

R. (on the application of WP (Poland)) v Secretary of State for the Home Department



No Substantial Judicial Treatment

Court

Queen's Bench Division (Administrative Court)

Judgment Date

16 April 2020

Where Reported

[2020] 4 WLUK 150

Subject

Immigration

Other related subjects

Mental health; Human rights; Health

Keywords

Balance of convenience; Coronavirus; Detained persons; Immigration; Inhuman or degrading treatment or punishment; Interim relief; Mental health; Vulnerable adults

Judge

[Cavanagh J](#)

Counsel

For the claimant: Laura Dubinsky, Marisa Cohen.

For the defendant: Zane Malik.

Case Digest

Summary

Although the court had considerable sympathy for the Secretary of State for the Home Department, who was facing an unprecedented administrative challenge in light of the Covid-19 emergency, it was appropriate to grant an urgent injunction for interim relief to secure the release of the claimant Polish national from immigration detention into bail accommodation pursuant to the [Immigration Act 2016 Sch.10](#) in circumstances where the claimant had been in detention for over 4 months despite grave concerns about her mental health.

Abstract

The claimant detainee sought an urgent application for interim relief to secure her release into bail accommodation pursuant to the [Immigration Act 2016 Sch.10](#).

The claimant was a 38-year-old Polish national. In August 2019 she had been encountered wandering naked or partially clothed and was admitted to a psychiatric ward. Her medical records showed that there were concerns that she was not fit to be detained due to her mental health and should be hospitalised. She was sentenced to 14 days' imprisonment for assault and public order offences on 18 December 2019 and transferred to an immigration detention centre. The claimant had an undisputed history of

mental health problems. The decision was made to administratively remove her from the UK. She appealed against that decision and her removal was put on hold due to the Covid-19 pandemic. On 22 February 2020 she was seen by a medical practitioner who prepared a rule 35 report, which voiced concerns, although she was accessing psychiatric treatment and anti-psychotic medication, she might deteriorate if she remained in detention. On 25 February 2020 the defendant stated that she was minded to release the claimant, but sought further documentary evidence in support of the claimant's vulnerability before taking a decision on whether to grant her sch.10 accommodation. On 5 March 2020, in response to the rule 35 report, the defendant accepted that the claimant was at level 2 of its Adults at Risk Policy and should be released from detention when accommodation was secured for her. On 2 April 2020 the defendant confirmed that the claimant was entitled to sch.10 support but stated that because of the Covid-19 emergency there was no possibility of providing a timescale as to when accommodation would be available.

The claimant submitted that there had been a considerable and unjustified delay by the defendant in getting to grips with obtaining sch.10 accommodation and that the application should have begun well before the 2 April 2020, as it had been clear from as early as January 2020 that she was very vulnerable. The defendant submitted that she was unable to give a commitment as to exactly when the claimant could be released because of the exceptional administrative burden placed on her by the Covid-19 emergency, but stated that accommodation had now been found. The defendant asked the court not to provide a deadline by which she had to provide accommodation but asked that if it was minded to make an order, a deadline of seven rather than four days would be appropriate.

Held

Application granted.

[Schedule 10 para.1](#) of the Act conferred powers on the defendant to grant bail to a detained person. [Schedule 10 para.9](#) conferred the power to provide accommodation to a person who had been bailed if the defendant believed that there were exceptional circumstances which justified the exercise of that power. Therefore, there was a power, rather than a statutory obligation, to grant immigration bail at all. However, case law demonstrated that there was an obligation to determine applications for sch.10 accommodation fairly and rationally. That imposed an implied obligation, if a decision was taken that somebody should be placed in sch.10 accommodation, to act reasonably to obtain accommodation within a reasonable period. The defendant's published policy on sch.10 bail recognised that if an individual was bailed but did not have access to accommodation support from other sources, and faced imminent suffering due to the denial of food, shelter and basic necessities, then there would, save in some exceptional cases, be a positive obligation under [ECHR art.3](#) to provide sch.10 accommodation. When it came to considering whether interim relief should be granted, the court had to first consider whether there was a real prospect of success at trial. It was not the basic *Cyanamid* test that applied but a somewhat stricter test equivalent to a strong prima facie case. The court then had to consider whether, damages plainly not being an adequate remedy, the balance of convenience favoured the granting of interim relief. The person in immigration detention did not have an automatic right to bail or a right to sch.10 accommodation. However, there was no doubt that the claimant was eligible and entitled to sch.10 accommodation once it became available. Eligibility for accommodation was not the same as an entitlement in law. The entitlement arose when the search for the accommodation was successful. Part of the obligation imposed by implication on the defendant to decide whether somebody should have sch.10 accommodation in a fair and rational manner was to make reasonable efforts to provide accommodation once it was decided that accommodation should be provided. Excessive delay might render a process of obtaining accommodation unlawful. The instant court had to consider whether there was a strong prima facie case that the defendant had failed so far to take reasonable steps to obtain appropriate accommodation for the claimant in circumstances which would merit the making of an interim order. The court had considerable sympathy for the defendant, who was facing an unprecedented challenge in light of the Covid emergency. However, in light of the factual history and the fact that the claimant had been in detention for four months despite grave concerns expressed by the defendant's own officials about her mental health, it was appropriate to grant an interim injunction. The order would provide for a further seven days to make the accommodation available rather than the four days requested. The court also granted the defendant liberty to apply if there were particular reasons why even that time limit could not be met.