

Bhatt Murphy Solicitors

PRESS RELEASE

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HOME OFFICE ADMITS IT UNLAWFULLY DETAINED AND SEPARATED A FATHER FROM HIS DAUGHTER, WHO REMAINED IN CARE AND AT IMMINENT RISK OF ADOPTION

The father (AJS) was separated from his 3 year old daughter (AJU) who was in care whilst he was unlawfully detained by the Home Office. The Local Authority decided and the Family Court ordered that it was in her best interests and welfare to be reunited with him, but if he was not released within a certain limited timeframe, she would have to be placed for adoption. Despite this the Home Office, in full knowledge of the Court's order, detained him under immigration powers, transferred him to a detention centre many miles away so that he could not see her at all, opposed his applications for release on bail and even when bail was granted delayed in providing accommodation to him. He was finally released after 3 months of immigration detention, only days away from his daughter being placed for adoption. The Home Office then provided a bail address which was still many miles away from his daughter and imposed a daily curfew on AJS which made the Court-ordered reunification plans impossible. AJS and AJU issued judicial review proceedings.

Two days before the final Court hearing, the Home Office have finally admitted that they acted unlawfully throughout in detaining and separating AJS from his daughter. The Home Office agreed to pay the Claimants £50,000 in damages. Despite this the Home Office refused to apologise to the Claimants or to review their practices despite the multiple unlawful actions and clear evidence in the case from the charity Bail for Immigration Detainees (BID) that this was not a one off, but indicative of systemic failure in detaining and separating parents from their children.

AJS and AJU issued judicial review proceedings on 20 December 2017. They filed detailed grounds along with evidence from BID, a charity that provides legal advice and representation to people in immigration detention. BID's evidence illustrated that there was widespread systemic failure in relation to the separation of parents from their children through administrative detention. The evidence showed for example that referrals to the Office of the Children's Champion, the department's internal professional advisors whose role is to assist the Home Office to comply with its duties towards children, had fallen sharply in recent years.

In the Order approved by the High Court today, the Home Office accepted that AJS was unlawfully detained for the entirety of his detention in breach of the Home Office's published policy relating to detention and Family Separation. The key breaches of policy were: breach of the policy precluding the detention of sole carers where the consequence is that the child will be taken into care; failure to co-operate with other public authorities and failure to make lawful, necessary and proportionate decisions about the separation of a family which take

the best interests of the child properly into account; failure to refer to the Office of the Children's Champion for advice; failure to properly review detention following a significant change in circumstances; and failure to complete the mandatory central record (the Family Separation Form ICD 5025). The effect of those failures was to prevent and/or significantly undermine the Court-approved Care Plan which had the objective of meeting the child best interests and safeguarding her welfare by reuniting her with her father and avoiding adoption.

The Home Office further admitted that the detention was in breach of section 55 of the Borders, Citizenship and Immigration Act 2009 (which requires the Home Office to have regard to the need to safeguard and promote the welfare of children in the UK when carrying out their functions) and in breach of both their Article 8 ECHR 'family life' rights including by their failure to enable contact between the child and her father to take place. They also agreed that the imposition of electronic monitoring and the curfew was unlawful and breached the Claimants' Article 8 ECHR rights.

His Honour Judge Blair QC was particularly concerned about the failure to refer to the Office of the Children's Champion and asked whether individuals could make a referral themselves where the Home Office fails to do so. He also commented that the reunion of this father and daughter following his release was "heart-warming" given all that they had been through.

This case follows two highly critical High Court judgments almost a decade ago¹, concerning similar failures in detention decision making, leading to the unlawful detention of two single mothers for many months. Changes to the Home Office's policy designed to provide better protection to children in this context were disregarded in this case and many others.

Janet Farrell of Bhatt Murphy solicitors said:

"The litany of unlawful conduct in this case and how close this child came to the catastrophic outcome of adoption is truly shocking. Despite highly critical judgments in the past and compelling evidence of the harm caused to children by the indefinite detention of their parents, the Home Office continues to separate children from their parents in an arbitrary and cruel manner. The duty to treat the best interests of children as a primary consideration is too often subjugated to the perceived need to be tough on immigration, with devastating effects on the welfare of children and parents alike. We would urge the Home Office to take this opportunity to urgently review their practices and promptly put corrective measures in place in order to protect families in the future."

Celia Clarke, Director of Bail for Immigration Detainees, a charity that works with Bhatt Murphy on such cases, commented:

"Time and again we see cases of children separated from their parents in the name of immigration control but we also see the devastating harm caused to those children by periods of separation."

¹ See MXL and Others v SSHD [2010] EWHC 2397 (Admin) and also NXT and Others v SSHD [2011] EWHC 969 (Admin) .

In this case the Home Office admitted that they breached their statutory duty to safeguard and promote the welfare of children and the family life rights of this father and child. But this is not a one off. We urge the government to bring to an end the deeply damaging practice of separating parents from their children for administrative convenience.”

Stephanie Harrison QC, counsel for the Claimants said:

“The Windrush debacle is the tip of the iceberg when it comes to the Home Office’s unlawful and abusive use of the draconian power of administrative immigration detention. The Home Office’s total disregard for this child’s best interests and welfare in detaining her father is obviously unacceptable. That it was also done in the face of an order from the Family Court requiring, in the child’s best interests, that she be reunited with her father, is a scandal and flagrant abuse of power. The systemic failure recently highlighted by the Joint Human Rights Committee in parliament is widespread and endemic within all aspects of Home Office practice relating to detention. The total disregard for the individual, which is symptomatic of the Government’s hostile environment policy, as this case shows, extends, even to, the most vulnerable in society: children separated from their parent and in care.”

For the sealed Order and Statement of Reasons in the case, please see this link [here](#).

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