Neutral Citation Number: [2020] EWCA Civ 36

Case No: C4/2019/1006

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT
Jeremy Johnson QC
[2019] EWHC 188 (Admin)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 28/01/2020

Before:

LADY JUSTICE KING DBE
LORD JUSTICE IRWIN
and
LORD JUSTICE BAKER

- -

Between:

The Queen (on the application of AC (Algeria))	**Appellant**
- and -	
The Secretary of State for the Home Department	**Respondent**

- -
- -

Ranjiv Khubber (instructed by **Turpin & Miller LLP**) for the **Appellant**
Alex Ustych (instructed by **The Government Legal Department**) for the **Respondent**

Hearing dates: 5 December 2019

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Approved Judgment

Lord Justice Irwin:

Introduction

1. This appeal concerns the application of the "*Hardial Singh*" principles, first laid down in *R v Governor of Durham Prison, ex parte Hardial Singh* [1984] 1 WLR 704, and developed and interpreted in a number of authorities since. The particular application with which we are concerned is as to the "grace periods", that period of time allowed to the Secretary of State, once detention has ceased to comply with the *Hardial Singh* principles, to make suitable arrangements for release.

2. In my judgment, this case exemplifies an over-liberal approach to this problem. An increased energy and rigour should be required of the Secretary of State in relation to such final periods of detention.

The Facts

3. In a careful, well-expressed and impressive judgment, Mr Jeremy Johnson QC sitting as a Deputy High Court Judge (as he then was) recorded the history of the Appellant. It is not necessary for me to recapitulate that other than in the barest form.

4. The Appellant is Algerian. He entered the United Kingdom illegally in 2013. On 11 March 2016 he pleaded guilty to two counts of sexual assault and was subsequently sentenced to four years imprisonment. He was due to be released on licence, on 25 December 2017. He had twice touched the bottom of a woman stranger.

5. On 21 June 2016, the Appellant was served with notice of a decision to make a deportation order. He responded by writing a letter to the Respondent claiming that he would be killed if deported to Syria. This was (properly) treated as an asylum claim.

6. The Appellant then tried to deceive the Respondent as to his nationality, claiming to be Syrian. By February 2017 he had been assessed to be Tunisian or Algerian. Nothing more was done about his asylum claim during most of 2017.

7. In December 2017, the Appellant was further interviewed. On 21 December 2017 he failed to engage with a language analysis interview. Four days later on 25 December 2017, when he would otherwise have been released on licence, he commenced immigration detention.

8. By February 2018, the Appellant through his (recently instructed) solicitors had admitted he was Algerian, but asked for his asylum claim to be progressed. He claimed he had been sexually abused from an early age and held as a captive sex slave for six years. On 2 October 2018 the Respondent rejected the asylum claim and made a deportation order. By then he had been in immigration detention for over nine months.

9. At the same time the Respondent certified the applicability of the presumption under s.72(2) of the Nationality, Immigration and Asylum Act 2002, namely that the Appellant had been convicted of a serious crime and constituted a danger to the community.

10. The Appellant's appeal against the dismissal of his asylum claim was itself dismissed by the First-tier Tribunal, on 26 November 2018. He did not bring a further appeal in time. At the time of the judgment below, he had sought to bring an out-of-time appeal, which had not been determined.

11. From December 2017 until the hearing below, the Appellant's detention was reviewed roughly every four weeks in written "Detention and Case Progression Reviews" ["DCPRs"]. These were fully analysed by the judge in paragraphs 18 to 30 and 33 to 41 of the judgment. The last DCPR took place on 4 January 2019, 12 days before the hearing below. The judge commented that, at more than one point, detention was in fact prolonged further than the period authorised in the latest extant DCPR.

12. The Appellant had been assessed as representing a high-risk of re-offending and "posing a serious risk of harm, if the opportunity should arise…"

13. By February 2018, as I have said, his nationality had been established, and the DCPR for that month recorded "a request for a travel document will be put in progress".

14. Over the ensuing months, as the judge outlines, successive decisions were taken to authorise further detention, on the basis that removal could be effected in a reasonable timescale. The Appellant had made a failed application for bail in January. It seems that the Appellant first sought Schedule 10 accommodation (accommodation pursuant to paragraph 9 of Schedule 10 to the Immigration Act 2016, suitable for an individual with the Appellant's record and risk) on 5 April 2018, and again in May 2018 and in ensuing months. At that point, and beyond, the Appellant's asylum claim had not been resolved.

15. A further application for bail was refused in the First-tier Tribunal on 23 May 2018, although the Tribunal indicated the balance of factors would likely change if there was further delay with the asylum decision. In a further hearing on 3 July 2018, although bail was refused, First-tier Tribunal Judge Barber expressed concern at the delay in the case.

16. A DCPR took place on 7 July 2018. As the judge found, detention was not authorised until 3 August2018, and thus there was a further period of unauthorised detention. On 30 July 2018, a case progression panel concluded that "removal within a reasonable time … may not be possible" [judgment, paragraph 25]. Further detention was nevertheless authorised on 3 August 2018. However, on 15 August 2018 the First-tier Tribunal ordered that the Appellant should be released on bail subject to provision of Schedule 10 support. This was clearly a watershed in the case.

17. As I have indicated, detention was thereafter repeatedly authorised. The question of provision of accommodation was analysed by the judge, once more impeccably, in paragraphs 42 to 47 of the judgment below. He analysed what he described as "extensive delays" by the probation service [47], and by SERCO [46].

18. After consideration of the law, and the policy of the Respondent, as affecting detention and the provisions of accommodation, the judge reached his conclusions on the lawfulness of detention. He accepted the Respondent's submission that the risks of absconding and of re-offending were relevant [79 to 83]. He concluded that there was "unsatisfactory" evidence as to why the process of obtaining a travel document

had not begun earlier [88] and [91], but concluded detention did not become unlawful during the period up to August 2018 [92 to 94].

19. The judge then concluded [96] that by August 2018 "it should have been apparent that the … asylum claim was likely to be determined within a matter of weeks … However, a travel document had not been obtained." The facts did not indicate "the expedition and diligence required…" [96].

20. The judge found [101] that by the end of August 2018, "the Appellant, having been in immigration detention for eight months, with 'receding' prospects of removal in a reasonable time, it was necessary to reassess … alternatives to detention". The anticipated time for removal had been February 2019.

21. On 15 August 2018, the First-tier Tribunal had granted bail subject to accommodation being provided by 29 August 2018. A similar grant of bail "in principle" was made on 4 October 2018, subject to the provision of accommodation by 25 October 2018. That, too, was not met. Again, the First-tier Tribunal granted bail on 2 November 2018, subject to the provision of accommodation by 16 November 2018. That was not met. The final DCPR before the hearing below on 4 January 2019 authorised "continued detention for a further 28 days pending further work on documentation and an assessment of timescales to removal".

22. No suitable accommodation had been provided by the time of the hearing below.

23. The judge's conclusions as to the last period of detention before the hearing below must be considered in more detail. The relevant passage reads:

> "106. January 2019: The only barrier to removal remains that of a travel document. I was told at the hearing that an interview with the Claimant had taken place on 3 January 2019. It remains the case that a request to the Algerian embassy has still (as at the date of the hearing) not been made. It seems to me that there is now no real prospect that the Claimant will be removed within a reasonable period of time (which I take to be by the end of February 2019, for the reasons I have given). Continued detention is therefore not compatible with HS3. It will also soon (at the end of February 2019) be incompatible with HS2 and HS4.
>
> 107. On a strict and literal application of HS3 it might be said that maintaining detention is now unlawful. The *Hardial Singh* principles reflect the common law's jealous protection of liberty and its abhorrence of arbitrary detention, matters of fundamental constitutional importance. They fall to be applied with the high constitutional importance of the right to liberty well in mind. They must be interpreted in a manner that is consistent with their underlying purpose and rationale. The principles are not, however, hard edged. They are not statutory rules which ineluctably give rise to illegality at the moment of breach – see *R (Krasniqi) v Secretary of State for the Home Department* [2011] EWCA Civ 1549 at [12]:

> "The *Hardial Singh* principles, though approved as such by the Supreme Court, are not the equivalent of statutory rules, a breach of which is enough to found a claim in damages. As I understand them, they are no more than applications of two elementary propositions of English law: first, that compulsory detention must be properly justified, and, secondly, that statutory powers must be used for the purposes for which they are given. To found a claim in damages for wrongful detention, it is not enough that, in retrospect, some part of the statutory process is shown to have taken longer than it should have done. There is a dividing-line between mere administrative failing and unreasonableness amounting to illegality. Even if that line has been crossed, it is necessary for the claimant to show a specific period during which, but for the failure, he would no longer have been detained."

108. They are thus not to be applied rigidly or mechanically (see *Lumba* at [115]) and it is necessary to take account of the way in which the Home Office functions – see *HXA v The Home Office* [2010] EWHC 1177 QB at [71].

109. If the Defendant had intended to continue to detain the Claimant until he could be deported then that would, in all the circumstances of this case, be unlawful. However, the *Hardial Singh* principles are sufficiently flexible in their application to permit continued detention for the purpose of arranging appropriate bail conditions, once continued detention is no longer compatible with HS3. In other words, if it becomes apparent that it will not be possible to remove a person within a reasonable period of time, continued detention for a short period whilst arrangements are made for release on bail may be justified.

110. That is so here. The period for which the Claimant has thus far been detained has not yet exceeded a reasonable period of time having regard to the circumstances of this particular case, though it will shortly do so. The Claimant continues to pose a significant risk of absconding and re-offending which can only be satisfactorily addressed by rigorous bail conditions. Detention pending release on bail is, in principle, lawful, even though it is now clear that removal will not take place within a reasonable period of time. That is because the Secretary of State no longer intends to detain pending removal, but only until appropriate accommodation can be secured.

…

Outcome

> 139. The Claimant's detention has not, at any stage, been unlawful. Since August 2018 the prospects of removal within a reasonable period of time have receded but detention pending the arrangement of appropriate accommodation for release on bail has been justified. The point has now been reached where there is no real prospect of removal within a reasonable period of time, and where the period of detention will shortly become unreasonable. Continued detention for a very short further period of time to secure appropriate accommodation is justified. However, the point is fast approaching (and is likely to be reached at the end of February 2019) where continued detention will be unlawful and the Claimant must be released even if the most suitable accommodation has not been secured.
>
> 140. There was no unlawful delay in the determination of the Claimant's asylum claim and, in any event, the period of time taken to resolve his claim was not material to his continued detention.
>
> 141. The Claimant has established an unlawful failure to refer his case for a "reasonable grounds" decision, but this failure has not had any material impact either on his asylum claim or on his detention."

The Grounds of Appeal and Permission

24. The Appellant sought to appeal broadly, but permission was granted on the issue of the "grace period". The relevant grounds in respect of which permission was granted read:

> "1.3 Although the HS principles are not intended to be applied rigidly/mechanically and the grace period for avoiding a finding of a breach is fact sensitive, the time given to the SSHD in this case was simply too long and has the effect of undermining the protection given to a person subject to detention under HS3 (and as distinct from /outside of the protection provided by HS2).
>
> 1.4. This ground raises an important point of principle regarding the application of the HS principles; the grace period permitted to the SSHD in detention cases, and which prevents a finding of illegality. This issue has received limited consideration by the Senior Appellate Courts pre and post the SC judgment in *Lumba.* Further, this case appears to be the first to consider it in the context of delay with provision of accommodation under Schedule 10 IA 2016.
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> …
>
> 3.1 The Court below erred in law in not finding that a breach of HS 2 had been established either by 15 August 2018 (by which

> time the FTT had granted bail and by which time the SSHD had accepted that the reason for continuing to detain was the lack of available accommodation), or from 16 January 2019 (the date of the hearing) or from 6 February 2019 (the date of judgment).
>
> 3.2. This error resulted from a failure to take into account the cumulative impact of all relevant factors to detention under HS 2 including the length of the Appellant's detention (7 months and ongoing), the nature of the obstacles preventing detention (the asylum claim and the need for travel documentation), the basis for detention (not being removal but to await provision of accommodation since 3 August 2018), the lack of diligence and speed in pursuing the travel documentation process by the SSHD."

25. When giving permission, I expressed the view that "it was arguable that the judge's approach to the "grace period" was somewhat generous". Permission was therefore limited to that issue.

The *Hardial Singh* Principles

26. The principles were formulated succinctly by Woolf J (as he then was) in *Hardial Singh* itself as follows:

> "Although the power which is given to the Secretary of State in paragraph 2 to detain individuals is not subject to any express limitation of time, I am quite satisfied that it is subject to limitations. First of all, it can only authorise detention if the individual is being detained in one case pending the making of a deportation order and, in the other case, pending his removal. It cannot be used for any other purpose. Secondly, as the power is given in order to enable the machinery of deportation to be carried out, I regard the power of detention as being impliedly limited to a period which is reasonably necessary for that purpose. The period which is reasonable will depend upon the circumstances of the particular case. What is more, if there is a situation where it is apparent to the Secretary of State that he is not going to be able to operate the machinery provided in the Act for removing persons who are intended to be deported within a reasonable period, it seems to me that it would be wrong for the Secretary of State to seek to exercise his power of detention.
>
> In addition, I would regard it as implicit that the Secretary of State should exercise all reasonable expedition to ensure that the steps are taken which will be necessary to ensure the removal of the individual within a reasonable time." (p.706 D/F)

27. The principles were re-stated by Lord Dyson in *R (Lumba) v SSHD* [2012] 1 AC 245 at [22]:

> "22. It is convenient to introduce the *Hardial Singh* principles at this stage, since they infuse much of the debate on the issues that arise on this appeal. It is common ground that my statement in *R (I) v Secretary of State for the Home Department [2003] INLR 196*, para 46 correctly encapsulates the principles as follows: (i) the Secretary of State must intend to deport the person and can only use the power to detain for that purpose; (ii) the deportee may only be detained for a period that is reasonable in all the circumstances; (iii) if, before the expiry of the reasonable period, it becomes apparent that the Secretary of State will not be able to effect deportation within a reasonable period, he should not seek to exercise the power of detention; (iv) the Secretary of State should act with reasonable diligence and expedition to effect removal."

28. As we have seen, the judge found [111] that the third principle was engaged: in other words, it had become apparent that the Secretary of State would "not be able to effect deportation within a reasonable period", and therefore she "should not seek to exercise the power of detention". The judge rather circumspectly used the term "engaged", but in fact that can have no meaning other than the point had been reached where the Secretary of State had to set about the release of the Appellant from detention. Mr Ustych, whose submissions for the Respondent were clear, balanced and helpful, agreed that "engaged" in fact means "breached".

29. The law recognises that does not mean the detainee must be ejected from detention, that day or the next, whatever the circumstances. But it does assuredly mean that the Secretary of State continues to detain on borrowed time, or in the language which has been adopted, is then and there enjoying a "period of grace". And in my judgment, that is so whether or not the other limits on the Secretary of State's powers, embodied in the second and fourth principles, have been breached.

30. It is necessary, therefore, to look at authority on the "grace period".

The Period of Grace

31. As this court emphasised in *FM v SSHD* [2011] EWCA Civ 807, the application of the *Hardial Singh* principles bearing on the "grace period" allows for practical matters, such as organising the conditions for release of a detainee. That is consistent with the principle that the test for the lawfulness of a period of detention is one of reasonableness. Pitchford LJ said exactly that in his judgment:

> "60. I have already expressed my opinion that the test for the lawfulness of a period of detention is one of reasonableness. The obligation of the Secretary of State is to cease detention when it becomes clear that detention is no longer required to effect removal but, in my view, common sense demands that a short period of grace is required for the decision-making process to take place which *may* include a decision as to the management of the detainee on release. First, there is, I think, a distinction between cases in which it is clear that removal directions will not be re-set (e.g. upon grant of ILR) and those

> in which the decision whether to re-set removal directions depends upon the outcome of proceedings (as in the present case). The Secretary of State will in the latter cases be concerned to ensure that she is kept aware of the whereabouts of the released detainee. That may require administrative arrangements for appropriate accommodation to be made available. I do not think that the Secretary of State is bound to release without regard to a residual risk of absconding (see, for example, *R (Wang) v SSHD* [2009] EWHC 1578 (Admin)). Secondly, I do not consider, as Mr Husain argues, that the Secretary of State's assumption of responsibility for the welfare of these two children in detention can lightly be segregated from a responsibility to take reasonable steps to ensure that they are properly accommodated on release. There is no policy of the Secretary of State which requires case workers to turn detainees out of a detention centre without first ensuring that they can survive. On the contrary, it is the policy of the Secretary of State (EIG 55.6.3) that detention may be necessary "whilst alternative arrangements are made" for the detainee's care (provided, of course, that the purpose of detention was to effect removal). It is not difficult to envisage circumstances in which the Secretary of State could be said to be acting in dereliction of the duty undertaken by the act of detention if she took no action but to release the detained person immediately removal within a reasonable period became, as a matter of fact, not possible.
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> 61. I note that in *R (Ahmed) v SSHD* [2008] EWHC 1533 (Admin), the claimant, while having been entitled to release from detention, remained in detention for a period of four days while arrangements were made to obtain accommodation for the claimant and her family. No claim was made in respect of that period of four days because it was accepted that the original detention was lawful and at the stage when the claimant was entitled to release those same enquiries would have been required."

32. It should be noted that in all the instances given in *FM* the "period of grace" was a matter of days. In the course of submissions, we were helpfully referred to a passage from *Detention Under the Immigration Acts Law and Practice: Denholm and Dunlop 1st Edition (2015)*, where the authors review the decisions then available on periods of grace. The reasoning is informative:

> "8.11… detention will not necessarily be unlawful from the instant it ceases to comply with the *Hardial Singh* principles. The concept of reasonableness applies to the termination of detention as much as to the decision to detain. As a result, if it becomes clear that a detainee cannot be removed within a reasonable period of time, the Secretary of State is not obliged

to release them instantaneously. The Secretary of State is allowed a "period of grace":

> (1) to take stock of the change in circumstances; and
>
> (2) to make suitable arrangements for release. If the detainee poses a risk of offending or absconding these arrangements may include tagging, notification of other agencies and the provision of accommodation that will minimize the risk of absconding. Even when there are no such risks, the Secretary of State may be allowed some time to identify suitable accommodation for them to be released to.

8.12 The courts have been unwilling to specify how long such a grace period may be. In *R (Muqtaar) v Secretary of State for the Home Department*, the majority of the Court of Appeal held that it was acceptable for the Secretary of State to take two weeks to respond to a judgment of the European Court of Human Rights ('ECtHR') by releasing the claimant, in part because there would have been many other detainees affected by the same judgment. Richards LJ said there was 'some force' in the Secretary of State's submission that she should not be obliged to react to changes in circumstances until the next monthly review under her policy. Elias LJ, dissenting, said that the delay of two weeks displayed "too cavalier an approach to the right to liberty". Lloyd LJ said he saw force in Elias LJ's point but found on the facts that two weeks was acceptable.

8.13 The other authorities do not reveal any clear limits on the grace period:

> (1) In *R (Wang) v Secretary of State for the Home Department*, Mitting J found that continued detention would be unlawful but allowed the Secretary of State 48 hours to fit a tag to the claimant before he was released.
>
> (2) In *R (I & Ors) v Secretary of State for the Home Department*, a case involving the detention of a father with his four children, the Court of Appeal held that, following the institution of judicial review proceedings and the cancellation of removal directions on a Thursday, the decision to release Mr I and his children could 'and therefore should' have been taken and implemented by the following Monday.
>
> (3) In *R (Rabbi) v Secretary of State for the Home Department*, the Secretary of State took four days to release a claimant after receiving a Rule 39 indication from the European Court of Human Rights. Beatson J held that there had been no unlawfulness because it took

four days for the Secretary of State to find an address to accommodate the claimant.

(4) In *Abdi & Khalaf*, the Court of Appeal held that the Secretary of State should have appreciated the effect of a change of circumstances (a concession made by the Secretary of State in the course of an appeal in the light of a recent 'Country Guidance' decision) within a week and detention thereafter was unlawful.

(5) In *R (Bizimana) v Secretary of State for the Home Department*, the Court of Appeal held that 'a couple of weeks' was a reasonable period of time to 'take stock and review matters'.

(6) In *R (LK Somalia)) v Secretary of State for the Home Department*, (which came between the first instance and Court of Appeal decisions in *Muqtaar*, and concerned the same ECtHR judgment) the Deputy High Court Judge allowed 24 days for the Secretary of State to take stock of the ECtHR's judgment, realise that the claimant would need to be released, and put in place the necessary monitoring arrangements. However, this aspect of the decision in *LK* should be approached with caution. Elias LJ granted permission to appeal to the Court of Appeal on the ground that it was arguable that the judge ought to have concluded that the Secretary of State should have dealt with MK's situation more speedily and released him more quickly. The appeal was subsequently withdrawn by agreement between the parties.

(7) In *R (Belkasim) v Secretary of State for the Home Department*, Haddon-Cave J held that it was reasonable for the Secretary of State to take 26 days after a United Nations decision to impose a no-fly zone over Libya to release the Libyan claimant. However, Haddon-Cave J expressly accepted that the imposition of the no-fly zone was not the only catalyst for the decision to release so this cannot be read as a simple endorsement of a grace period of 26 days.

Like everything else in this field, the permissible grace period will depend on the facts of the case. The facts of the cases at paragraph 8.13 demonstrate how flexible the concept may be. We do not agree with the submission which Richards LJ appeared to favour in *Muqtaar* – i.e. that the Secretary of State should have until the date of the next detention review under the policy to take stock of a change in circumstances. It is not clear that Richards LJ was aware of the fact that the policy expressly requires ad hoc review if circumstances change. Besides, the period before the next detention review may be as

> long as one month and the cases at paragraph 8.13 demonstrate that the courts have often expected the Secretary of State to appreciate a change of circumstances in significantly less than one month."

33. It is clear from that review [1] that the "grace periods" are granted for practical purposes, reflecting the facts of each case and applying a test of reasonableness; [2] that this court has declined to set any overall or absolute limit to such a period as a "long-stop" for all purposes; [3] that the periods have more usually been short, often a few days, but running up to a month, and [4] that there has been some tendency for the periods to increase.

The Submissions

34. The parties' submissions were expressed with clarity. This was a case where counsel for both sides were realistic and helpful, and this court is grateful for their sensible approach. Their respective arguments can be properly summarised very shortly.

35. Mr Khubber for the Appellant submits that the judge misdirected himself in his conclusion that the period of detention became unlawful only when breach of the second and/or fourth *Hardial Singh* principle was established. Once the third principle was breached, then subject to the "grace period", the obligation to end detention arose. Mr Khubber argues that, given the repeated failure to arrange suitable accommodation and secure conditions for the release of the Appellant, a failure which had been going on for many months, any grace period should have been short. It was both an error of law and artificial to prolong the "grace period" as the judge did.

36. In his oral submissions, Mr Khubber conceded that consideration of ECHR Article 5 added little.

37. In oral reply, Mr Ustych emphasised the practical difficulties which often face the Respondent in establishing proper arrangements for the release of detainees such as the Appellant. He also emphasised the importance of protecting the public, and thus the undesirability of release other than under proper conditions. Mr Ustych did his best to draw out for us the considerable efforts which had been made in this case, at least from August 2018 onwards, albeit with no success. He rightly conceded that once detention fell outside any of the *Hardial Singh* principles, then the starting point must be that detention was no longer lawful, subject to the grant of a reasonable further period to establish proper conditions for release. He was also driven to concede that a period of six weeks or so between the point where deportation within a reasonable period could no longer be anticipated, and the point when further detention would be unlawful, represented a very long grace period, measured against those permitted in earlier reported cases.

Analysis and Conclusions

38. Despite the care and clarity of the judgment, there was in my view an error in the deputy judge's conclusion. It cannot be lawful to detain until two or more of the *Hardial Singh* principles are breached, or to fix a "period of grace" with such further breaches in mind. Once any of the second, third or fourth principles are breached,

then the question arises whether any further detention is lawful. Such further detention can be lawful, in my judgment, only for a reasonable period to put in place appropriate conditions for release.

39. The duration of such a "period of grace" must be judged on the facts of the case. The relevant facts include the history, as well as the risks to the public. I fully accept that the risk to the public is a highly important factor, but it cannot justify indefinite further immigration detention. No risk can justify preventive detention: that is clearly out-with the statutory power of the Respondent.

40. In this case the history was highly relevant. For many months the Respondent had known the Appellant should have been released albeit under strict conditions. For whatever reason, those arrangements had fallen away and the necessary steps had not been taken. It is clear from the judgment that a proper understanding of these difficulties had brought the judge to the conclusion that detention up to the date of the hearing was lawful. But the repeated failure to arrange release into secure conditions are relevant to what further period can properly be regarded as lawful. In this case it is also relevant that, at the time of the trial, the Respondent still had produced no evidence as to how the Appellant might safely be released. There were still no arrangements available after some 14 months of detention.

41. This court was informed of the aftermath to the judgment in an agreed chronology: the Respondent effected no release of this Appellant until ordered to do so by Mostyn J on 12 March 2019, the order being for release from detention by or before 22 March 2019, into Schedule 10 accommodation or unconditionally.

42. It should be stressed that it is the Respondent's legal obligation to release a detainee when detention is no longer lawful. That is a decision for the Respondent and her officials. There can be no question that it is proper for officials to avoid such a decision until compelled to release by the courts.

43. In this instance, given the history, a period of grace of around two further weeks from the date of the judgment (6 February 2019) would have been ample. In my judgment, detention beyond that time was unlawful.

44. I would add that, in future, when the question of a "period of grace" arises or might arise, the Respondent should be expected to advance some evidence and to make considered submissions as to what period would be appropriate and why.

45. To that extent and for those reasons, I would allow the appeal.

Lord Justice Baker:

46. I agree.

Lady Justice King DBE:

47. I also agree.