



AC-2022-LON-002861
Claim No. CO/3801/2022

**IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
ADMINISTRATIVE COURT**

BETWEEN - :

**THE KING
(on the application of WHH)
by his litigation friend, KARRIS HAMILTON)**

Claimant

-and-

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Defendant

CONSENT ORDER

UPON the Defendant agreeing to (a) conduct a review of the Detention Services Order 04/2020: Mental Vulnerability and Immigration Detention: non-clinical guidance ("**the DSO**") and (b) notify the Claimant of the outcome of that review (in the form of a summary of the review and agreed next steps), by 31 May 2024 (absent special circumstances)

AND UPON the Defendant accepting that the assessment of capacity in respect of immigration related decisions is not operating effectively or as intended in certain cases, in particular, in cases where concerns are raised about a detained individual's ability to make immigration related decisions

AND UPON the Defendant accepting that the assessment of capacity in respect of immigration related decisions did not operate effectively in the Claimant's case

AND UPON the Defendant having given the assurance recorded above and having accepted that:
(a) the assessment of capacity in respect of immigration related decisions is not operating

effectively or as intended in certain cases; and (b) the assessment of capacity in respect of immigration related decisions did not operate effectively in the Claimant's case, the Claimant agreeing to withdraw Grounds 3 and 4 of his claim for Judicial Review on the terms set out below.

AND UPON the Claimant's application to amend his claim by Application Notice dated 26 October 2023

AND UPON the Parties agreeing to continue to negotiate in respect of the resolution of the Grounds 1 and 2 of the Claimant's claim for Judicial Review

AND UPON the Claimant's claim for Judicial Review being listed for hearing on 12 and 13 December 2023

AND for the reasons set out in the attached statement of reasons

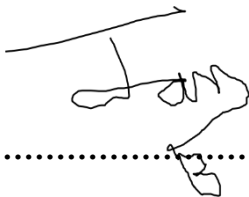
AND UPON consideration of the application made by the solicitors for the Claimant pursuant to Part 21 of the Civil Procedure Rules and accompanying documentation

IT IS ORDERED THAT:

1. The Court approves the settlement of Grounds 3 and 4 of the judicial review on the terms set out in this order under CPR rule 21.10.
2. Grounds 3 and 4 of the claim for judicial review are stayed except for the purpose of securing compliance with the terms of the agreement in the first recital above and for that purpose the parties have permission to apply without the need to issue fresh proceedings.
3. If no application is made to lift the stay in accordance with paragraph 1 of this order by 14 June 2024, Grounds 3 and 4 of the judicial review shall stand dismissed.
4. The Claimant has permission to rely on his Amended Statement of Facts and Grounds of 26 October 2023.
5. The Defendant shall, if so advised, file and serve consequential amendments to his Detailed Grounds of Defence and further evidence relating to the amended ground by 14 December 2023
6. Grounds 1 and 2 of the Claimant's claim for Judicial Review shall proceed as a private law claim for false imprisonment in the King's Bench Division.

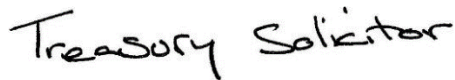
7. The hearing on 12 and 13 December 2023 is vacated and shall be relisted in the Trinity Term in consultation with Counsel's clerks.
8. The Defendant shall pay the Claimant's costs to the date of this order, to be assessed if not agreed.
9. Pursuant to CPR r.44.2(8), the Defendant shall make a payment on account of the costs ordered in paragraph 8, in the sum of £115,000 within 28 days of the date of this Order.
10. There shall be a detailed assessment of the Claimant's legally aided costs.

Dated this 30th day of November 2023



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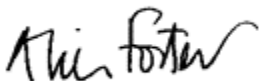


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Solicitor for the Defendant

Dated this 8th day of December 2023



The Hon Mrs Justice Foster DBE

BY THE COURT

AGREED STATEMENT OF REASONS:

1. The Secretary of State detained the Claimant under immigration powers from 16 June 2021 to 30 November 2022, when he was released on High Court bail.
2. The Secretary of State's powers of detention are limited by the Hardial Singh principles, which include that detention must not exceed a period that is reasonable in all the circumstances and should not be exercised if it becomes apparent that he will not be able to effect deportation within a reasonable period. What constitutes a reasonable period may be influenced by the extent to which the detained individual cooperates with the removal process, for example by attending an interview with a consulate for the purposes of obtaining a travel document.
3. The expert evidence is that the Claimant lacks, and is likely to have lacked throughout the period of his detention under immigration powers, mental capacity to decide to cooperate with attempts to remove him to Sudan. The Claimant also lacks litigation capacity.
4. The Secretary of State's *Detention Services Order 04/2020 Mental vulnerability and immigration detention: non-clinical guidance* ("the DSO") is designed to (among other things) identify individuals who lack mental capacity to make decisions relevant to their detention under immigration powers. The DSO provides that if staff become aware of indicators that an individual may lack capacity, the detained individual should be referred to the healthcare team for an assessment "*as described in the service specification*".
5. From 16 June 2021 to 30 November 2022 the relevant service specification did not (and currently still does not) make specific provision for the assessment of a detained individual's mental capacity to make decisions relevant to their detention. To that extent, the DSO did not operate effectively to identify individuals like the Claimant who lacked mental capacity to decide to cooperate with the removal process.
6. By Ground 3 of the claim for judicial review, the Claimant alleged that the Secretary of State had breached his rights under Article 14 read with Article 5 of the European Convention on Human Rights in that he did not make adequate arrangements to treat him (a detained individual with a learning disability) differently from a detained individual without a learning disability, in particular by failing to make adequate arrangements to assess his mental capacity to make decisions relevant to his immigration position and detention.
7. By Ground 4, the Claimant alleged that the Secretary of State indirectly discriminated against him, contrary to s.19 of the Equality Act 2010, by not screening detained individuals for learning disabilities.
8. The Secretary of State contested Grounds 3 and 4 of the claim.
9. In light of the Secretary of State's admission that the assessment of capacity in respect of immigration-related decisions did not operate effectively in the Claimant's case, the Secretary of State's agreement to conduct a review of the DSO and notify the Claimant of the outcome, the Claimant (through his litigation friend) is satisfied that the issues raised by Grounds 3 and 4 of the claim have been resolved satisfactorily. The Claimant (through his litigation friend) is satisfied that he can be adequately compensated for his loss of liberty, and associated distress, through the outstanding claim for damages for false imprisonment.

10. The order provides for the Secretary of State to pay the Claimant's costs of the claim for judicial review. The claim for false imprisonment, as set out in Grounds 1 and 2 of the claim for judicial review, will proceed as a private law claim. As set out in the recitals to the draft order, the parties intend to continue to explore whether it is possible to arrive at a negotiated resolution of that claim. The order also provides for the Claimant to have permission to make an amendment to the grounds relating to that claim, and for the Defendant to make consequential amendments and serve evidence in respect of the amendment. In all the circumstances, it is undesirable for the balance of the claim to be tried in the Administrative Court in the existing fixture of 12-13 December 2023, and the draft order provides for that hearing to be vacated and for the trial to be re-listed in the KB Civil List in Trinity Term 2024.
11. The Court has been provided with a confidential opinion from the Claimant's counsel to assist it in deciding whether to approve the settlement of Grounds 3 and 4 of the claim under CPR Part 21.