BHATT MURPHY SOLICITORS
PRESS RELEASE
19 December 2014
(FOR IMMEDIATE RELEASE)
IMMIGRATION DETAINEES IN PRISONS
BREACH OF ARTICLE 5 TO BE CONSIDERED BY COURT OF APPEAL

Today the High Court handed down a judgment about the detention of immigration detainees in prisons rather than immigration removal centres (R on the application of Idira v Secretary of State for the Home Department [2014] EWHC 4299). The Claimant challenged the legality of the policy of routinely holding immigration detainees in prisons and "Operation 1000" effective between November 2012 to Spring 2014. The effect of the policy was to hold immigration detainees in prisons without individual risk assessment. Mr Justice Jay found the approach of the Secretary of State was a "*systemic*" public law error [56] & [84].

He found that the policy requiring detention in prisons was a blanket policy which permitted no exceptions [41]. He found that the Secretary of State's reason for the changing the policy was "*nothing to do with assessment of risk or the interests of immigration detainees, but everything to do with administrative convenience*" [26]. He declined to make a declaration that the policy was unlawful in the circumstances of the Claimant's case as the Claimant had been released. He noted that the reason for holding the Claimant in prison conditions after 3 July 2013 was "*fundamentally flawed*" [56].

In his judgment Mr Justice Jay commented that holding immigration detainees in prisons required:
"*sound and proper justification within the context of Article 5(1)(f), and the policy matrix which the Defendant has devised and implemented. A policy which either systematically or invariably...has a consequence of holding those in the Claimant's position in prison, rather than in an IRC, cannot be properly justified. Moreover, the implementation of such a policy severs the requisite link which must exist in cases such as these to justify detention under Article 5.....*[75]

The judge concluded [75] that if the matter were free from authority he would have held that the "*Defendant's incarceration of the Claimant [in prison rather than an IRC].... was in breach of his rights under Article 5(1)(f) of the ECHR; and a sufficiently serious breach to sound in damages*." However, the matter was not free from authority. The judge (with "*considerable reluctance*") considered himself bound by the Court of Appeal's decision in Krasniqi v Secretary of State for the Home Department [2011] EWCA Civ 1549, to dismiss the claim. Given the conclusions he would have reached if not so bound, Mr Justice Jay granted permission to appeal to the Court of Appeal in order that the Article 5 issue can be further considered.

The Claimant is represented by Jane Ryan of Bhatt Murphy and Graham Denholm of Landmark Chambers.

- For the High Court judgment dated 19 December 2014 please look here
- Please email requests for further information to j.ryan@bhattmurphy.co.uk

www.bhattmurphy.co.uk