

## PRESS RELEASE

26 May 2023

### High Court declares secret Home Office detention policy to be unlawful

The High Court has declared unlawful a secret Government policy used by the Home Secretary to repeatedly stop and detain two mothers and their children, lawful residents of the UK, seeking to re-enter the UK at port. The secret policy was only uncovered in these proceedings through evidence gathered from charities and lawyers. Evidence filed in the claims revealed a practice at the border of detaining for examination those with continuing leave to remain about their NHS debt, even though the debt is not capable of preventing their re-entry to the UK. The Home Secretary was repeatedly asked to confirm the policy and to publish it but refused to do so throughout many months of litigation.

In a detailed judgment handed down on 26 May 2023, Mr Justice Chamberlain held that the women and their young children were falsely imprisoned by the Home Secretary without justification. He also found that the Home Secretary had breached her duty to consider the impact of the policy on the groups protected under the Equality Act 2010, including women, who are known to be disproportionately impacted by NHS charging.

The Home Office disclosed the policy in the course of the litigation but did not concede that it should have been published. By the time of the hearing the Home Office had withdrawn the offending policy. It is currently being re-written. You can read the judgment [here](#).

#### **The women who brought the action, whose identities are protected for the protection of their children, said:**

**SXB** said “The experience of being detained with my young daughter was frightening and humiliating. I have a valid visa and my child is a British citizen but we were not being allowed to return home to the country we live in. After it happened for a second time I was so scared that I didn’t want to travel again. This judgment is a huge relief for me. I know that we will be able to travel and come back home.”

**MXK** said “I was detained with my children every time we travelled home to see my family for the last eight years. It made us dread approaching immigration control as we just did not know how long they would hold us or even if they would let us through. I am really relieved that the Judge agreed with us that the officers cannot use detention powers in this way. I welcome the Home Office’s decision to change its policy for people like me who have been living lawfully in the UK for years and who just want to be able to return home”

**Janet Farrell, solicitor for Claimant families** said: “The detention of our clients was humiliating and distressing. This judgment shows how vital it is that policies concerning the use of coercive powers such as detention are published so victims can hold the government to account in court in a meaningful way. As well as these Claimants, we are acting for many other vulnerable families who have been subject to multiple unlawful

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detentions over a period of many years under these same powers. We are pursuing legal action on their behalf seeking declarations that they have been unlawfully detained and damages. It is only through our clients' perseverance and courage that this secret policy has been revealed and declared unlawful."

## NOTES TO EDITORS

MXK, SXB and their children are represented by Janet Farrell and Erica San of Bhatt Murphy and Dan Squires KC of Matrix Chambers and Shu Shin Luh of Doughty Street Chambers.

The Judge found that the policy was "capable of inducing an officer to breach his legal obligations by examining and detaining a returning resident for purposes other than those permitted" and that it is "at best, misleading in that it fails to identify the sole purposes for which they may examine and detain a person with limited leave to enter or remain whose only flag relates to an NHS debt – and in doing so gives the impression that the permitted purposes are broader. In my judgment, the policy is therefore unlawful. The fact that the policy is unpublished supplies a further reason why it is unlawful." [73-74]

Recognising that the NHS charging regime disproportionately impacts on women, the Judge found that "there is no evidence to show that the Secretary of State or any official has ever considered the equality impacts of her use of the examination and detention powers in Sch. 2, let alone kept those impacts under continuing review. If the examination and detention powers had been considered, those responsible for the formulation of policy about the exercise of those powers would have had to focus on the question whether a practice of detaining returning residents for varying periods for examination about NHS debts could be justified, given its disproportionate impact on women and any other groups which are disproportionately affected." [88-89]

Those who have been detained or otherwise affected by this unlawful policy and want to find out more can contact [j.farrell@bhattmurphy.co.uk](mailto:j.farrell@bhattmurphy.co.uk) or [e.san@bhattmurphy.co.uk](mailto:e.san@bhattmurphy.co.uk)

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