

# Bhatt Murphy Solicitors

## Briefing note on *R(HA (Nigeria) v SSHD*

### The Claimant's detention

The Claimant was detained under immigration powers following a prison sentence from 27 August 2009 until 5 July 2010; and again from 5 November 2010 until 15 December 2010, when the High Court ordered his release on bail. Between 5 July and 5 November 2010 he was treated as a detained patient at Hillingdon Hospital under the Mental Health Act 1983.

#### *Detention at Immigration Removal Centres (IRC)*

The Claimant exhibited disturbed behaviour over a long period of time in immigration detention, including sleeping in a toilet area, refusing to wash and alienating himself from others. UK Border Agency officials characterised his behaviour as non-compliant and placed him in segregation. Eventually, a consultant psychiatrist assessed the Claimant at Brook House IRC and recommended urgent transfer to hospital under the Mental Health Act 1983 for further assessment and treatment. Little was done to progress the transfer and the Claimant was moved to Harmondsworth IRC in March 2010 where he was once again placed into segregation and force was used upon him.

#### *Detention at Hillingdon Hospital*

The Claimant was eventually transferred to the Colne Ward, a psychiatric intensive unit at Hillingdon Hospital, on 5 July 2010. He was assessed and treated with anti-psychotic medication which initially had to be administered without his consent. He received a diagnosis of paranoid schizophrenia. He made good progress and began to show insight into his illness. By late October 2010 he was assessed by his responsible psychiatrist as well enough to be discharged; however a psychiatrist specifically warned the UK Border Agency caseworker responsible for reviewing the decision to detain that:

*"It is likely that [HA's] mental health will deteriorate significantly were he to remain in an Immigration Removal Centre for a prolonged period of time. His past history indicates that it was several months before his aberrant behaviour (lying in a toilet for months; restricting food intake to 4 slices of white bread and milk) was recognised as possibly being related to a mental illness as opposed to him being a difficult person.*

*He remains vulnerable as he suffers from a severe mental disorder... should his mental health deteriorate, he may need enforced treatment which cannot be provided in an Immigration Removal Centre..."*

#### *Detention at Immigration Removal Centres (IRC)*

Despite this clear advice that the Claimant suffered from severe mental illness which was not capable of being treated and managed appropriately in an immigration removal centre, he was transferred, as said, back to Harmondsworth on 5 November 2010. He deteriorated as predicted and did not receive appropriate psychiatric treatment. As said, the High Court ordered his release on bail on 15 December 2010.

### **Home Office policy on detention of people with mental illness**

Until 26 August 2010 it was Home Office policy that the mentally ill should only be detained in very exceptional circumstances. In August 2010, without warning, notice or consultation, the Director of Detention Services at the UK Border Agency amended the policy so that detention of people with mental illness would only be very exceptional if the person concerned was “suffering” from a “serious mental illness” which could “not be satisfactorily managed in detention”.

In a response to concerns expressed in a letter from the Immigration Law Practitioners’ Association, the Director of Detention Services stated in a letter dated 20 December 2010 that the UK Border Agency “*did not consider the matter to be a change in policy, rather it reflected a more explicit statement of [the UK Border Agency’s] existing policy*”. Accordingly, the Agency did not “*consider it necessary to consult on the issue and that it was not necessary to prepare an equality impact assessment*” under equality legislation.

Evidence was placed before the High Court from a number of non-governmental organisations (Mind, Freedom From Torture, Bail for Immigration Detainees and Medical Justice) raising concerns that the amended policy would inevitably increase the risk that mentally ill detainees would be inappropriately detained.

### **The Judgment**

Mr Justice Singh ruled as follows:

- The Claimant’s detention was unlawful from 1 February to 5 July 2010 because the UK Border Agency did not adequately take into account evidence of his deterioration<sup>1</sup>.
- The circumstances of the Claimant’s detention at Brook House and Harmondsworth IRCs from **1 February 2010 until 5 July 2010** constituted inhuman and degrading treatment in breach of article 3, for reasons included:
  - acts which “violated his own dignity” (prolonged periods of time in isolation; sleeping on the floor, often naked, in a toilet area; drinking and washing from the toilet; self neglecting including not eating properly and not washing or changing clothes for prolonged periods; and suffering from insomnia);

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<sup>1</sup> Judgment, paragraphs 133-158, in particular paragraph 155.

- behaviour which alienated him from other detainees;
  - not receiving appropriate medical treatment for a prolonged period of more than 5 months; and
  - the use of force on him on several occasions<sup>2</sup>.
- The UK Border Agency's "reformulation" of its policy on the detention of the mentally ill on 26 August 2010 without conducting an equality impact assessment breached public sector equality duties under the Disability Discrimination Act 1995 and Race Relations Act 1976. Accordingly, the changes made were unlawful<sup>3</sup>.
  - The Claimant was, in any event, unlawfully detained pursuant to that policy when he was returned to Harmondsworth on 5 November 2010. The Judge went as far as to find that no rational Secretary of State could have reached the decision that the Claimant should be detained<sup>4</sup>.
  - The circumstances of the Claimant's detention at Harmondsworth IRC between **5 November and 15 December 2010** constituted inhuman or degrading treatment in breach of article 3 of the European Convention on Human Rights as:
    - It was known that the Claimant had a serious mental illness which had not been treated for many months when he was previously detained;
    - He had been stabilised by the use of medication;
    - Harmondsworth did not have the medical facilities he would need if he suffered a relapse; and
    - An aspect of his mental illness was paranoia about staff at the detention centre<sup>5</sup>.

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<sup>2</sup> Judgment, paragraphs 173-182.

<sup>3</sup> Judgment, paragraphs 183-200.

<sup>4</sup> Judgment, paragraphs 201-203.

<sup>5</sup> Judgment, paragraphs 204-207.