

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

BETWEEN

THE QUEEN
On the Application of AKE
(By his litigation friend the Official Solicitor)

Claimant

- and -

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Defendant

draft ORDER

BEFORE THE HONOURABLE

UPON hearing Counsel for the Claimant and for the Defendant

AND UPON reading the Statement of Reasons annexed to this Order

AND UPON reading the opinion of Counsel for the Claimant provided to the Court for the purposes of approving the settlement of these proceedings pursuant to Rule 21.10(1) of the Civil Procedure Rules;

AND UPON the Defendant having agreed to grant the Claimant leave to remain in the United Kingdom for 30 months;

AND UPON the parties having agreed to the terms set out below in full and final settlement of the claim for judicial review (CO/2010/2018), the settlement including those grounds for which permission has not been granted;

AND UPON the Defendant acknowledging that the detention of the Claimant pursuant to immigration powers had become unlawful by the end of the period in issue in this claim;

AND UPON the Defendant agreeing to pay the Claimant damages as set out at paragraph 3 of this Order, subject to the approval of the Court in accordance with Part 21 of the CPR.

IT IS HEREBY ORDERED BY CONSENT THAT:

1. The agreement by which the claims made by the Claimant in this application for judicial review have been compromised between the Claimant and the Defendant, in the terms recorded in the following provisions of this Order, is approved, and upon the Defendant's performance of her obligations set out in the following provisions of this Order she is discharged from any and all further liability to the Claimant in respect of the claims made by the Claimant in this application for judicial review.
2. The Claimant's application for judicial review is withdrawn on the terms set out in the recitals above and the terms below.
3. The Claimant may accept the sum of £100,000 (one hundred thousand pounds) in full and final settlement of the entirety of all of the claims made by him in this application for judicial review, including (for the avoidance of doubt) those claims which have been made by him but in respect of which the Court has not to date granted permission to apply for judicial review.
4. Within 28 days of the Court approving the settlement of the claim and approving the arrangements for the investment of the sum referred to at paragraph 3 of this Order, the Defendant shall pay that sum into the Court Funds Office pending the appointment of a professional deputy on behalf of the Claimant.
5. The Defendant shall pay the Claimant's reasonable costs of this application for judicial review to be subject to detailed assessment if not agreed. The costs so payable by the Defendant to the Claimant will be assessed on the standard basis.
6. In the event of agreement between the Defendant and the Claimant's solicitors of the sum of the costs referred to in paragraph 5 of this Order, the Claimant's solicitors have permission to request that detailed assessment be dispensed with if they waive any claim to further costs.

IT IS FURTHER ORDERED THAT:

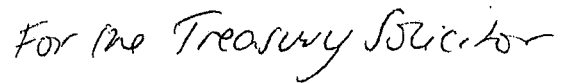
7. The substantive hearing listed to begin on 4 December 2019 is to be a hearing for the approval of the Claimant's settlement pursuant to CPR 21, with a time estimate of 1 hour.
8. There be a detailed assessment of the costs of the Claimant's publicly funded costs.
9. There be liberty to apply as to carrying the terms set out in this Order.

We, the solicitors for the parties, on their behalf and upon their instructions, hereby confirm our consent to an order on the terms set out above

Signature:



**Bhatt Murphy
10 Tyssen Street, Dalston
London E8 2FE**



**Government Legal Department
102 Petty France, Westminster
London SW1H 9GL**

STATEMENT OF REASONS

1. The Claimant in this matter is an Iranian national. He claims to have entered the UK illegally in 2012. He made an application for asylum which was refused. He exhausted his appeal rights but did not return voluntarily to Iran.
2. Medical reports obtained by the Claimant's legal representatives on his behalf diagnose the Claimant as suffering from bipolar affective disorder and Post Traumatic Stress Disorder. The medical reports conclude that the Claimant lacks mental capacity to conduct litigation. Consequently the Official Solicitor acts as the Claimant's litigation friend in these proceedings.

The Claimant's case

3. The Claimant was detained by the Defendant under the Immigration Act (IA) 1971 for two periods. The first period was from 1 December 2015 to 11 July 2016, a total of 223 days; and the second from 19 October 2016 to 25 June 2018, a total of 615 days. Both periods were preceded by the service of a short custodial sentence for criminal offences. The Claimant attended three interviews with officials at the Iranian Consulate in London but none of those interviews resulted in a travel document being issued.
4. It was the Claimant's case that his removal could not be enforced in the absence of a travel document being issued by the Iranian authorities and because he was not willing to return voluntarily to Iran. In any event it was the Claimant's case that he did not have the mental capacity to consent to return to Iran. The Defendant alleges that the Claimant did not cooperate with removal.
5. When the Claimant was released on 25 June 2018, he was subject to conditional bail imposed under Schedule 10 of the Immigration Act 2016 ('IA 2016'). The conditions included a requirement for the Claimant to report to an immigration officer on 28 June 2018. The notice informed the Claimant that a failure to comply could result in arrest and / or his detention, was a criminal offence and could result in any outstanding application being refused.

6. On 22 July 2018, the Claimant was arrested by police for public nuisance in a park. He was detained by the police under section 136 of the Mental Health Act (MHA1983) and subsequently detained in hospital for assessment under section 2 MHA 1983 and subsequently for treatment under section 3 MHA 1983.
7. On 7 December 2018, the Claimant was discharged from hospital under a Community Treatment Order with supervision from a care coordinator. In a Bail Form dated 10 January 2019, the Defendant imposed bail conditions which required the Claimant to appear before the Defendant on 17 January 2019 and thereafter, to report to an immigration officer every Thursday. He was also subject to a residence condition and restrictions on study and work. The Claimant appeared on one occasion for reporting but did not subsequently report.
8. On 7 March 2019, the Defendant issued a notice of a breach of bail conditions, stating that he had failed to comply since 17 January 2019. The Notice informed the Claimant of the Defendant's power to re-detain him for the breach or impose criminal sanctions including custody or a fine.
9. On 25 June 2019, the Defendant varied the conditions of bail, substituting reporting in person with reporting by telephone.

These proceedings

10. This application for judicial review raised three grounds of challenge:
 - a. That all or part of the Claimant's detention was unlawful;
 - b. That the imposition of conditional bail on the Claimant was unlawful because i) there was no lawful power to detain the Claimant and / or ii) schedule 10 to the 2016 Act is incompatible with Article 5 ECHR and/or iii) the Claimant had no mental capacity to understand and/or comply with the conditional bail .
 - c. That the Defendant was in breach of sections 20 and 29 of the Equality Act 2010 in respect of the absence / inadequacy of measures to identify and facilitate those who are mentally ill and / or mentally incapacitated to make representations about their detention, and conditions of detention and segregation and/or release on bail.

11. The Defendant denied liability in relation to all of the grounds of challenge.
12. On 11 July 2019, permission was granted by John Bowers Q.C. to proceed with a challenge to the lawfulness of the Claimant's detention on the basis of the *Hardial Singh* principles; a challenge to the lawfulness of the imposition of bail conditions; and with the Claimant's contention that the detention, release and bail system in respect of those who are mentally ill or incapacitated was incompatible with sections 20 and 29 of the Equality Act 2010. Other grounds upon which detention was said to be unlawful were stayed.
13. On 4 September 2019, this claim was set down for a substantive hearing from 3-5 December 2019. On 2 December 2019, the hearing was re-listed for 4-6 December 2019.

Reasons for the Order

14. The Defendant has acknowledged that the Claimant's detention had become unlawful by the end of the second period in issue, but has made no further admission in respect of any part of the claim.
15. The Claimant has been granted limited leave to remain for a period of 30 months, the consequences of which he will no longer be subject to conditional bail under the Immigration Act 2016.
16. The Defendant has agreed to pay the Claimant compensatory damages in the sum of £100,000 in full and final settlement of this application for judicial review, including the grounds that have been stayed.
17. The consent order and proposed settlement of the claim is subject to the Court's approval pursuant to the relevant provisions of Rule 21 of the Civil Procedure Rules 1998 because the Claimant is a protected party.