needed. AKE is*

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<sup>2</sup> R (ASK) v Secretary of State for the Home Department, R (MDA) v Secretary of State for the Home Department [2019] EWCA Civ 1239.

## Bhatt Murphy Solicitors

*yet another example of the need to impose clear statutory limits and criteria on this draconian power."*

Hamish Arnott of Bhatt Murphy Solicitors together with Stephanie Harrison Q.C. and Shu Shin Luh of Garden Court Chambers were instructed by the Official Solicitor for AKE

Anthony Vaughan of Garden Court Chambers, together with Laura Dubinsky (Doughty Street) and Eleanor Mitchell (Matrix) acted for Bail for Immigration Detainees who intervened in this claim.

### **NOTES TO EDITORS**

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