

Bhatt Murphy Solicitors

PRESS RELEASE

HIGH COURT RULES ON 15 APRIL 2011 THAT HOME OFFICE UNLAWFULLY SEPARATED MOTHER OF THREE FROM HER CHILDREN

NXT was separated from her three children whilst unlawfully detained by the Home Office. The children were scattered across the UK in separate foster care arrangements of varying degrees of stability, isolated from each other and their mother. Mr Justice Blair found that the Home Office should have released their mother when it became obvious the Home Office could not assess the children's best interests whilst she remained in detention.

In the course of his judgment, Mr Justice Blair made some powerful criticisms about the flaws in the decision making process within the Home Office in this case including:

- Where community based assessments regarding the best interests of the children are required, this is *“decisive in determining whether the period of detention was reasonable in all the circumstances. The defendant was required to treat the best interests of the children as a primary consideration...there came a time when it became apparent that the defendant would not be able to effect the first claimant's deportation (with or without the children) within a reasonable period...By the end of May 2010, the first claimant had been in detention for over seven months. In my judgment, her continued detention with a view to deportation became unreasonable at this time within the meaning of the case law.”* [para 144]
- Also that this case was not unique, *“The fact remains, however that the decision had to be faced...It is plain from the material from BID, the Children's Society, as well as the submissions of the Children's Commissioner, that such circumstances are not unique, and that the circumstances in which such detention continues has caused considerable concern”* [para 138].

Bail for Immigration Detainees and The Children's Society, the charities that had worked with the family commented:

“While it is pleasing that the judge found the detention unlawful. But it is disappointing that he did not find that the decision to detain, decision to deport and continued detention were unlawful because the interests of the children had not been properly considered. Separating families, for the purpose of immigration control, is mentally and emotionally harmful to the young people involved. “

Janet Farrell of Bhatt Murphy solicitors said:

“This is an important decision for children and parents who are unnecessarily separated by immigration detention whilst the Home Office makes a decision about their future. Section 55 of the Borders Citizenship and Immigration Act 2009 places a statutory duty on the UKBA to take the best interests of the children involved properly into account. Unfortunately this case is another example of the Home Office not complying with their duties towards children. ”

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