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PRESS RELEASE

5 August 2011

HIGH COURT RULES THAT UK BORDER AGENCY SUBJECTED A MAN SUFFERING FROM MENTAL ILLNESS TO INHUMAN OR DEGRADING TREATMENT IN IMMIGRATION DETENTION

Today, in a landmark decision¹, the High Court has ruled that the Secretary of State for the Home Department, through the UK Border Agency, unlawfully detained a man with severe mental illness for a period of five months between April and September 2010 and that the circumstances of his detention at Harmondsworth immigration removal centre amounted to inhuman or degrading treatment in breach of article 3 of the European Convention on Human Rights ("ECHR").

It is believed to be the first time that a UK court has found that detention at an immigration removal centre to have breached article 3 ECHR.

The Claimant, whose identity is protected by an anonymity order in the proceedings and is known only as "S", had a history of serious ill treatment and abuse prior to arriving in the UK which had been accepted by a number of medical experts. After serving a prison sentence, a criminal court made an interim hospital order under the Mental Health Act in December 2009. He remained at the secure psychiatric hospital until his discharge on 23 April 2010. It was well documented, both from his time in prison and at the psychiatric hospital, that detention had caused deterioration in his psychiatric state, precipitating psychotic symptoms and incidents of serious self harm. The medical reports that followed S from the hospital on 23 April 2010 specifically warned that detention would cause him to regress to a state that he would once again require hospital admission.

In deciding to detain S, the UK Border Agency, inexplicably, stated that there was "no evidence" that he was mentally ill. The failure at the outset to understand and appreciate the nature and degree of S's mental illness was repeated by the officials responsible for reviewing and authorising his detention until his release on bail by the High Court on 29 September 2010.

Within days of arriving at Harmondsworth, S began to present with psychotic symptoms and also began to self harm. He was also identified at high risk of serious self harm and suicide and was placed on special watch. By early June 2010, he had been assessed by a psychiatrist as unfit to remain in detention and, once again, requiring treatment in a psychiatric hospital. However, by the end of July 2010 UKBA had done very little to progress S's transfer to hospital and he had deteriorated to the point that he lacked capacity

¹ *The Queen on the application of S v Secretary of State for the Home Department* [2011] EWHC 2120 (Admin)

to make decisions in his own best interests. He was presenting with psychotic symptoms and there were further serious episodes of self harm.

Eventually, on 28 July 2010, the High Court ordered the UK Border Agency to take steps to arrange for S to be transferred to a psychiatric hospital. By late September 2010, psychiatric staff at the hospital had assessed that S was well enough to be discharged but repeated the recommendations made previously by specialists that he required long term psychological treatment as a community patient. Despite all that had gone before, the UK Border Agency were intent on returning S to immigration detention and it was only after a second intervention by the High Court that S was released on bail. Since his release, S has lived with his family, he has fully complied with the conditions of bail set by the court, and his appeal against deportation has been adjourned so that the UK Border Agency can reconsider their decision.

The High Court decided, in summary:

1. S's detention was unlawful from the outset because when his detention was authorised the deportation order, which had been sitting on file since January 2010, had not been served on him².
2. His detention breached the UK Border Agency's detention policy³, in that the officials responsible for authorising detention failed to understand and take into account the evidence of S's mental illness⁴. Further, the Court found that UK Border Agency's "...policy was not properly understood by those authorising detention and was certainly not properly applied and that the decision and subsequent reviews failed to both understand and assess the impact of detention on S's mental condition."⁵ The Court specifically found that the evidence showed that S presented a risk to himself and not others.
3. By detaining S, the UK Border Agency had breached the negative and positive obligations under article 3 ECHR:
 - (a) With regard to the negative obligation on the state ("to refrain from inflicting serious harm on persons within their jurisdiction"), the Court found that the circumstances of S's detention at Harmondsworth immigration removal centre amounted to inhuman or degrading treatment⁶. At paragraph 212 the Court said:

"...I find that the treatment of S, both in the fact of detention, and its continuation despite S's deteriorating condition, and both the mental and physical manifestations of S's condition were sufficiently severe to fall within the Article 3 prohibition. S's pre-existing mental condition was both triggered and exacerbated by detention and that involved both a debasement and humiliation of S since it showed a serious lack of respect for his human dignity. It created a

² See paragraphs 142-161. The deportation order was served on 30 April 2010.

³ Chapter 55 of the Enforcement Instructions and Guidance, available at <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/enforcement/detentionandremovals/chapter55.pdf?view=Binary>.

⁴ See paragraphs 162-185.

⁵ See paragraph 182.

⁶ See paragraphs 210-214.

state in S's mind of real anguish and fear, through his hallucinations, which led him to self-harm frequently and to behave in a manner which was humiliating. It also led to his humiliating treatment in the hands of other detainees on 21 July.

- (b) With regard to the state's positive obligation ("to take measures designed to ensure that individuals within their jurisdiction are not subjected to torture or inhuman and degrading treatment or punishment"), the Court found that the UK Border Agency had not put in place appropriate measures to ensure that S was not subject to inhuman or degrading treatment, and such measures that were in place were not treated with the "appropriate level of seriousness or urgency"⁷. Further, the Court said:

"...taking into account the consistency of the psychiatric advice in this case, the Defendant's own guidance and the expert advice against detaining S, it follows that I am far from being satisfied that the UKBA or Defendant did all that they might reasonably have been expected to do in this case to prevent the treatment which I have criticised."

The Court recognised at paragraph 218 that its findings may have wider implications on how the UK Border Agency treats the mentally ill:

"...what I find with respect to the treatment of S may indeed have implications for the future treatment of the mentally ill who are proposed to be deported or removed..."

Jed Pennington of Bhatt Murphy solicitors, solicitor for S, said:

"This is far from the first time that the courts have found that the UK Border Agency has falsely imprisoned a very vulnerable person for a lengthy period of time. However, the court's decision that my client suffered inhuman or degrading treatment at a UK detention facility sends a very loud and clear message to the authorities. We would urge the Minister to conduct a fundamental review into how people suffering from mental illness are treated in the immigration detention estate."

For further information, please contact:

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⁷ See paragraphs 215-217.