The Queen on the Application of A v The Secretary of State for the Home Department

CO/4086/2009

High Court of Justice Queen's Bench Division the Administrative Court

9 February 2010

[2010] EWHC 808 (Admin)

2010 WL 308668

Before: Sir Michael Harrison (Sitting as a Deputy High Court Judge)

Tuesday, 9th February 2010

Representation

Ronan Toal (instructed by Bhatt Murphy Solicitors) appeared on behalf of the Claimant.
Steven Kovats (instructed by the Treasury Solicitor) appeared on behalf of the Defendant.

Judgment

The Deputy High Court Judge:

Introduction

1 This claim is for judicial review of the claimant's continued detention under paragraph 2 of Schedule 3 of the Immigration Act 1971 . The detention began on 7th August 2007 and continues to date. The claimant has now been detained for some 30 months.

2 The present position is that on 26th August 2008 the European Court of Human Rights indicated under Rule 39 of the Court Rules that the claimant should not be deported to Somalia pending that court's decision in another case. The claimant also has an outstanding in-country appeal against the defendant's refusal to revoke a deportation order made against him. The defendant is unable to specify a timetable for the resolution of any of those impediments to his removal.

3 In those circumstances, the claimant submits, pursuant to the Hardial Singh principles, that he has been detained for a longer period than is reasonable in all the circumstances to effect his removal, that in any event, the defendant will not be able to effect deportation within a reasonable period and that the defendant has not acted with reasonable diligence and expedition to effect his removal.

Factual background

4 The claimant is a 34-year-old national of Somalia. In 1982 he left Somalia with his mother for Abu Dhabi. In 1989, at the age of 14, he came to the United Kingdom with his mother and two siblings. They claimed asylum on arrival which was refused in 1991, but they were granted exceptional leave to remain. In 1998 the claimant was granted indefinite leave to remain.

5 However, between 1991 and 2006 the claimant committed a large number of offences. Over that period he was convicted on 25 occasions of 37 offences. About half of them were non-domestic burglaries. There were other offences of dishonesty, two offences of possessing controlled drugs, three failures to surrender to bail and three failures to surrender to custody. Between 1995 and 2003 he received custodial sentences of various lengths, the longest being 18 months' imprisonment. It seems

clear that the offences were committed to fund his drug addiction. In 2003 he was convicted of possession of heroin with intent to supply and he was sentenced to 5 years' imprisonment. As a result of that, the defendant decided in April 2005 to make a deportation order against him. He appealed against that decision and his appeal was dismissed in August 2005. In August 2006 he was sentenced to 2 years' imprisonment for a non-domestic burglary and for failing to surrender to custody. On 7th August 2007 the claimant completed his sentence. From that date onwards, he has been detained under immigration powers. He has therefore been in immigration detention now for about 30 months.

6 In October 2007 a deportation order was served on the claimant. In March 2008 removal directions to Somalia were deferred. On 13th June 2008 the claimant made an application to the European Court of Human Rights ("the ECHR") under Article 34 of the European Convention on Human Rights , and on 26th August 2008 the ECHR indicated, under Rule 39 of the Court Rules, that the claimant should not be deported to Somalia pending the court's decision in M (2) v United Kingdom . As a result of that, removal directions to Mogadishu, which had been set for 29th August 2008, were cancelled. Subsequently, on 21st October 2008, there was a letter from the ECHR which stated as follows:

> "The Asylum & Immigration Tribunal recently published the country guideline determination of HH & others (Mogadishu armed conflict: risk) Somalia CG [2008] UKAIT 00022 , in which it considered whether there was a real risk that a person returned to Mogadishu would be subjected to treatment that would violate Article 3 of the Convention. An application for permission to appeal against the Tribunal's decision is currently pending before the Court of Appeal. The Court has therefore decided to wait for proceedings in the domestic courts to finish before it considers applications by persons facing expulsion to Somalia.
>
> The Court decided on 7 October 2008 to adjourn all applications that concern expulsions to Somalia until the question of risk of return has been considered fully by the domestic courts."

7 Thereafter, following the filing of this claim for judicial review in April 2009, and the grant of permission by the court in June 2009, the defendant indicated his intention of removing the claimant to Somaliland rather than to Mogadishu. On 7th July 2009 he stated that a referral had been made to the Somaliland authorities for verification that the claimant would be admitted if he were to be removed there. In fact, it turned out that no referral had been made on that date, but a referral was made on 16th September 2009. The defendant informed the claimant's solicitors that, under the Memorandum of Understanding with the Somaliland authorities, a reply would be sent in 21 days but that in some cases the inquiries may take longer, particularly where the individual has not supplied the full details. Although the claimant in this case maintains he is from Mogadishu, it would appear that the defendant has at all times held the necessary evidence relating to him and his family to show that he is from Somaliland. Despite inquiries, no reply has yet been received from the Somaliland authorities, and the defendant is not able to indicate when a reply will be received.

8 Subsequently, on 1st December 2009, the claimant's solicitors made further representations to the defendant that the claimant's removal to any part of Somalia, including Somaliland, would breach his human rights. Those representations included a letter from Hillingdon Hospital that the claimant is a Type 1 diabetic on twice-daily insulin without which his condition is 100 per cent fatal, and a report from Markus Hoehne, an expert on Somalia, to the effect that, although insulin is available in Somaliland, it is very expensive which makes continuous therapy mostly impossible. The further representations also stated that, as a westernised Somali who had been in the United Kingdom for 20 years, the claimant would be at risk of harassment and violence.

9 On 6th January 2010 the defendant treated the further representations as an application to revoke the deportation order and refused the application. There was no certification of the claim and, as it included an Article 8 claim, the refusal gave rise to an in-country appeal. The claimant subsequently lodged an appeal with the Asylum & Immigration Tribunal which is listed to be heard on 13th April 2010.

The law

10 Before turning to the parties' submissions, I should first deal with the relevant legal principles and the relevant law.

11 The relevant principles were first stated by Woolf J (as he then was) in *R v Governor of Durham Prison, ex parte Hardial Singh [1984] 1 WLR 704* . They were helpfully distilled into four principles by Dyson LJ in *R (I) v Secretary of State for the Home Department [2002] EWCA Civ 888* at paragraph 46 as follows:

> "i. The Secretary of State must intend to deport the person and can only use the power to detain for that purpose;
>
> ii. The deportee may only be detained for a period that is reasonable in all the circumstances;
>
> iii. If, before the expiry of the reasonable period, it becomes apparent that the Secretary of State will not be able to effect deportation within that reasonable period, he should not seek to exercise the power of detention;
>
> iv. The Secretary of State should act with the reasonable diligence and expedition to effect removal."

12 The only other relevant legal principle to which I ought to refer is that stated by Dyson LJ in *R (M) v Secretary of State for the Home Department [2008] EWCA Civ 307* at paragraph 14, when he said:

> "…the combination of a risk of absconding and a risk of re-offending may justify allowing the Secretary of State, in the words of Simon Brown LJ in R (I) at para 29, 'a substantially longer period of time within which to arrange the detainee's removal abroad'. The greater the risks, the longer the period for which detention may be reasonable. But there must come a time when, whatever the magnitude of the risks, the period of detention can no longer be said to be reasonable."

13 I was referred to four cases where the claimants had all been in the United Kingdom for a substantial period of time and had been detained pending deportation to Somalia. They all had a history of drug-relating offending, in each case there was a significant risk of absconding and re-offending and all the claimants were either pursuing appeals through the Asylum & Immigration Tribunal and/or the Court of Appeal or had Rule 39 indications from the ECHR or both. They involved periods of detention of 30 months, 3 years, 22 months and 14 months respectively. In the first three cases, the detention was found to be unlawful. In the fourth case, it was held that it was not unlawful. It is, however, important to point out that each case must be decided on its own individual facts which will vary according, not only to the period of detention involved, but also to all the other relevant circumstances of the case.

14 The case of R (Abdi) v Secretary of State for the Home Department [2009] EWHC (Admin) 1324 was a decision of Davis J on 22nd May 2009. The claimant's convictions included indecent assault, robbery, burglary and assault. There was a high risk of re-offending and a high risk of absconding. For almost the entire period of the claimant's detention of 30 months, there had been extant appeals or legal proceedings instituted by him relating to whether or not he could lawfully be removed to Somalia. Davis J rejected the submission made by Mr Tam on behalf of the Secretary of State

that any period of detention where the individual is pursuing an asylum claim or a judicial remedy or appeal to prevent removal should be excluded as a relevant consideration. He stated at paragraph 36:

> "Accordingly, I do not think that there is any such general and inflexible rule for which Mr Tam argues. I can certainly accept that the fact that a period of detention occurs whilst the applicant is pursuing an appeal or comparable judicial process will always be a highly relevant factor: commonly, no doubt, in cases where there is also a risk of absconding and/or of reoffending, it may be a decisive one where the only operative bar to removal is pursuit of the very appeal process. Thus it is most certainly one of the matters, and a very important one, to be taken into account in deciding on the reasonableness of detention. But that is not the same as there being a rule of the kind Mr Tam advances."

15 Having referred to the outstanding legal proceedings, Davis J stated at paragraph 76:

> "Given all these circumstances, I think that the time has come in this particular case to say that enough is enough here. The relevant legal proceedings are likely to go on for a long time, so far as concerns Mr Abdi, potentially even running into years. It is time now, in my view, that Mr Abdi be released from detention and I so order. Rejecting, as I do, Mr Tam's argument that the court should ignore any period of time, whether in the past or hereafter to be spent in detention, whilst Mr Abdi is pursuing his appeal and any other related litigation, I do not think that it can now be said that Mr Abdi will be or is likely to be removed within a reasonable time; and I think that by now a reasonable period of time for detaining him has elapsed."

16 The case of *R (Ahmed Daq) v Secretary of State for the Home Department [2009] EWHC 1655 (Admin)* was a decision of Mr John Howell QC, sitting as a Deputy High Court Judge, on 25th June 2009. The claimant in that case had been convicted of 18 offences between 1998 and 2004, including robbery, assault occasioning actual bodily harm and a number of domestic burglaries. His longest sentence was one of 3 years' imprisonment. There was a risk of re-offending and absconding. He had been in immigration detention for 3 years. Mr Howell QC referred to the various outstanding and potential legal proceedings preventing removal to Somalia and concluded that it may be another year before the claimant could be removed so that he could be facing a total of over 4 years' detention before removal. His continued detention was held to be unlawful.

17 The case of *R (MM Somalia) v Secretary of State for the Home Department [2009] EWHC 2353 (Admin)* was a decision of Charles J on 22nd July 2009. The claimant in that case had an extensive criminal record involving some 19 convictions for over 30 offences, drugs being a common causative feature of the offences. There was a high risk of absconding and re-offending. The claimant had been in immigration detention for about 22 months. Charles J considered the existing litigation concerning removals to Somalia as well as the claimant's own proceedings before the AIT and concluded with a "best guesstimate" of about 18 months before removal would be possible. He decided that enough was enough and/or that the elastic had broken and that the claimant should be released.

18 Finally the case of *R (Egal) v Secretary of State for the Home Department [2009] EWHC 2939 (Admin)* was a decision of Neil Garnham QC, sitting as a Deputy High Court Judge, on 17th November 2009. The claimant had a caution for burglary, and a subsequent conviction for burglary, followed by a conviction for robbery which led to a decision to deport him, against which he successfully appealed, the AIT warning him that things may change if his pattern of offending were to continue. He was

subsequently convicted on two occasions, once for assaulting a police constable and once for causing grievous bodily harm, for which he was given, respectively, 8 months' and 10 months' imprisonment. He had subsequently been in immigration detention for some 13½ months. The Deputy Judge placed some reliance on a witness statement that a process "now" existed by which returns could be effected to Somalia. He then considered whether the period whilst the claimant's appeals were being pursued should be disregarded for assessing the reasonableness of the continued detention. He concluded in paragraph 56:

> "It is in that context, however, that the observations of Davis J at paragraph 36 of his Judgment in Abdi are of particular significance. As I have held above, this is a case where there is a significant risk of absconding and of re-offending. In such a case, the fact that it is the pursuit of an appeal, whether domestically or to Strasbourg, which prevents removal is likely to lead, in my judgment, to a conclusion that the period of detention is not unreasonable. I say 'is likely' to do so, because, in my view, there can be no hard and fast rule to that effect; these are fact-sensitive judgments. To be weighed in the balance would be the nature and magnitude of the risk of re-offending and of the claimant absconding, the timeliness of the claimant's pursuit of his appeal rights, the diligence and expedition of the Secretary of State's pursuit of deportation and the likely period of delay before the appeals process has concluded."

19 The Deputy Judge stated that it was impossible to say how long the claimant's appeals would take, but the fact that they may take some time did not mean that the detention was unlawful. I was told that an appeal to the Court of Appeal against that decision has been adjourned part heard.

Submissions

20 I come now to the parties' submissions in this case. Mr Toal, who appeared for the claimant, made it clear that, although not conceding the point, he was not asking the court to make a finding on the legality of detention thus far; he was asking the court to conclude that it would be unlawful to continue to detain the claimant from now onwards.

21 He referred to the many issues which remain to be finally resolved before the claimant could be returned to Somalia, including the test for determining entitlement to humanitarian protection under Article 15 of the Qualification Directive and the issue of determining the risk of travel on return. Reliance was placed on the Rule 39 indication by the ECHR which makes it clear that the Court will not deal with applications that concern removal to Somalia, not just Mogadishu, until the issue of the risk on return has been considered fully by the domestic courts. I was told that there are four Somali cases to be considered by the Court of Appeal in March 2010, including the case of HH v Secretary of State for the Home Department , and it was submitted that at least one of the issues involved in those cases was likely to go to the Supreme Court. It was also submitted that some of those cases were likely to be remitted to the AIT, and that there was likely to be a need for fresh country guidance in the light of the deterioration in the situation in Somalia since the country guidance case of AM v Secretary of State for the Home Department in January 2009.

22 The point was made by Mr Toal that the referral in this case to Somaliland had been made 4½ months ago, but there was still no reply and no explanation why there was no reply. There was also the claimant's outstanding appeal to the AIT, which in itself could involve an appeal to the Court of Appeal. Mr Toal referred to the defendant's estimate, contained in the latest detention review dated 4th December 2009 that the claimant's ECHR application could be a barrier to removal for a year or more. He submitted that, even if that were right, it would involve a total detention period of 3½ years. However, he submitted that that was a conservative estimate and that the legal bars to removal

were certain to last more than 18 months and could last for 2 years or more.

23 My attention was drawn to the views expressed by some officers in the defendant's latest detention review. The officer compiling the report stated on 4th December 2009 that there was a case for release being considered appropriate, but, on balance, she thought that continued detention was appropriate to reduce the risk of public harm. On 6th January 2010 a Senior Executive Officer recommended a referral for rigorous contact management, which I was told meant release subject to stringent conditions. On 7th January 2010 the Assistant Director agreed that a referral for release under rigorous contact should be made. I was informed of the final decision on the day of the hearing, which was a decision of the Strategic Director on 29th January 2010 that the claimant should not be released.

24 Mr Kovats, who appeared for the defendant, acknowledged in his skeleton argument that the court would be concerned by this case. He acknowledged the existence of the obstacles to the claimant's removal arising from the four cases to be considered in the Court of Appeal in March 2010, the claimant's own appeal to the AIT and the claimant's Rule 39 indication from the ECHR . Mr Kovats agreed that the judgment of the Court on Appeal in March was by no means certain to be the end of the matter and that there may be an appeal to the Supreme Court. He also accepted that there may be further proceedings in the AIT relating to factual matters and further country guidance. Finally, he accepted that the ECHR may wait for those matters to be decided by the domestic courts before deciding the claimant's application.

25 So far as the Rule 39 indication by the ECHR is concerned, a letter from the Foreign and Commonwealth Office to the ECHR dated 29th January 2010 was produced at the hearing, seeking amendment of the Rule 39 indication in the claimant's case on the ground that he originates from Somaliland in respect of which it was understood removals were considered on a case-by-case basis. Mr Kovats sought to rely on that letter whilst Mr Toal described it as extraordinary to ask the court to decide the matter at this late stage on the basis of a letter written a few days ago. He submitted that the court was being asked to speculate on a groundless basis. I should also mention that Mr Kovats, in his skeleton argument, accepted that the question whether the Rule 39 request would preclude a return to Somaliland, as opposed to Mogadishu, might itself become the subject of litigation.

26 Mr Kovats relied on paragraph 36 of Davis J's judgment in R (Abdi) v Secretary of State for the Home Department relating to the fact that the detention has occurred whilst the claimant has been pursuing legal remedies, something which he described as not a trump card, but a very important consideration.

27 Finally, Mr Kovats relied on the latest detention review dated 4th December 2009 as showing a careful and anxious consideration of the case by the defendant. He submitted that it demonstrated that there was a high risk of absconding and a high risk of re-offending.

Conclusion

28 I accept that last point. The claimant has a bad criminal record and also a history of failing to surrender to bail or custody. The inevitable conclusion is that there is a significant risk of re-offending and a significant risk of absconding. Another important consideration is that just over half of the period of the claimant's immigration detention has occurred whilst he was pursuing a legal remedy, namely an application to the ECHR made in June 2008 and his application to revoke the deportation order on human rights grounds made much more recently in December 2009. All of those matters argue in favour of a longer period of detention being reasonable than would otherwise be the case. However, as has been stated on previous occasions, there must come a time when, despite those strong considerations, the period of detention can no longer be said to be reasonable. I have to consider whether that is so in this case.

29 The existing length of detention of 30 months is, by any yardstick, a very long

period of detention. It is a finely balanced argument whether that period of detention, in itself, can be said to be reasonable in the light of the considerations I have just mentioned. However, the matter does not end there because there are a myriad of legal complications to be overcome before it would be possible to remove the claimant.

30 As things stand at the moment, the claimant's application to the ECHR will not be determined until the question of the risk of return to Somalia has been determined by the domestic courts. I cannot place any weight on the very recent letter from the Foreign and Commonwealth Office to the ECHR , because the response to that letter is pure speculation. In any event, as I have mentioned, it is accepted on behalf of the defendant that the question whether the Rule 39 request would preclude a return to Somaliland, as opposed to Mogadishu, might itself become the subject of litigation.

31 It is clear that there are a number of issues that have to be determined by the domestic courts before the claimant's ECHR application can be determined. The process will start with the four cases to be heard by the Court of Appeal in March, but, as is accepted by the defendant, that is unlikely to be the end of it. Not only might there be an appeal to the Supreme Court arising from the Court of Appeal's decision, but the Court of Appeal's decision itself is likely to result in one or more of the cases being referred back to the AIT for a further decision, including, quite possibly, further country guidance, having regard to the deterioration in the situation in Somalia since the last country guidance determination by the AIT.

32 I would accept that the claimant's appeal to the AIT is likely to be determined before his ECHR application, although it must be borne in mind that there could be an appeal arising from the AIT's determination. Nevertheless, the defendant's assessment in the latest detention review dated 4th December 2009, which was commended to me by Mr Kovats as a careful and anxious consideration of the case, was that the claimant's ECHR application could be an outstanding barrier for a year or more. That, by itself, would mean that the claimant would be in detention for at least 3½ years. I tend to agree with Mr Toal that the assessment of a year is too conservative. In my view, it is much more likely that the legal impediments to the removal of the claimant would last for at least a further 18 months, and possibly for 2 years. That would mean that the claimant would be facing detention for a total of 4–4½ years before he may be removed. In my view, that is simply too long, despite the magnitude of the risks involved and the claimant's initiation of legal proceedings.

33 Having regard to the length of time the claimant has already been in detention, coupled with the period during which it is reasonably foreseeable that he will continue to remain in detention before his removal can be effected, it is, in my judgement, clear that the defendant is not going to be able to deport him within a reasonable time and that his detention has therefore now become unlawful.

34 The defendant's officers, who were recorded in the latest detention centre as recommending release under rigorous contact management, were, in my judgment, correct. I will hear counsel as to the appropriate conditions for the claimant's release, but I have in mind reporting twice weekly to a police station or immigration centre to be identified by the defendant, a condition of residence at an address to be agreed by the defendant, and electronic tagging.

35 MR KOVATS: My Lord, I think the parties have agreed. Can I hand up—

36 MR TOAL: My Lord, may I just have a word with my learned friend? **(Pause)** .

37 MR KOVATS: My Lord, I am told this is agreed, save for number 5. **(Handed)** .

38 THE DEPUTY HIGH COURT JUDGE: Right. Thank you very much. Yes?

39 MR KOVATS: My Lord, in my submission there can be no sensible objection to number 5.

40 THE DEPUTY HIGH COURT JUDGE: What do you say about number 5?

41 MR TOAL: My Lord, I would just say it is not really an appropriate component of an order for release in these circumstances. We are not objecting to it because the

claimant wants to be free to commit further offences; we just say that the sanction for committing further offences is not appropriately to be found in conditions of this nature, but otherwise we do agree to the other conditions that are suggested by the Secretary of State.

42 THE DEPUTY HIGH COURT JUDGE: Well, if he commits a further offence then he is likely to be brought before a court, is he not?

43 MR KOVATS: My Lord, he will be brought before the court if he commits any more offences, that is true, but we say that number 5 has a two-fold purpose: one, it impresses upon the claimant the importance of not committing further offences and, two, it makes it quite clear that, whatever happened in the criminal courts, whether he was granted bail or not, it would itself be a ground for putting him back in immigration detention.

44 THE DEPUTY HIGH COURT JUDGE: I see. What is the harm in number 5? I think I can understand, in a way, the point that you are making, but what harm is there in that? If he commits an offence, he will then have acted contrary to his reporting conditions and that will have immigration detention consequences, will it not?

45 MR TOAL: Yes, my Lord. It is the objection of principle that I indicated in the first place, but there is also the possibility that, even for most minor imaginable offence — were he to have committed, or been thought to have committed, a very minor, trivial offence, he would then be liable to being re-detained.

46 THE DEPUTY HIGH COURT JUDGE: That may not be a bad idea. He has an appalling record. For him to be aware that the slightest thing goes wrong and he is in trouble is not a bad deterrent to have behind him, is it?

47 MR TOAL: I would accept that, but in practice a very minor offence — there is none that springs immediately to mind, but he could find himself facing—

48 THE DEPUTY HIGH COURT JUDGE: How minor is minor, you will find yourself asking. I think that can stay in. I think it might serve a purpose.

49 Then I will order that he be released subject to those conditions, five conditions, which have been agreed between the parties, which I order should be imposed. Thank you very much. There is no need for me to initial this or anything like that?

50 MR TOAL: I do not think there is.

51 THE DEPUTY HIGH COURT JUDGE: Is there any need for me to initial this or not?

52 MR KOVATS: I do not think so, my Lord, no.

53 THE DEPUTY HIGH COURT JUDGE: Fine, it can go back with the court papers.

54 MR TOAL: My Lord, may I just raise a couple of matters. One is a factual matter going back to the judgment that your Lordship has just given. My instructing solicitor found, after the hearing of this claim, a notice of hearing in respect of the immigration appeal and did send that, I think it was the day after the hearing, to the court and to the defendant. The position is that the appeal has been listed for hearing on 13th April 2010.

55 THE DEPUTY HIGH COURT JUDGE: I see. Thank you very much. Well, I will make the relevant alteration in the transcript.

56 MR TOAL: My Lord.

57 THE DEPUTY HIGH COURT JUDGE: Yes.

58 MR TOAL: In addition, may I ask, firstly, for an order for costs.

59 THE DEPUTY HIGH COURT JUDGE: Can you resist that, Mr Kovats?

60 MR KOVATS: I do not resist that, my Lord, no.

61 THE DEPUTY HIGH COURT JUDGE: I will order that the defendant pays the claimant's costs.

62 MR KOVATS: To be assessed.

63 THE DEPUTY HIGH COURT JUDGE: To be assessed if not agreed.

64 MR TOAL: And also for detailed assessment under the Community Legal Services funding certificate.

65 THE DEPUTY HIGH COURT JUDGE: Yes, you shall have that.

66 MR TOAL: Thank you, my Lord.

67 THE DEPUTY HIGH COURT JUDGE: Thank you.

68 MR KOVATS: My Lord, can I just mention one matter. My learned friend knows about this already. We do need 72 hours just to make sure that his property is suitable for electronic tagging. That is standard procedure.

69 THE DEPUTY HIGH COURT JUDGE: Yes, does that have to be reflected in the order or not?

70 MR KOVATS: We do not believe it does.

71 MR TOAL: My Lord, could we ask that there should be an order that he should be released by the end of 3 days from now, so that would be by the end of Friday?

72 THE DEPUTY HIGH COURT JUDGE: I need those conditions back. Was the first condition not that he should — that was left in the hands of the defendant, was it not, to specify when he should report?

73 MR KOVATS: Yes, to the immigration officer at a time and place, yes.

74 THE DEPUTY HIGH COURT JUDGE: Well, if you are in a position now to tell me when 72 hours will be from, I see no objection to that.

75 MR KOVATS: My Lord, the point is that I have no reason to believe that the property will be unsuitable, but let us just assume for the moment that it is. He would then have to go to another property, which would be a property provided by the National Asylum Seekers Service, and that may take some time to arrange.

76 THE DEPUTY HIGH COURT JUDGE: Well, I did a case of this kind last week and it ended up with me specifying these 72 hours. If there is something that crops up then I am sure the matter can be dealt with as a matter of common sense then.

77 MR KOVATS: My Lord, I am content with that.

78 THE DEPUTY HIGH COURT JUDGE: So by 4.00 pm on — where are we now?

79 MR KOVATS: Friday, so it would be the 12th.

80 THE DEPUTY HIGH COURT JUDGE: By 4.00 pm on 12th February.

81 MR KOVATS: My Lord, I am content with that, thank you.

82 MR TOAL: My Lord, yes.

83 THE DEPUTY HIGH COURT JUDGE: Thank you both for your help in the case.