



Neutral Citation Number: [2023] EWHC 319 (Admin)

Case No: CO/4409/2021

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
ADMINISTRATIVE COURT

Issued: Tuesday 14th February 2023
Handed down: Thursday 17th February 2023

Before:
MR JUSTICE FORDHAM

Between:
THE KING
(on the application of LC)

Claimant

and
SECRETARY OF STATE FOR THE HOME DEPARTMENT

Defendant

Chris Buttler KC and Catherine Meredith (Duncan Lewis Solicitors) for the **Claimant**
Jack Anderson (Government Legal Department) for the **Defendant**

Determination in relation to an Agreed Order
Approved

I direct that no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

A handwritten signature in black ink, appearing to read 'Michael Fordham'.

.....
THE HON. MR JUSTICE FORDHAM

MR JUSTICE FORDHAM:

Introduction

1. This is a judicial determination on the papers, pursuant to the mechanism described in the Administrative Court Judicial Review Guide 2022 §24.4 (Consent orders and uncontested hearings) and CPR PD54A §16.1. I consider it appropriate to give reasons by way of a short judgment in the public domain, having regard to the open justice principle (Judicial Review Guide §24.4.1 fn. 410).

Order

2. In this case, I made the following Order on 14 February 2022:

IT IS ORDERED, BY CONSENT, AS FOLLOWS:

- (1) *It is declared that the Claimant was falsely imprisoned from 1-17 November 2021 and is entitled to compensatory damages.*
- (2) *On 31 March 2023, the claim shall be transferred to the County Court at Central London for an assessment of damages.*
- (3) *The parties shall use the period until 31 March 2023 to endeavour to agree the sum of damages payable.*
- (4) *The Claimant has permission to withdraw his Article 3 ECHR claim.*
- (5) *The Defendant shall pay the Claimant's reasonable costs of the claim on the standard basis, to be assessed if not agreed.*
- (6) *There shall be a detailed assessment (if required) of the Claimant's publicly funded costs in accordance with the Civil Legal Aid (Costs) Regulations 2013.*

IT IS FURTHER ORDERED THAT:

- (7) *Pursuant to CPR r 44.2(8), the Defendant shall make a payment on account of those costs, within 14 days of being served with a schedule of costs, in the sum of 60% of the schedule.*

3. The Agreed Statement of Matters Relied on (which I included at Schedule 1 to the Order) is in these terms:

[T]he parties rely on the following matters as justifying the proposed agreed order:

- (i) *The Defendant's decision to detain the Claimant under immigration powers from 1 November 2021 to 17 November 2021 was unlawful because it did not accord with the Defendant's Interim Internal Guidance and communications on the detention of individuals with HIV requiring antiretroviral treatment.*
- (ii) *The Defendant's Interim Internal Guidance was disseminated internally to immigration enforcement officers on 4 August 2021 following the judgment of Bourne J in R (CSM) v Secretary of State for the Home Department [2021] 4 WLR 110. The effect of the Interim Internal Guidance was that "At the point of detention, a referral will only be considered appropriate where [it is] confirmed that the individual has their own prescribed medication with at least 30 days of supply", which was considered to be an "adequate supply of prescribed medication and antiretroviral drugs".*
- (iii) *The Defendant did not comply with the Interim Internal Guidance in the Claimant's case, in that, knowing that the Claimant had HIV and had been prescribed antiretroviral medication, the Defendant detained him without any supply of antiretroviral drugs.*
- (iv) *The Defendant's failure to comply with the Interim Internal Guidance was a material public law error (and was a causative error of the Claimant's detention) because the Claimant would not have been detained if the Internal Interim Guidance had been followed. This was recognised in the Defendant's "Case Review and Lessons Learnt" exercise.*
- (v) *Accordingly, the Defendant is liable for the tort of false imprisonment and the Claimant is entitled to compensatory damages for the losses caused by his imprisonment, including his loss of liberty.*

4. The Agreed List of Essential Reading for the Court (which I included as Schedule 2 to the Order) was: (a) Skeleton arguments of the Claimant and Defendant; (b) R (CSM) v Secretary of State for the Home Department [2021] 4 WLR 110; (c) Interim Internal Guidance; (d) Lessons Learned Exercise; (e) the Claimant's submissions on payment on account, the Defendant's submissions on payment on account and the Claimant's reply.
5. The Recitals to the Order recorded that the Court considered the Agreed Statement of Matters Relied On and the items in the Agreed List of Essential Reading; that the Court was asked to resolve, on the papers, the disputed aspects relating to paragraph (7) of the Order; and that the Court was satisfied that all of the terms of the Order are appropriate.

Payment on Account of Costs

6. I do not need to say more about paragraphs (1) to (6) of the Order. As to paragraph (7):
 - i) The Claimant's representatives asked for the Order in the terms which I have made. These key points were made: (1) Legally aided parties do not file statements of costs because summary assessment is not available to a legally aided party, so the Claimant was seeking 60% of the professionally drawn bill of costs. (2) The Claimant's representatives were under a professional duty not to bill for more than the work that has been done. (3) The order sought was a standard form of order made in legally aided cases. (4) By reference to Mars UK v Teknowledge Ltd [1999] 2 Costs LR 44, 60% squarely accords with an amount which the Claimant "will almost certainly collect"; is a considerable discount on the full amount with no risk of overpayment following detailed assessment; and a lesser sum would not fulfil the underlying purpose of preventing the Defendant "putting off the evil day".
 - ii) A witness statement of Toufique Hossain, solicitor and Public Law Director at Duncan Lewis Solicitor, told me:

I confirm that the form of order which the Claimants are seeking is a standard form used in legally aided cases (i.e. "Pursuant to CPR r 44.2(8), the Defendant shall make a payment on account of those costs within 28 days of being served with a schedule of costs in the sum of x% of the schedule"). An Order of this kind has been made by the Court in at least seven of Duncan Lewis' cases in the past 6 months.

I have seen a note of counsels' time and I have had regard to the time billed by fee earners, which I am confident is reasonable, sustainable and in line with billing in comparable public law cases. I expect, as always occurs, that there will be some knock down on detailed assessment. However, I am confident that in this case recovery will be in excess of 80% and that there is no risk in any event that it will be lower than] 60%.
 - iii) The Defendant asked me to order that the Defendant "shall make a payment on account in the sum to be agreed by the parties of the Claimant's bill of costs, within 28 days of such a bill being served"; or alternatively to make the order sought by the Claimant but substituting "40%". The key points made were: (1) that the appropriate sum ought to be agreed by the parties following receipt, and review by the Defendant's professional costs persons, of the Claimant's bill of costs; and (2) that Bills of costs are "often reduced significantly" and a percentage above 40% created "a risk of payment higher than the final settlement".

- iv) The Claimant's representatives made these reply points: that the Defendant's proposed order would inappropriately give the Defendant complete control of the amount paid on account; and that the Defendant had not rebutted the evidence that it was vanishingly unlikely that the reduction in this case would be more than 40%.

7. I accepted the submissions on behalf of the Claimant and the evidence of Mr Hossain.

17.2.23