

## **PRESS RELEASE: 20 DECEMBER 2023 SUPREME COURT DISMISS GOVERNMENT APPEAL IN TORTURE COMPLICITY CASE**

A landmark decision ([judgment](#) and [press summary](#)) handed down today by the Supreme Court has dismissed the Government's appeal in a case brought by Abu Zubaydah (a detainee in Guantanamo Bay, Cuba) which concerns UK complicity in torture.

Abu Zubaydah alleges that from 2002 – 2006 he was arbitrarily detained at secret US “black site” prisons located in six different countries (“the Six Countries”), where he was subjected to extreme mistreatment and torture by the CIA. He contends that from at least May 2002 – 2006 the UK security and intelligence services were aware that he was being arbitrarily detained, mistreated, and tortured in CIA “black sites” but nonetheless sent questions to the US intelligence agencies to be used in their interrogations of him for the purpose of attempting to elicit information of interest to the UK security services. He claims that by acting in this way, the UK security services committed the torts of misfeasance in public office, conspiracy to injure, trespass to the person, false imprisonment, and negligence.

In February 2021 the High Court determined as a preliminary issue the question of what law should be applied when deciding the claims against the UK Government. The Government argued it should be the laws of the Six Countries, meaning that the UK Government's liability would be determined by reference to the laws of Thailand, Lithuania, Poland, Morocco, Afghanistan, and the United States (or possibly Cuba). Abu Zubaydah argued the applicable law should be English law. Having lost that issue in the High Court, Abu Zubaydah successfully appealed to the Court of Appeal which, in March 2022, overturned the High Court decision, ruling that his claims are governed exclusively by English law. The Supreme Court has today dismissed the Government's appeal against the Court of Appeal decision and found that, comparing the significance of the factors connecting the alleged torts with the Six Countries and with England and Wales, it is substantially more appropriate for the applicable law to be English law.

Abu Zubaydah's claims against the Government continue in the Kings Bench Division of the High Court.

In recent years several decisions have been handed down by international human rights courts and bodies concerning the detention and treatment of Abu Zubaydah. The ECHR has made findings against Poland and Lithuania in respect of their involvement in his mistreatment. In an April 2023 decision ([here](#)) the UN Working Group for Arbitrary Detention (UNWGAD) made highly critical findings against the UK and the six other states involved in his detention and mistreatment, who UNWGAD found had “joint responsibility” for rendition, torture, and detention at Guantanamo. Finding that the ongoing detention has no lawful basis, UNWGAD called for his immediate release with reparations, and urged the US Government to ‘prioritise closing’ the facility at Guantanamo Bay.

Abu Zubaydah is represented in the proceedings against the UK Government by Michael Oswald of Bhatt Murphy, Richard Hermer KC, Ben Jaffey KC and Edward Craven. His international counsel is Helen Duffy of Human Rights in Practice.

### **NOTES TO EDITOR**

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