



Neutral Citation Number: [2020] EWHC 3303 (Admin)

Case No: CO/3736/2020

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

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 3 December 2020

**Before :**

**Anthony Ellera QC Deputy High Court Judge**

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**Between :**

**THE QUEEN**  
**on the application of**

**JK**

**Claimant**

**- and -**

**THE SECRETARY OF STATE FOR THE**  
**HOME DEPARTMENT**

**Defendant**

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**Mr Franck Magennis (instructed by Wilson Solicitors LLP) for the Claimant**  
**Mr William Irwin (instructed by Government Legal Department) for the Defendant**

Hearing date: 22 October 2020  
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**Approved Judgment**

**Anthony Ellera QC Deputy High Court Judge:**

1. This is an application for an interim injunction. The order sought is that the defendant ('SSHD') should release the claimant ("JK") to accommodation provided under section 95 Immigration Act 1999 within five days.
2. On 14 October 2020 the Honourable Mrs Justice Tipples directed on terms the hearing of the application on 22 October 2020. It came before me that afternoon.
3. Before me, Mr Magennis appeared for JK and Mr Irwin appeared for SSHD who resists the application. This is my reserved decision.

**Background**

4. JK is aged 33. He is a national of Uganda. He arrived in the UK aged 15 with a settlement visa. He has two children who live at an address in Hull. His mother has an address in Peckham Rye.
5. JK has been convicted of a number of offences since November 2014. In particular on 21 March 2019 he was convicted in Croydon Crown Court of three counts of making an indecent photograph/pseudo photograph of a child. He was sentenced to 24 months in prison. He was made subject to a Sexual Harm Prevention Order (SHPO).
6. On 17 May 2019 JK was made the subject of a deportation order without right of appeal.

**Asylum**

7. On 27 May 2019 JK applied for asylum. On 17 February 2020 that claim was refused. On 19 April 2020 further representations made for JK against the deportation decision were rejected. On 29 April 2020 JK lodged an in country appeal. Case management directions in relation to that appeal are to be heard on 11 November 2020.

**Detention**

8. On 23 July 2019 JK was detained under immigration powers, given the deportation order.
9. That decision was made subject to release licence until 23 July 2020. The licence stated that he should reside permanently at an address approved by the Probation Supervising Officer.

**Immigration Bail**

10. On 29 July 2019 JK applied for immigration bail. On 30 July 2019 that was refused as his proposed residence in the Peckham Rye flat was not approved. On 13 February 2020 another immigration bail application was made. It was refused. The proposed residences at the Peckham Rye address or the Hull address were not approved.
11. On 18 February 2020 bail was in principle granted on the basis that an address was secured by the Home Office and approved by the Probation Service within seven days. A proposed address was not approved.

## Section 95

12. On 24 February 2020 application was made by JK for section 95 accommodation. Such request was copied to the Criminal Casework Accommodation Team ('CCAT'). The court was advised that SSHD was unable to secure an address within the time provided and the bail grant subsequently lapsed. On 6 March 2020 CCAT confirmed the refusal of section 95 support and issued a refusal letter and appeal form. An appeal made on it was dismissed on 26 March 2020.
13. On 29 June 2020 JK was granted conditional bail until 27 July 2020 in order to obtain accommodation approved by the Probation Service. He made application for support under section 95 which was not received until 4 August 2020, by which time the grant of bail had lapsed.
14. On 9 July 2020 a recommendation was made that JK should be released due to factors which suggested that removal within a reasonable timeframe might be possible. Consequently a release submission was sent for approval on 22 July 2020 which could not be considered until a release address had been approved.
15. On 4 August 2020 CCAT refused support under section 95 with the right of appeal. I understand refusals of section 95 appeal were on the basis that JK could not establish that he was destitute or likely to be destitute within the meaning given in section 95.
16. JK appealed the refusal of section 95 accommodation. On 7 September 2020 the Asylum Support Tribunal ('AST') allowed JK's appeal against the previous refusal by SSHD for support under section 95. On 10 September 2020 SSHD began the search for suitable accommodation.

## Judicial Review

17. On 15 October 2020 JK has lodged an application for judicial review. He contends that his initial and ongoing detention has been unlawful and that his detention has been against the Hardial Singh principles identified by the Court of Appeal in **R(I) v SSHD** [2002] EWCA Civ 888 as approved by the Supreme Court in **Lumba v SSHD** [2011] UKSC 12. The grounds further contend that the delay in obtaining a section 95 bail address have been unlawful and that SSHD has failed to take into account duties under Article ECHR section 55 Orders of Citizenship Act 2009. JK has yet to obtain permission to seek judicial review.
18. The application for interim relief is based on the contention that SSHD has delayed unlawfully in the provision of accommodation under section 95 as a bail address.

## Interim Relief

19. The principles in **American Cyanamid v Ethicon** [1975] AC 396 apply to this application subject to appropriate modification for the public law context.
20. I consider first whether JK has a real prospect that he will succeed at trial of his claim for judicial review that delay in providing section 95 bail accommodation has been unlawful. Mr Magennis makes a number of points. JK has been detained for 15 months. He asserts SSHD has been dilatory in dealing with JK. He cites authority for the

proposition that courts have given short time to secure accommodation once release or bail accommodation has been ordered. He points out that it is about four months since a tribunal granted JK bail conditional upon his obtaining a bail address. He stresses that the refusal of a section 95 application on 4 August 2020 was successfully appealed to the AST on 7 September 2020.

21. The SSHD denies that a delay in obtaining a section 95 bail address has been unlawful. She submits that she has to satisfy herself that accommodation is suitable to house someone of his offending history. She contends the pool of appropriate accommodation is smaller than it would otherwise be. She takes the point that she could not suitably place JK in temporary hotel accommodation. She also notes the disapproval by the Probation Service up to 23 July 2020 of the Peckham Rye and Hull addresses proposed by JK as bail addresses.
22. Mr Magennis cites a decision of Mr Justice Fordham on 8 June 2020 in **R (Merca) v SSHD** [2020] EWHC 1479 Admin in which he granted interim relief now sought by JK. In that case section 95 accommodation was being sought. The decision to refuse section 95 support has been reversed on 29 May 2020. The learned judge was satisfied that it was necessary and proportionate and in the interests of justice to provide a timeframe deadline for release to section 95 accommodation. The SSHD in that case had accepted it had to provide section 95 accommodation. The learned judge afforded the SSHD with a short period to reply to vary or discharge his five day order without encouraging such an application.
23. It appears to me that JK has a real prospect of establishing that the delay in providing section 95 accommodation has made continued detention unlawful. The SSHD has not hereto filed evidence explaining specific problems whether borne of JK's SHPO or otherwise that has disabled provision of section 95 accommodation.
24. It appears to me that SSHD may have a defence that the delay may not have been unlawful although such may depend on fact sensitive information.
25. Whilst it is correct that if JK can establish a period or periods of unlawful detention he may be entitled to damages, I do not consider that they can sensibly, on an interim basis, be considered an adequate remedy.
26. In so far as other matters are not determinative I should consider the balance of convenience. I agree with Mr Irwin that the public interest may not favour the grant of relief. Mr Irwin sets out concern that the grant of mandatory interim relief relating to JK may affect access to, or the administration of, the pool of accommodation available to those also granted section 95 accommodation, as has been JK. Nonetheless JK has been found by a tribunal entitled to section 95 accommodation. Absent details of specific problems in providing accommodation to JK, I do not consider them to militate in favour of SSHD against the grant of mandatory relief.
27. I consider the order sought for JK should provide for JK to be released to accommodation provided under section 95 within seven days of the handing down on my order. That timing accords with the 14 days I mentioned in argument and my time in preparing this judgement. My order should also give SSHD ability on 48 hours' notice to apply to vary or discharge this order should circumstance prevent the SSHD from compliance with it.

28. I will deal with submissions on costs or permission to appeal to be made by counsel on paper to me within seven days of the handing out of this judgment.