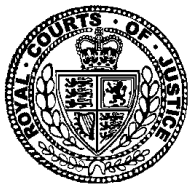

Neutral Citation: [2017] EWHC 2809 (QB)

Case No: HQ16X01806

**IN THE HIGH COURT OF JUSTICE**
**QUEEN'S BENCH DIVISION**

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 8 November 2017

**Before** :
**MR EDWARD PEPPERALL QC**
**SITTING AS A DEPUTY HIGH COURT JUDGE**

- - - - - - - - - - - - - - - - - - - - -

**Between :**

**ABDULRAHMAN MOHAMMED**

**Claimant**

**- and -**

**THE HOME OFFICE**

**Defendant**

- - - - - - - - - - - - - - - - - - - - -

**Mr Chris Buttler** (instructed by **Leigh Day**) for the **Claimant**
**Mr Benjamin Tankel** (instructed by the **Government Legal Department**) for **the Defendant**

Hearing dates: 7 & 8 November 2017

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**Approved Judgment**

I direct that pursuant to CPR PD39A para 6.1 no official shorthand note shall be taken of this judgment and that copies of this version as handed down may be treated as authentic.

**MR EDWARD PEPPERALL QC:**

1. Abdulrahman Mohammed is a 39-year-old Somali citizen. He came to the UK on 2 February 1996 at the age of 17. He has spent much of the last two decades in and out of custody, largely for serious criminal offences but he has also been detained by the Home Office pursuant to its powers to order the detention of foreign criminals who are liable to deportation.

2. By this action, Mr Mohammed complains that three periods of immigration detention, totalling some 445 days, were unlawful:

   2.1 41 days from 12 September to 22 October 2012;

   2.2 139 days from 6 January to 24 May 2013; and

   2.3 265 days from 14 June 2015 to 4 March 2016.

3. Accordingly, Mr Mohammed claims damages for false imprisonment. Following the earlier judgment of Hayden J. upon Mr Mohammed's claim for interim relief ([2016] EWHC 447 (Admin)), the Home Office conceded that he had been falsely imprisoned for 149 days between 8 October 2015 and 4 March 2016. This case was listed before me to determine the remaining issues of liability. However, the Home Office conceded liability in respect of all three periods of detention late on the afternoon before trial. Furthermore, the Home Office abandoned its argument that the Court should only award nominal damages. It therefore falls to me to assess damages.

4. Mr Mohammed gave brief evidence in support of his case. In addition, he relied on the written evidence of Dr Lisa Wootton, a consultant in forensic psychiatry. The Home Office did not call any evidence.

## FINDINGS OF FACT

EARLY LIFE IN AFRICA

5. As a 13-year-old boy, Mr Mohammed suffered unimaginable barbarity in Mogadishu at the outbreak of the Somali civil war. He had been at his mother's home when armed men from the Hawiye tribe demanded to speak to a male member of the family. His uncle stepped forward and identified the family as being from the Reer Aw Hassan clan. The uncle refused the men's demands for gold and jewellery, whereupon he was shot dead.

6. Mr Mohammed and a female cousin tried to hide behind his mother and aunts. The armed men pulled the girl away and raped her in the corner of the room before turning their attentions to Mr Mohammed. The men tried to cut out his tongue but only succeeded in cutting both sides of his mouth with their bayonets. Medical evidence showed that the cut on one side had been the full thickness of his cheek. The men then branded Mr Mohammed with a burning cattle prod, saying "remember us by this."

7. Mr Mohammed's account was rightly not challenged. Indeed, it was, in my judgment, plainly supported by the medical evidence:

7.1 First, Dr Margit Szel examined Mr Mohammed on 6 October 2015 upon his admission to an Immigration Removal Centre (an "IRC"). Dr Szel found scarring consistent with Mr Mohammed's report.

7.2 Secondly, Dr Jonathan Orrell examined Mr Mohammed on 10 November 2015. He again found physical evidence consistent with Mr Mohammed's account. Specifically, the straightness of the scarring on each side of his mouth was consistent with being caused by a bayonet. Dr Orrell discounted as unlikely the possibility that such wounds were self-inflicted. He also found further scarring that was consistent with the account of being branded with a cattle prod.

7.3 Thirdly, Dr Wootton diagnosed a moderately severe post-traumatic stress disorder that she attributed, not surprisingly, to the severe trauma of this childhood incident.

8. I therefore have no hesitation in finding on the balance of probabilities that Mr Mohammed was tortured as a 13-year-old boy in Mogadishu. Equally, I accept that Mr Mohammed has suffered a moderately severe post-traumatic stress disorder, the symptoms of which persist more than a quarter of a century after this horrific experience.

9. A few days after this incident, Mr Mohammed and his half-brother fled to Bulu Hawa, a city near to the Kenyan border. There they remained for a couple of years until Hawiye forces advanced closer to the city. The boys then fled across the Kenyan border to the Dadaab refugee camp where they lived for the next two years.

COMING TO THE UK

10. Mr Mohammed entered the UK on 2 February 1996 together with his half-brother. While his brother was a quiet and religious man, the young Mr Mohammed enjoyed the freedom of western society and soon found himself mixing in bad company. He explained, at paragraph 20 of his statement:

> "My friends were crazy; they would drink, take all sorts of substances and steal cars. I wanted to fit in and became involved in those things too. I am not looking to blame anyone; I am responsible for my actions and decisions. But I was a young boy in a new country with freedoms and a culture unlike anything I had ever experienced before. I was drawn to so many things which were not good for me and I did not know how to stop or impose any limits on myself. I started spending all my time with my friends and began drinking more and more. It was soon clear I had developed a drinking problem and with that began my offending."

11. Mr Mohammed's offending has not, however, been limited to some minor youthful indiscretion. Over the last 20 years, he has become a habitual and violent criminal who has been sentenced to a number of significant sentences of imprisonment, most notably to two different sentences of four years'

imprisonment for robbery. I set out below his full criminal record since coming to the UK:

| **Date** | **Offence(s)** | **Sentence** |
|---|---|---|
| 2 February 1998 | Shoplifting | Community service |
| 30 July 1998 | Criminal damage<br>Failing to surrender to custody | Fined |
| 20 November 1998 | Allowing himself to be carried in a vehicle taken without authority<br>Failing to surrender to custody | Fined |
| 12 January 1999 | Burglary | 4 months' detention in a young offenders' institution |
| 29 March 1999 | Possession of an offensive weapon | Conditional discharge |
| 26 March 2002 | Possession of cannabis<br>Resisting or obstructing a constable | Fined |
| 6 November 2002 | Robbery (x2) | 4 years' imprisonment |
| 25 February 2002 | Deception | Fined |
| 17 March 2006 | Robbery | 2 years' imprisonment |
| 20 April 2009 | Disorderly behaviour | Fined |
| 28 May 2010 | Criminal damage | Community order |
| 13 January 2011 | Use of racially or religiously aggravated words | 12 weeks' imprisonment suspended for 12 months |
| 17 February 2011 | Failing to surrender to custody (x2)<br>Failing to comply with the requirements of a community order | 12 weeks' imprisonment suspended for 12 months |
| 17 March 2011 | Failing to comply with the community requirements of a suspended sentence order | 12 weeks' imprisonment |
| 23 May 2011 | Common assault (x2) | 10 weeks' imprisonment |
| 25 July 2011 | Disorderly behaviour | 1 day's imprisonment |

| | | |
|---|---|---|
| 17 November 2011 | Possession of a knife in a public place | 4 months' imprisonment |
| 24 May 2012 | Affray | 5 months' imprisonment |
| 22 August 2012 | Using threatening, abusive or insulting words or behaviour with intent to cause fear or provocation of violence<br>Shoplifting | Fined |
| 24 August 2012 | Common assault | 20 weeks' imprisonment |
| 26 November 2012 | Common assault | 18 weeks' imprisonment |
| 14 June 2013 | Possession of cannabis | Fined |
| 5 December 2013 | Robbery | 4 years' imprisonment |

12. At an earlier hearing, Mr Buttler said of his client, with what Hayden J. rightly described as ironic understatement, that he "might not be considered an asset to society."

IMMIGRATION STATUS

13. Mr Mohammed claimed asylum immediately on entering the UK. His application was refused but he was granted leave to remain until 12 August 2000. On 24 February 2005, following his release from a long prison sentence, Mr Mohammed's solicitors submitted an application for indefinite leave to remain. That application was refused and a decision made that Mr Mohammed should be deported. Mr Mohammed's appeal against that decision was dismissed on 31 August 2007.

14. Mr Mohammed was first detained by the Home Office in connection with his planned deportation on 23 October 2007.

15. On 15 January 2008, the Home Office formally decided to deport Mr Mohammed. Through the Refugee Legal Centre, Mr Mohammed submitted fresh representations on 8 February 2008 based upon the deteriorating situation in Somalia. Three days later, Mr Mohammed applied to the European Court of Human Rights for a direction pursuant to rule 39 of that court's rules of procedure that he should not be removed from the UK while his application was outstanding. The following day, a direction was made by the European Court that Mr Mohammed should not be removed from the UK until further notice.

16. Thereafter, there were further periods of both imprisonment and immigration detention until, on 12 September 2012 he was again detained for the first of the periods that are now accepted to have been unlawful.

THE IMPACT OF DETENTION

17. Mr Mohammed has of course been imprisoned on many occasions. He points, however, to a difference between imprisonment and detention, at paragraph 45 of his statement:

> "I have found being detained very difficult. I know I have been in prison on a number of occasions, but immigration detention is different. In prison, you know when you are going to be released; you have hope that there is an end point. With detention, there is no fixed point. I have spent long periods in detention. It has always made me feel frustrated and depressed. It makes me feel hopeless and I find it difficult to concentrate on even ordinary things like reading a newspaper. Detention makes me feel trapped and humiliated."

18. Mr Buttler realistically accepts that the unlawful detention of such a career criminal will not have caused the same shock and humiliation that would have been suffered by a law-abiding citizen with no experience of the criminal justice system. Nevertheless, I accept that Mr Mohammed's open-ended immigration detention created some sense of hopelessness.

19. Mr Mohammed claims that detention has had a particular effect on his post-traumatic stress disorder. After describing the continuing impact of torture upon his mental health. He added, at paragraphs 46-47:

> "46. Detention also makes dealing with my experience harder. When I am outside with friends and family, it is easier not to think of the attack. It is important to have friends and family around you … [In] detention I am away from my family and the bad dreams and flashbacks get much worse. This is especially so when things are quiet and I am left on my own such as at night.
>
> 47. I understand that the Home Office are suggesting that detention might be better for my mental health as I am able to work in detention whereas outside I am not. I accept that working in detention is better than being in detention and not working. But that does not mean it is better than being free, it does not make up for the fact that I am incarcerated and that I feel like I am caged and humiliated because so much of what I do is in the control of others. I will always find it easier to deal with what happened to me if I am outside rather than in detention, whatever the conditions of detention might be."

20. This evidence, which was not challenged by the Home Office, was supported by Dr Wootton. She reported that it was recognised that victims of torture are at particular risk of harm in detention, explaining at paragraph 3(b) of her report:

> "The reason that these adults are considered at risk is because the trauma/torture victim is being controlled and restricted in both a situation of trauma/torture and also in a detention centre. Detention will then trigger their feelings of powerlessness and helplessness, vulnerability, loss of choice and degradation (associated with their previous trauma) which will make them feel in danger and therefore exacerbate and increase their symptoms placing them at further risk of harm."

21. Such reasoning is no doubt the explanation for the Home Office's then guidance which provided, at paragraph 55.10, that victims of torture are normally considered suitable for detention in only very exceptional circumstances.

22. As to the impact in this case, Dr Wootton reported, at paragraph 3(c):

> "It is not possible to completely separate out the impact of Mr Mohammed's precarious immigration situation and the impact of detention per se. However, I think it is possible to be clear that detention caused a deterioration in his mental health for the reasons described by him. When he is detained:
>
> i. He feels isolated.
>
> ii. It is more difficult for him to see and communicate with is (sic) family.
>
> iii. He has to sleep alone: 'not next to anyone, alone.'
>
> iv. And perhaps most significantly: he 'feels trapped and humiliated' when he is detained (as he did when he was tortured)."

23. Mr Tankel, for the Home Office, points out that this is not, however, all one-way traffic. In answer to questions raised by the Home Office, Dr Wootton pointed out that in the community Mr Mohammed's substance abuse had caused him problems in employment and with relationships. It had also been a factor in his offending behaviour. Against this, the fact that he does not use substances in custody (alternatively that his access to substances is more restricted) was linked to his ability to work in custody. Work is positive in that it distracts the mind and gives some relief from the symptoms of post-traumatic stress disorder.

24. I accept that unlawful detention exacerbated to some extent the symptoms of post-traumatic stress disorder in this case. That said, I am equally satisfied that Mr Mohammed will no doubt have suffered some such exacerbation in any event during the many prison sentences that were lawfully imposed upon him because of his own criminal conduct.

25. I allowed Mr Buttler to adduce additional evidence from Mr Mohammed as to the differences between detention in the prison estate and in an IRC. Mr Mohammed told me that he had been detained in various prisons until 2 September 2015 when he was moved to an IRC. He said that he had been

locked up for as much as 23 hours per day in prison, whereas detainees were only locked up at night, from 8pm to 8am, at the IRC. He spoke generally of a more relaxed regime in the IRC. A matter that particularly troubled him was that while he was free to use a mobile phone at the IRC, such devices are not of course allowed in the prison estate. In prison, he had to use the limited credit allowed to him to use a designated payphone. He complained that usage was monitored and that his credit was quickly exhausted when phoning someone's mobile phone.

26. Mr Mohammed has three children; two boys, now aged 13 and 11, and a six-year-old girl. He last lived with them and their mother in 2011 but said that prison had come between them. In 2012 and 2013, he said that he saw his children weekly. His relationship with the children's mother is now at an end, and indeed she moved away to Dudley with the children in early 2014. Mr Mohammed says that there is another man in her life. He blamed the breakdown of his relationship with his children upon his unlawful detention and the limited access to the phone in the prison estate.

27. Mr Tankel was to some extent ambushed by this evidence which had not been foreshadowed in Mr Mohammed's witness statement. That said, it is well known that prisoners are often locked up in the prison estate for very long hours. Whether he was locked up for 23 hours per day or the 21 hours tentatively put by Mr Tankel in cross-examination (based not on evidence but the finding in AXD v. Home Office [2016] EWHC 1617 (QB)), I find that the conditions in prison were significantly more restrictive than when Mr Mohammed was detained at the IRC.

28. Such finding is not surprising. Indeed, it is a matter of design since rule 3(1) of the Detention Centre Rules 2011 provides:

> "The purpose of detention centres shall be to provide for the secure but humane accommodation of detained persons in a relaxed regime with as much freedom of movement and association as possible, consistent with maintaining a safe and secure environment, and to encourage and assist detained persons to make the most productive use of their time, while respecting in particular their dignity and the right to individual expression."

29. I accept Mr Mohammed's evidence that he has lost contact with his children. That has happened because he has broken up with their mother and she has moved away to the Midlands in order to live with another man. I am not persuaded on the evidence that that was a direct result of his unlawful detention by the Home Office any more than it was because of his criminal lifestyle or his repeated periods of lawful imprisonment.

**THE LAW**

30. Counsel were largely agreed about the applicable legal principles. The leading case remains that of the Court of Appeal in Thompson v. Commissioner of Police for the Metropolis [1998] QB 498, but the principles were helpfully

summarised by Laws L.J. in MK (Algeria) v. Secretary of State for the Home Department [2010] EWCA Civ 980, at [8]:

> "There is now guidance in the cases as to appropriate levels of awards for false imprisonment. There are three general principles which should be born in mind:
>
> 1) The assessment of damages should be sensitive to the facts and the particular case and the degree of harm suffered by the particular claimant: see the leading case of Thompson v. Commissioner of Police [1998] QB 498, at p.515A and also the discussion at p.1060 in R v. Governor of Brockhill Prison, Ex Parte Evans [1999] QB 1043;
> 2) Damages should not be assessed mechanistically as by fixing a rigid figure to be awarded for each day of incarceration: see Thompson at p.516A. A global approach should be taken: see Evans p.1060E;
> 3) While obviously the gravity of a false imprisonment is worsened by its length the amount broadly attributable to the increasing passage of time should be tapered or placed on a reducing scale. This is for two reasons: (i) to keep this class of damages in proportion with those payable in personal injury and perhaps other cases; and (ii) because the initial shock of being detained will generally attract a higher rate of compensation than the detention's continuance: Thompson p.515 E-F."

31. It is common ground before me that a career criminal, such as Mr Mohammed, will not suffer the same initial shock as a law-abiding citizen without any experience of the criminal justice system. Indeed, for this reason Lord Woolf M.R. reduced the award that would otherwise have been made in Evans where a prisoner was unlawfully detained for a further 59 days at the end of a lawful sentence of imprisonment. This approach was followed in the unusual case of R (NAB) v. Secretary of State for the Home Department [2011] EWHC 1191 (Admin), where Irwin J. observed, at [18], that detention had not disrupted "an otherwise ordinary life in the community."

32. Nevertheless, there is still a taper for longer periods of false imprisonment even where there is no initial shock. This follows directly from the twin justification for the tapering of awards for longer periods of detention, and explains the need for a taper in cases such as Evans.

33. In Thompson, Lord Woolf M.R. gave specific guidance, at p.515D-F, that in a "straightforward case of wrongful arrest and imprisonment" the starting point was likely to be about £500 for the first hour of loss of liberty, and that an award of about £3,000 was appropriate for a claimant who was wrongly detained for 24 hours.

34. Since Thompson, there have been a number of reported decisions in respect of different periods of false imprisonment. Some assistance is obviously gained by considering those awards, properly adjusted to reflect inflation since such cases were decided. Awards made before 1 April 2013 also need to

be increased by 10% to give effect to the decision in Simmons v. Castle [2012] EWCA Civ 1288, [2013] 1 W.L.R. 1239.

35. That said, there are limits to the value of the case law:

35.1 First, the Court of Appeal has repeatedly stressed that the assessment of damages must be tailored to the particular circumstances of the case. Some cases (such as the unreported 1991 case of Lunt v. Liverpool City Justices) concern the false imprisonment of people with no experience of the criminal justice system, while others (such as Evans) involve relatively short periods of false imprisonment following the completion of a lawful sentence of imprisonment. Even among those with previous criminal records, the facts vary widely. Some, such as Muuse v. Secretary of State for the Home Department [2010] EWCA Civ 453, involve egregious indifference to the lawfulness of detention of a relatively lightly convicted man. Thus, circumstances vary widely and it is the extent of the harm suffered by the individual claimant that must be assessed, not simply the mechanistic application of a tariff.

35.2 Secondly, as Jay J. observed in AXD v. Home Office [2016] EWHC 1617 (QB), there is precious little authority in respect of very long periods of unlawful detention.

36. Nevertheless, I have found certain cases helpful as a comparator. Indeed, counsel are agreed that AXD, being the only case drawn to my attention in respect of a period of unlawful detention in excess of 300 days, is particularly pertinent. Since all decisions are fact sensitive, it is first necessary to explain briefly the circumstances of that case:

36.1 AXD had previous convictions for unlawful wounding, sexual assault of a child under 13 and criminal damage. He had been sentenced to various terms of imprisonment, most notably to 16 months for wounding and 21 months for the sexual offence. (Details of these convictions are taken from the judgment on liability: [2016] EWHC 1133 (QB).)

36.2 AXD was detained in prison between November 2011 and 14 May 2014 when he was transferred to The Verne IRC where he remained until 5 December 2014.

36.3 Jay J. found that detention had initially been lawful but that he was falsely imprisoned from 1 April 2013 until 5 December 2014.

36.4 AXD's experiences in prison were worse than at the IRC. First, because he was locked up for 21 hours per day in prison and only allowed access to fresh air for 30 minutes, whereas at the IRC he was only locked up at night from 8pm to 8am. Secondly, AXD was bullied and, on one occasion, assaulted in prison because of his homosexuality.

36.5 While AXD was a paranoid schizophrenic, there was no evidence that he was worse off in prison or that his mental health condition was exacerbated by his detention.

36.6 AXD, who was also Somalian, had not suffered torture in his home country. He was nevertheless fearful of being returned to Somalia, and the judge found, at [39], that such factor enhanced the award in his case "to some limited extent." Such enhancement was modest because of AXD's limited insight.

37. Upon the judge's findings that there had been a period of lawful detention of 16 months followed by a period of false imprisonment of 614 days, two-thirds of which was in the prison estate, he awarded basic damages of £80,000. Helpfully for my purposes, the judge went on to consider what his award would have been on two different findings of liability. I tabulate these, together with his actual award below. Each award has then been updated for inflation:

| Period of lawful detention | Length of false imprisonment | Proportion in the prison estate | Award | Updated award |
|---|---|---|---|---|
| 25 months | 339 days | 39% | £58,000 | £60,488 |
| 23 months | 400 days | 48% | £62,000 | £64,660 |
| 16 months | 614 days | 66% | £80,000 | £83,432 |

38. In R (Belfken) v. Secretary of State for the Home Department [2017] EWHC 1834 (Admin), Deputy High Court Judge Karen Steyn QC awarded £40,000 for 295 days' unlawful detention following the end of an 18-month prison sentence. Mr Belfken had a string of convictions, principally for burglary and theft and had served a number of prison sentences, the longest being one of three years' imprisonment. There were no particular aggravating features of the false imprisonment.

39. This case concerns one unusual factor that is not present in the previous case law and on which neither counsel was able to take me to any authority, namely that Mr Mohammed was detained for three separate periods whereas other cases have concerned the assessment of damages for a continuous period of detention.

40. Mr Buttler argued that there were effectively three torts and drew the analogy of a worker bringing a claim for two or more industrial accidents against the same employer. Each claim, he submitted, fell to be separately assessed. Against this, Mr Tankel argued that there was no need to apply tortious principles and that I should consider the three periods of detention as part of the same overall objective of removing Mr Mohammed from the UK.

41. I have no hesitation in preferring Mr Buttler's approach. There were, in my judgment, three separate torts committed against Mr Mohammed, each persisting for different periods of time. He might well have brought an earlier action for the first period and there can be no question, in my judgment, of simply aggregating the three periods simply because damages for all three torts falls to be decided in this trial.

**AGGRAVATING FEATURES**

42. In his able and well-structured submissions on behalf of Mr Mohammed, Mr Buttler invited me to find that the Home Office had a high degree of culpability for Mr Mohammed's unlawful detention.

43. First, he submitted that Mr Mohammed could not have been deported until his Qualification Directive claim had been determined. Yet he was detained during much of the 5½ years that it took to resolve such claim.

44. Secondly, Mr Buttler pointed to a letter from the Home Office dated 1 October 2015. The relevant passage, extended to include passages relied upon by Mr Tankel in reply and with added numbering, read:

> "1. It must be considered that your criminality constitutes a level of behaviour serious enough to demonstrate to the Home Office that you have shown a blatant disregard for the laws of the United Kingdom. The Home Office has to take into consideration your criminal record and level of offending and has to judge that this is a clear indicator of risk that you pose to the United Kingdom. It is noted that you have received 23 convictions for 32 offences since you have resided in the UK.
>
> 2. Because of the severity of your convictions as detailed and your numerous other convictions the public of the UK expect your deportation.
>
> 3. Your criminal behaviour undermines the good order of society and renders you a threat to it. The United Kingdom is not required to keep here someone whose conduct strikes so deeply at its social values that it strains the tolerance of even a broadminded society.
>
> 4. If you are released from detention, our actions can lead to a negative view of the Home Office by the general public who may see the department as failing in its duty to protect them from criminals and therefore there is a high risk of harm to the public."

45. In his judgment at the interim stage, Hayden J. recorded, at [3], Mr Buttler's submission about what I have numbered paragraphs 3 and 4 of this letter:

> "[Mr Buttler] acknowledges, on his client's behalf, that it is 'understandable' why the Secretary of State might, for what he identifies as 'political reasons', be reluctant to release the Claimant."

46. At [22], the judge concluded:

> "The prospect of deportation for this Claimant to Mogadishu / Somalia within a reasonable period is, on all the available evidence, remote. As such and within her own guidance, the Home Secretary is required by law to facilitate the Claimant's release. That this has been the position now for some time is obvious. One is left with the sense that the decision has indeed been deferred, as the Claimant suggests, for reasons of expediency."

47. Mr Buttler again presses this submission before me, arguing that this is a case of deliberate delay to avoid the politically unpalatable conclusion that Mr Mohammed had to be released. Further, he points out that despite the

argument before Hayden J. at the interim stage and that judge's inference that a decision in this case was delayed for reasons of expediency, the Home Office has failed to file any evidence on the point in these proceedings.

48. In reply, Mr Tankel invites me to consider the context of all four paragraphs cited above. He argues that the Home Office's observations in the first three paragraphs are understandable and that the fourth was unhappily worded. He argues that the public would indeed take a negative view of release, but that I should not infer that detention was continued simply to avoid a politically unpalatable decision.

49. I share the sense of unease expressed by Hayden J. Nevertheless, I am just persuaded that I should not, on the balance of probabilities and on the basis of this single passage, conclude that the Home Office was deliberately allowing the "politics" of this position to dictate its decision making.

50. Thirdly, Mr Buttler argues that there was a marked failure by the Home Office to comply with the well-known principles derived from the leading case of R v. Governor of Durham Prison, Ex parte Hardial Singh [1984] 1 W.L.R. 704. By way of example, he particularly referred me to the August 2015 detention review describing the analysis as vacuous. In his realistic submissions in reply, Mr Tankel accepted that the department's reasoning had been formulaic. Whichever adjective is more appropriate, I accept – as indeed Hayden J. demonstrated at the interim stage and the department now accepts by its concession of liability – that there was no serious engagement with the Hardial Singh principles in this case.

51. Fourthly, Mr Buttler complains that there was a stark breach of the procedure under rule 35 of the Detention Centre Rules 2001. Under the rules, every IRC must have a medical practitioner who is required to examine a detainee within 24 hours of admission. If the doctor is concerned that a detainee might have been the victim of torture, then he is required to report such concern under rule 35.

52. Paragraph 55.10 of the Home Office's then Enforcement Instructions and Guidance provided that where there is "independent evidence" of torture, the person will normally only be considered suitable for detention in "very exceptional circumstances."

53. In this case there was, as already recounted, clear independent evidence of torture. First, there was a rule 35 report from Dr Szel, yet the Home Office simply rejected such evidence in its review on 8 October 2015. Further, the Home Office was provided with the more detailed report of Dr Orrell under cover of a letter from Mr Mohammed's solicitors dated 22 December 2015, and yet detention was continued. I therefore agree with the observations of Hayden J. at the interim stage (at [12]). Given the clear independent evidence of torture, the Home Office's own policy required it to release Mr Mohammed unless there were very exceptional circumstances justifying continued detention. As the Home Office now concedes, there weren't.

54. Mr Tankel realistically accepts that the department's response to the independent medical evidence was wrong.

55. I agree with Mr Buttler that such obvious breach of the rule 35 procedure is a serious factor. I was referred to the unreported 2010 County Court case of E v. Home Office in which HHJ Collins CBE referred to the recommendation of a May 2005 inspection report by HM Inspector of Prisons that the rule 35 procedure be remedied. Judge Collins rightly described it as "outrageous" that there was no effective system in that case for complying with rule 35. He said, at [20]:

> "Bearing in mind the undisputed primacy of the interests of those who claim asylum in this country after being the victims of torture elsewhere, the failure to have an adequate system for dealing with rule 35 cases, notwithstanding a warning by the Inspector of Prisons, was as grave a failure on the part of the Home Office and its contractors as can be imagined in the context of this sort of case."

56. In this case, there was a rule 35 report, but no proper weight was given either to that report or to Dr Orrell's further report. That is, in my judgment, grounds for serious criticism of the Home Office.

57. Finally, Mr Buttler argued that the Home Office had persisted in an unmeritorious defence up until the eve of this hearing. He submitted that the department must have known that its case had no merit and pointed to the fact that it failed to file any first-hand evidence to justify the decisions to detain in this case. Such criticism was well made, and this department's failure to file evidence to explain its decision making in these cases has already been the subject of adverse judicial comment by Thomas L.J. in Muuse, at [59], McFarlane L.J. in R (JS (Sudan)) v. Secretary of State for the Home Department [2013] EWCA Civ 1378, at [60] and Jay J. in AXD, at [204].

**THE AWARD**

58. I am reminded by both counsel that it is important not to double count the aggravating features in this case in making any separate award of aggravated damages. Indeed, I am jointly invited simply to reflect these various aggravating features in my assessment of the basic award for false imprisonment in this case. I accede to such invitation.

59. Mr Buttler invited me to consider the period for which Mr Mohammed was lawfully in custody prior to each of the periods of false imprisonment. His calculations, which were not challenged by Mr Tankel, can be usefully tabulated:

| Period of lawful custody | Period of subsequent false imprisonment |
|---|---|
| 18 days | 12.9.12-22.10.12 (41 days) |
| 42 days | 6.1.13-24.5.13 (139 days) |
| 2 years | 14.6.15-4.3.16 (265 days) |

60. Mr Buttler submitted that Mr Mohammed had already been punished for his criminal behaviour and that damages did not fall to be reduced by reason of his character. Mr Tankel accepted this broad proposition, but rightly argued that the essential question was the effect of false imprisonment on this particular man. He submitted that Mr Mohammed's criminal conduct perhaps indicated that he did not "cherish his liberty." I don't accept that formulation, but readily acknowledge that Mr Mohammed repeatedly put his own liberty at risk by his offending. To some extent custody had become an occupational hazard of his criminal lifestyle.

61. Mr Buttler submitted that a particular feature of this case, as in AXD, was that Mr Mohammed had been detained for 260 of the 445 days in a harsher prison environment rather than in an IRC. I accept that submission, but equally consider that there is force in Mr Tankel's observation that Mr Mohammed was no doubt very used to prison conditions. Had the issue been very significant to Mr Mohammed, one would perhaps have expected it to have been mentioned in his witness statement. While there are parallels with AXD, this was not a case where the claimant was bullied in the prison estate.

62. In my judgment, the important factors in this case are therefore as follows:

62.1 This is not an initial shock case. Mr Mohammed has been in and out of prison for many years and, in any event, each period of unlawful detention was preceded by a period of lawful custody.

62.2 While there is no initial shock, the award for each period falls to be tapered in order to ensure parity with personal injury awards.

62.3 It is important to take into account both the length of each period of unlawful detention and the preceding period of lawful detention.

62.4 The first two periods of unlawful detention were served in the more restrictive prison regime, as too were the first 81 days of the third period.

62.5 Immigration detention is potentially open ended and therefore particularly difficult for a detainee.

62.6 Detention in this case, just as lawful sentences of imprisonment, exacerbated Mr Mohammed's post-traumatic stress disorder.

62.7 This case has been aggravated by the Home Office's failings that I set out above.

63. Relying heavily on the case of AXD, Mr Buttler argues for awards of:

63.1 £10,000 for the period of 41 days from 12 September to 22 October 2012;

63.2 £27,000 for the period of 139 days from 6 January to 24 May 2013; and

63.3 £49,000 for the period of 265 days from 14 June 2015 to 4 March 2016.

64. Mr Tankel agrees that AXD is the most useful comparator and argued that the appropriate composite award for all three periods of detention was probably in the region of £68,000 to £71,000. He did not offer a breakdown in the event that I decided the separate award point against him, but it follows from the agreed need to taper awards for longer periods of detention that the effect of such finding would be to increase the overall level of damages.

65. In my judgment, the correct sums for damages are as follows:

65.1 £8,500 for the first period of 41 days;

65.2 £25,000 for the second period of 139 days; and

65.3 £45,000 for the third period of 265 days,

making a total award in this case of £78,500.

**POSTSCRIPT**

66. Some reading this judgment might well question why a foreign citizen who has so thoroughly abused the hospitality of this country by the commission of serious criminal offences is entitled to any compensation. There are, perhaps, three answers to such sceptic:

66.1 First, there are few principles more important in a civilised society than that no one should be deprived of their liberty without lawful authority.

66.2 Secondly, it is essential that where a person is unlawfully imprisoned by the state that an independent judiciary should hold the executive to account.

66.3 Thirdly, justice should be done to all people. In R (Kambadzi) v. Secretary of State for the Home Department [2011] UKSC 23, [2011] 1 W.L.R. 1299, Baroness Hale said, at [61]:

> "Mr Shepherd Kambadzi may not be a very nice person. He is certainly not a very good person. He has overstayed his welcome in this country for many years. He has abused our hospitality by committing assaults and sexual assault. It is not surprising that the Home Secretary wishes to deport him. But in Roberts v. Parole Board [2005] UKHL 45, [2006] 1 All E.R. 39, at [84] … Lord Steyn quoted the well-known remark of Justice Frankfurter in United States v. Rabinowitz (1950) 339 US 56, at 69, that 'It is a fair summary of history to say that the safeguards of liberty have frequently been forged in controversies involving not very nice people.' Lord Steyn continued: 'Even the most wicked of men are entitled to justice at the hands of the State.' And I doubt whether Mr Kambadzi is the most wicked of men."

67. Mr Mohammed is a prolific and violent offender. I can well understand why the Home Secretary might wish to deport him. She has not, however, been able to do so, largely because of the very real risk that deportation to Somalia would pose. Like Mr Kambadzi, he is not the most wicked of men, but his presence in the UK is not conducive to the public good. Nevertheless, in a civilised society, he is entitled to justice. Specifically, he is entitled not to be falsely imprisoned and, given the Home Office's admission that he has been unlawfully detained, he is now entitled to the compensation that I have awarded.