

CO/5386/2016, CO/5262/2016, CO/5630/2016

CO/5533/2016, CO/5529/2016, CO/5535/2016, CO/5534/2016, CO/5532/2016;
CO/4853/2016

IN THE HIGH COURT OF JUSTICE

QUEEN'S BENCH DIVISION

ADMINISTRATIVE COURT

BEFORE THE HONOURABLE MR JUSTICE OUSELEY

21 NOVEMBER 2016

B E T W E E N:



The Queen on the application of

(1) Medical Justice, (2) JXL, (3) SN, (4) Hoang THI; (5) Mutiat Jinadu OLAWUNMI;
(6) Oyelaran George OYEOWOLE; (7) Mohammed Ullah JABARKHEL; (8) Paul
Obiozor ONONYE; (9) Soliman NASSEF



Claimants

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Abu
30.11.16

Defendant

ORDER

UPON hearing Stephanie Harrison QC, counsel for Medical Justice, and JXL and SN ("the Bhatt Murphy Claimants"), Chris Buttler, counsel for the Fourth to Ninth Claimants ("the Duncan Lewis Claimants"), and Rory Dunlop, counsel for the Defendant;

AND UPON the Order dated 15 November 2016 of Mitting J granting permission to apply for judicial review in claim CO/5386/2016 ("the Medical Justice claim");

AND UPON READING Medical Justice's application for a cost-capping order, the witness statement of Jed Pennington of Bhatt Murphy Solicitors and the 2nd witness statement of Theresa Schleicher, Acting Director for the Claimant, Medical Justice;

AND UPON READING the application by the Fourth to Ninth Claimants ("the Lead Duncan Lewis Claimants") for interim relief;

IT IS ORDERED, BY CONSENT, THAT:

1. Pursuant to CPR r.39.2, in claim CO/5262/2016 the Claimant's identity shall not be disclosed directly or indirectly and the Claimant shall be referred to as "JXI".
2. Pursuant to CPR r.39.2 in claim CO/4853/2016 the Claimant's identity shall not be disclosed directly or indirectly and the Claimant shall be referred to as "SNA".
3. The grounds brought by the Bhatt Murphy Claimants which are not granted permission below shall proceed separately and be subject to the following directions:
 - i) Varying and extending the deadlines in the earlier orders of Collins J and McGowan J, the Defendant shall file and serve an Acknowledgement of Service and Summary Grounds of Defence within 21 days of this Order.
 - ii) Immediately following the expiry of the time scale provided in (i) above, the court shall consider on the papers whether to grant permission on the separated grounds identified above.
 - iii) The Defendant shall not remove the Bhatt Murphy Claimants pending the determination of their application for permission to apply for judicial review in respect of Grounds 1 and 2 in their respective claims.
4. The claim brought by the Ninth Claimant that are not related to the lawfulness of the adults at risk policy shall go before a single Judge for a decision on permission.

IT IS ORDERED THAT:

5. The claims of the Third to Eighth Claimants, in so far as they challenge the lawfulness of the adults at risk policy or DSO 9/2016, shall be joined to the claims of the First and Second claimants as lead cases, not test cases. No other claim challenging the

lawfulness of the Defendant's adults at risk policy or DSO 9/2016 on the same basis as Medical Justice, the Bhatt Murphy Claimants or the lead Duncan Lewis Claimants shall proceed to a substantive hearing on the issues raised in those claims until judgment has been given in the lead cases.

6. The Second Claimant, JXL CO/5262/2016 is given permission solely to argue the aspects of Ground 4 which challenge the lawfulness of the Defendant's adults at risk policy and DSO 9/2016 – i.e. to argue that (a) the decision to maintain the Second Claimant's detention on 12 September 2016 was unlawful, because (i) it was taken pursuant to an unlawful policy and/or (ii) it was inconsistent with the Defendant's published policy; and (b) as a result of (a), detention thereafter was unlawful.
7. The Third Claimant, SN CO/5630/2016, is given permission solely to argue the aspects of Ground 3 which challenge the lawfulness of the Defendant's adults at risk policy and DSO 9/2016 – i.e. to argue that (a) the decision to maintain the Second Claimant's detention on 12 September 2016 and thereafter following the implementation of the Immigration Act 2016 Adults at Risk statutory guidance was unlawful, because (i) it was taken pursuant to an unlawful policy and/or (ii) it was inconsistent with the Defendant's published policy; and (b) as a result of (a), detention thereafter was unlawful.
8. The Lead Duncan Lewis Claimants are given permission to apply for judicial review on all grounds.
9. The Ninth Claimant is given permission solely to argue the aspects of Ground 3 which challenge the lawfulness of the Defendant's adults at risk policy and DSO 9/2016.
10. Medical Justice's application for a cost-capping order is granted.
11. Costs recoverable from Medical Justice shall be capped at £10,000.
12. The amount recoverable by the First Claimant under an order for costs in its favour in these proceedings shall be no greater than that which would be determined in accordance with the principles set out in *R (Medical Justice) v Secretary of State for the Home Department* [2010] EWHC 1425 (Admin), subject to a rider that the rates for

leading counsel, junior counsel and solicitors shall not exceed £225 per hour, £110 per hour and £200 per hour respectively.

13. Pending the conclusion of these proceedings, and with effect from 00.01am on 7 December 2016, references to 'torture' in DSO 9/2016, "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 be read to mean 'any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed, or intimidating or coercing him or a third person, or for any reason based upon discrimination of any kind'.

DIRECTIONS TO FULL JUDICIAL REVIEW HEARING

14. There shall be a full judicial review hearing with a time estimate of four days to consider the following issues:
 - a. all grounds in the Medical Justice claim;
 - b. the grounds on which the Bhatt Murphy Claimants have been given permission in this order, save that the hearing shall not determine whether the Bhatt Murphy Claimants are entitled to nominal or substantive damages. The question of quantum shall be adjourned;
 - c. all grounds brought by the Lead Duncan Lewis Claimants, save that the hearing shall not determine whether the Lead Duncan Lewis Claimants are entitled to nominal or substantive damages (which shall be adjourned).
15. The Defendant shall file and serve detailed grounds of defence and evidence by 20 December 2016, in accordance with CPR 54.14(1)(a) and (b).
16. The First to Eighth Claimants shall file and serve any reply together with any evidence in reply by 27 January 2017.

17. The parties shall endeavour to agree the contents of trial bundles, including a core bundle for the individual claims, which the First to Eighth Claimants shall file and serve by 5 February 2017.
18. Medical Justice and the Bhatt Murphy Claimants shall file and serve a joint Skeleton Argument by 10 February 2017 and the Lead Duncan Lewis Claimants shall file and serve a joint Skeleton Argument by the same date.
19. The parties shall endeavour to agree chronologies and/or a statement of facts for the individual claims, which the First to Eighth Claimants shall file and serve by 10 February 2017.
20. The Defendant shall file and serve a Skeleton Argument by 24 February 2017.
21. The Bhatt Murphy Claimants and the Lead Duncan Lewis Claimants must pay continuation fees in the sum of £770 in each case by 4pm on 28 November 2016.
22. The full judicial review hearing, time estimate four days (to run from Tuesday to Friday), shall be listed as soon as practicable, taking account of counsels' availability, in the period 6-24 March 2017.
23. Costs in the case.

Observation: The court expects any future claimant, who is aware of this order (for example through his legal representatives) but nonetheless wishes to bring a claim challenging the lawfulness of the adults at risk policy or DSO 9/2016, to bring this order to the attention of the court in any application for permission or interim relief. Any claimant who wants their application for permission to be determined before the lead cases have been determined should explain why that is necessary, i.e. why the court should not await the outcome of these lead cases before deciding whether to grant permission.

Dated this 21st day of November 2016



By the Court