

# Bhatt Murphy Solicitors

## PRESS RELEASE

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### HIGH COURT SEVERELY CRITICAL OF DETENTION OF MAN SUFFERING FROM MENTAL ILLNESS AT HARMONDSWORTH IMMIGRATION REMOVAL CENTRE

In a judgment handed down on 26 October 2011, the High Court ruled<sup>1</sup> that the Secretary of State for the Home Department, through the UK Border Agency, unlawfully detained a man with severe mental illness between 21 June and 7 October 2011 and that the circumstances of his detention at Harmondsworth immigration removal centre between 4 July and 6 August 2011 amounted to inhuman or degrading treatment in breach of article 3 of the European Convention on Human Rights ("ECHR").

It is the second time this year that the High Court has found the detention of a man with severe mental illness at Harmondsworth to amount to inhuman or degrading treatment in breach of article 3<sup>2</sup> and raises real concerns that there may be systemic problems with the treatment of mentally ill people by UKBA and within the privately managed immigration detention estate.

#### Background

There is a detailed chronology of events set out at paragraphs 8 to 119 of the judgment. The Claimant, whose identity is protected by an anonymity order and is known only as "BA", arrived in the UK in December 2005. He was found to have a significant amount of cocaine concealed internally. On 18 May 2005 he was convicted in connection with the importation of Class A drugs and sentenced to 10 years in prison.

During his prison sentence BA initially engaged with the prison regime and his behaviour was good. He was assessed by probation services as posing a low risk of re-offending and low risk of serious harm to the public.

His mental health deteriorated in prison, with evidence of psychosis and the refusal of food and fluids and of medical intervention. This resulted in two separate periods of admission to hospital under the Mental Health Act.

UKBA detained BA upon his discharge from hospital on 1 February 2011. They had been warned by his responsible psychiatrist that he would be likely to deteriorate in prison and that signs of deterioration included him refusing food and fluids.

There were a number of shortcomings in the care provided for BA at Harmondsworth, including:

- A failure by healthcare to monitor BA for the first two months of his detention,
- A failure to allow him to see a psychiatrist until 21 May 2011, despite a recommendation for a psychiatric assessment made by a GP seven weeks earlier,
- Decisions to take him to a hospital for rehydration treatment in handcuffs, which caused him to refuse medical interventions, and

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<sup>1</sup> R (BA) v Secretary of State for the Home Department [2011] EWHC 2748 (Admin) (26 October 2011).

<sup>2</sup> The earlier decision was R (S) v Secretary of State for the Home Department [2011] EWHC 2120 (Admin) (5 August 2011).

- A delay in the assessment of his mental state for the purposes of transfer under the Mental Health Act and in arranging the transfer itself, which was only achieved on following the intervention of the Court<sup>3</sup>.

The psychiatrist who discharged BA in February 2011 had predicted a deterioration of BA's mental health in detention. When he was assessed by Dr Lucy Summers, a General Practitioner working with the charity Medical Justice, on 3 June 2011 she observed that he had a history of stress induced psychosis and was showing signs of relapse, including anxiety, depression and signs of psychosis. On 6 July 2011 he was assessed by Dr Peter Agulnik, a consultant psychiatrist working with Medical Justice on the instruction of BA's solicitors. Dr Agulnik stated that BA required urgent psychiatric treatment outside of immigration detention and warned that continued detention carried "a real risk that he could die".

On 4 July 2011 the healthcare manager at Harmondsworth had already informed UKBA that BA was unfit to remain in detention. This assessment was confirmed and repeated by medical staff in later assessments that month provided to UKBA. By 28 July 2011 the healthcare manager considered that BA could die imminently and was preparing "an end of life care plan" for him<sup>4</sup>.

Despite all of the information UKBA had about BA's mental illness and the risks of continued detention David Wood, the Director of Criminality and Detention at UKBA, maintained his detention on two separate occasions in late July and early August 2011 when he was asked by junior officials to consider authorising release<sup>5</sup>. Mr Philip Schoenenberger, assistant director of UKBA's detention services, expressed surprise that BA had not been released. He stated, in words described by the judge as chilling<sup>6</sup> that:

*"...on our Monday conference call, we will discuss informing the RRT as there will be significant press interest if he does subsequently pass away. We have made sure that healthcare are keeping good and accurate details of his care and this record will be available to the [Prisons and Probation Ombudsman] should he die."*<sup>7</sup>

BA was transferred to a Hillindon Hospital on 6 August 2011. By late September 2011 those treating him at Hillingdon Hospital had assessed that BA had improved sufficiently to be discharged. They warned however that he would be likely to deteriorate if he returned to detention. Despite all that had happened before, and the clear medical advice, UKBA decided to return BA to Harmondsworth. BA's judicial review was heard on 30 September and 7 October 2011. After lunch on 7 October 2011, the Secretary of State's counsel explained to the Court that, in breach of the order made on 26 July 2011, BA had been transferred back to Harmondsworth<sup>8</sup>.

### **The Court's decision**

Elisabeth Laing QC, sitting as a Deputy High Court Judge, ruled that BA's detention from 21 June 2011 until his release on 7 October 2011 was unlawful and constituted a false imprisonment. She further held that the circumstances of his detention at Harmondsworth between 4 July and 6 August 2011 amounted to inhuman or degrading treatment in breach of article 3 ECHR.

In finding a breach of article 3<sup>9</sup>, she said:

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<sup>3</sup> The transfer only took place on 6 August 2011 after the court intervened on 26 July 2010.

<sup>4</sup> See paragraph 82.

<sup>5</sup> See paragraphs 111-115.

<sup>6</sup> Paragraph 113.

<sup>7</sup> This quote from an email is set out at paragraph 113.

<sup>8</sup> Paragraph 241.

<sup>9</sup> Paragraphs 236-238.

*“In my judgment there was a deplorable failure, from the outset, by those responsible for BA’s detention to recognise the nature and extent of BA’s illness... I... consider that there has been a combination of bureaucratic inertia, and lack of communication and co-ordination between those who were responsible for his welfare. The documents disclosed by the Secretary of State have also shown, on one occasion, a callous indifference to BA’s plight...”*

**Jed Pennington of Bhatt Murphy solicitors, solicitor for BA said:**

*“UKBA’s apparent indifference to my client’s plight left him on the verge of death. The UK does not return people to countries where there is a real risk that they will be imprisoned in conditions that are inhuman or degrading. It should be matter of grave concern to the officials who allowed this to happen, and the responsible minister, that this has occurred at a UK detention facility.*

*After the judgment in S in August this year, we urged the minister to conduct a fundamental review into how mentally ill people are treated in the immigration detention estate. We are not aware that any such review has taken place and this case shows that lessons are not being learned. We now call on the minister to urgently review how mentally ill people are treated by UKBA within the immigration system.”*

**Theresa Schleicher, Casework Manager at Medical Justice, said:**

*“The UK Border Agency wilfully gambled with this man’s life, fully aware of the risks.*

*They proved incapable of monitoring his health, but were ready to manage his death. Their private healthcare provider contractor said they would draw up an end of life care plan and UKBA concerned itself with press interest.*

*Lessons urgently need to be learnt, especially while investigations into the deaths of three immigration detainees in one month this summer are still pending.*

*Based on medical evidence from many hundreds of detainees that Medical Justice has assisted, we have documented the toxic effect of indefinite immigration detention on mental health. Coupled with disturbingly inadequate healthcare in immigration removal centres, the damage caused is so widespread that the only solution is a fundamental rethink before further tragedy occurs.”*

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Note to editors

1. A copy of the judgment can be downloaded [here](#).
2. The press release for the decision in R (S) v Secretary of State for the Home Department [2011] EWHC 2120 (Admin) can be downloaded [here](#), the judgment [here](#) and the Guardian covering [here](#).