

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT
BEFORE THE HONOURABLE MR JUSTICE OUSELEY

CO/5386/2016, CO/5262/2016, CO/5630/2016
CO/5532/2016, CO/5534/2016, CO/5529/2016
CO/5533/2016, CO/5535/2016

BETWEEN

THE QUEEN

On the application of

(1) MEDICAL JUSTICE

(2) JXL

(3) SN

(4) HT

(5) MO

(6) OO

(7) MJ

(8) PO



Claimants

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Defendant

ORDER

UPON the grant of interim relief pending conclusion of these proceedings by Ouseley J, ordering with effect from 7 December 2016 that references to 'torture' in Detention Services Order (DSO) 09/2016 (titled "Detention Centre Rule 35"), "Immigration Act 2016: Guidance on adults at risk in immigration detention" and "Adults at risk in immigration detention" (EIG 55b) shall not bear the meaning in Article 1 UNCAT but shall instead bear the definition identified in *E and O v Secretary of State for the Home Department* [2013] EWHC 1236 (Admin) at paragraph 82.

AND UPON the Defendant undertaking on 22 December 2016 not to reintroduce DSO 9/2016 in its original form unless a) the Court ruled that the SSHD could use the UNCAT definition of “torture” in the AARSG and EIG 55b, and b) an amendment to R35 DCR, approved by Parliament, had come into force, defining “torture” as in the AARSG.

IT IS DECLARED THAT:

1. The statutory guidance on detention of vulnerable persons issued by the Secretary of State for the Home Department on the 12 September 2016 pursuant to section 59 of the Immigration Act 2016, the version of DSO 09/2016 relating to the Rule 35 process in force until 5 December 2016, and the version of Chapter 55b of the Enforcement Instructions and Guidance issued on the 15 September 2016 in force until 5 December 2016 were unlawful in limiting the definition of torture to Article 1 of the UN Convention Against Torture (UNCAT) for the reasons set out in the judgment.
2. Given the declaration above, it is not unlawful, pending consideration of what action should be taken, for the Secretary of State for the Home Department to apply the caseworker guidance “Adults at risk in immigration detention Version v2.0”, promulgated on 6 December 2016, which applies the definition of torture in paragraph 82 of the judgment in *EO and Others v SSHD* [2013] EWHC 1236 (Admin), even though that definition is wider, and therefore inconsistent with, the definition of torture in the Statutory Guidance. The Secretary of State shall take steps to review and reissue the Statutory Guidance within a reasonable period of time.
3. JXL was in consequence unlawfully detained in breach of the common law tort of false imprisonment and Article 5 ECHR between 12 September 2016 and 19 October 2016.
4. SN was in consequence unlawfully detained in breach of the common law tort of false imprisonment and Article 5 ECHR between 23 September 2016 and 8 November 2016.
5. HT was in consequence unlawfully detained in breach of the common law tort of false imprisonment and Article 5 ECHR between 16 September and 10 October 2016.
6. MO was in consequence unlawfully detained in breach of the common law tort of false imprisonment and Article 5 ECHR between 7 October and 19 October 2016.
7. OO was in consequence unlawfully detained in breach of the common law tort of false imprisonment and Article 5 ECHR between 12 September and 14 October 2016.

8. MJ was in consequence unlawfully detained in breach of the common law tort of false imprisonment and Article 5 ECHR between 23 September and 1 November 2016.
9. PO was in consequence unlawfully detained in breach of the common law tort of false imprisonment and Article 5 ECHR between 6 October and 2 November 2016.

IT IS ORDERED THAT:

10. The Claimants shall, if so advised, file amended grounds of judicial review within 14 days of the sealing of this Order.
11. The Defendant shall file and serve detailed grounds of defence no later than 35 days following receipt of the amended grounds for judicial review.
12. The Defendant shall file and serve all evidence on which she wishes to rely by no later than 28 days following service of the detailed grounds of defence.
13. The Claimants shall serve any submissions and/or evidence in reply no later than 21 days following receipt of the Defendant's evidence.
14. A directions hearing shall be listed as soon as reasonably practicable thereafter with a time estimate of 3 hours, the purpose of which is to determine future case management of the cases.
15. The Defendant do pay the First Claimant's reasonable costs, to be assessed if not agreed.
16. Pursuant to CPR 44.2(8), the Defendant shall pay 50% of the First Claimant's costs on account, within 14 days of receiving the First Claimant's Bill of Costs.
17. In respect of the Second to the Eighth Claimants,
 - a. the Defendant do pay their reasonable costs up to and including the service of the Defendant's Acknowledgment of Service and Summary Grounds of Defence, and
 - b. thereafter the Defendant do pay the reasonable costs of and associated with the issues determined in the judgment handed down on 10 October 2017. For the avoidance of doubt, such costs shall include the costs incurred by the Fourth to Eighth Claimants in respect of the expert reports of Dr Lohawola and Dr Wootton.

- c. All such costs referred to in this paragraph are to be assessed if not agreed.
- d. All such costs referred to in this paragraph shall not be paid before the conclusion of the damages claim of each individual Claimant.

18. All other costs relating to the Second to Eighth Claimants shall be reserved.

19. The Second to Eighth Claimants' publicly funded costs shall be subject to detailed assessment in accordance with the Civil Legal Aid (Costs) Regulations 2013.

20. There be liberty to apply.

Dated; 10 October, 2017

By the Court