

If this Transcript is to be reported or published, there is a requirement to ensure that no reporting restriction will be breached. This is particularly important in relation to any case involving a sexual offence, where the victim is guaranteed lifetime anonymity (Sexual Offences (Amendment) Act 1992), or where an order has been made in relation to a young person.

This Transcript is Crown Copyright. It may not be reproduced in whole or in part other than in accordance with relevant licence or with the express consent of the Authority. All rights are reserved.

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



No. AC-2024-LON-  
001661

Royal Courts of Justice

Friday, 7 June 2024

Before:

CLARE PADLEY  
(Sitting as a Deputy Judge of the High Court)

B E T W E E N :

THE KING (on the application of MATEEN)

Claimant

- and -

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Defendant

\_\_\_\_\_

MR R HALIM (instructed by Duncan Lewis Solicitors) appeared on behalf of the Claimant.

MR J ANDERSON (instructed by GLD) appeared on behalf of the Defendant.

\_\_\_\_\_

J U D G M E N T

## THE DEPUTY JUDGE:

- 1 This is an application for interim relief in the context of immigration detention, namely an order for the provision of a suitable release address by the defendant within seven days to enable the claimant's immediate release on bail from immigration detention.
- 2 The claimant is represented by Mr Raza Halim of counsel and the defendant by Mr Jack Anderson of counsel. I am grateful to them both for their written and oral submissions. I heard oral submissions in this case on the morning of Wednesday 5 June 2024 but, given the time constraints caused in part by the defendant's late disclosure of documents and counsel's availability, I indicated to the parties I would give an oral judgment today.

### **Background**

- 3 The claimant is a Pakistani national who was born in February 1993 and is now aged 31. He came to the UK in 2011 on a student visa. His leave was initially extended to October 2014, but his further application for an extension was rejected. He then made an application for leave to remain on the basis of his marriage to an EU citizen, which was granted on 15 June 2016 for five years. The claimant made a further application for settlement under the EU Settlement Scheme ('EUSS') on 2 April 2021.
- 4 On 11 August 2022, the claimant was convicted at Perth Sherriff Court in Scotland of a sexual assault on an adult female. He received an extended sentence of 4 years, comprising 2 years in custody and an extended sentence of 2 years thereafter on licence. He was also made subject to a non-harassment order relating to the victim for ten years. As a result of that conviction, he became liable for automatic deportation. On 15 January 2023, the defendant issued a liability for deportation notice. On 28 February 2023, representations were made in response by the claimant's former solicitors.
- 5 On 21 June 2023, the claimant was detained by the defendant following the completion of the custodial part of his sentence under Section 36 (1) of the UK Borders Act 2007. On 6 October 2023, the claimant's representations against deportation were refused and the claimant's outstanding application for settlement under the EUSS was also refused. On 18 October 2023, the claimant exercised his appeal rights to the First-tier Tribunal against both those decisions. That created a statutory bar to removal pending the final conclusion of those appeals under Section 72 of the Nationality, Immigration and Asylum Act 2002.
- 6 On 23 October 2023, bail was approved in principle by the defendant, subject to a suitable bail address. On 19 December 2023, the claimant applied for accommodation support. On 13 January 2024, the defendant's detained medical records team received a Rule 35 report on the claimant and assessed him as being an adult at risk level 3 on the basis of his previous history of torture as a child in Pakistan, and his current mental health issues.
- 7 On 18 January 2024, conditional bail was granted in principle by an immigration judge at the First-tier Tribunal, subject to suitable release accommodation. On 24 January 2024, the defendant refused the claimant's application for accommodation support. On 15 February 2024, the grant of conditional bail was extended by the First-tier Tribunal, and it was extended again on 14 March 2024, but no suitable accommodation was made available.

8 On 23 March 2024 and on 4 April 2024, the defendant offered accommodation and support to the claimant under Schedule 10 of the Immigration Act 2016. Since that time, no suitable release address has been provided by the defendant which has been approved by the probation service and the claimant therefore remains in immigration detention. Further details were provided during the hearing about the efforts made by the defendant to secure a suitable release address, which I will address in due course.

### **Procedural history**

9 A pre-action protocol letter was sent by the claimant to the defendant on 3 April 2024, was responded to by the defendant on 22 April 2024, and a further pre-action protocol letter was then sent on that date. On 16 May 2024, a judicial review claim and a Form N463 was received and issued by the court under the urgent consideration procedure. On the same day, Lang J gave an order giving urgent directions for an acknowledgement of service by 23 May and a reply three days after and listing the matter for an urgent interim relief hearing after 30 May 2024, which is the matter that came before me on Wednesday.

10 The acknowledgement of service (AOS) was in fact not served until 28 May 2024 and the extension of time for the AOS was allowed retrospectively by an ACO lawyer using delegated powers, and time for a reply was also extended although no reply has been served.

### **Grounds of claim**

11 The claimant's full claim is based on three grounds.

- (1) A failure to provide Schedule 10 support, in that the delay is unreasonable and causing hardship;
- (2) That the claimant's detention is unlawful by common law and in breach of Hardial Singh principles (ii) and (iii);
- (3) That the detention is in breach of the defendant's "adults at risk" policy.

12 In the AOS and Summary Grounds of Defence, the defendant disputed the claim and said that the defendant has made reasonable efforts to find a suitable release address that meets the conditions set by the Probation Service (the Interested Party). The defendant also relied on Section 12 of the Illegal Migration Act 2023, which came into force on 28 September 2023. The defendant asserted that Section 12 displaces the Hardial Singh principles (ii) and (iii) and gives the Secretary of State broader decision-making powers in relation to the reasonableness of further detention. The defendant relied on the claimant's conviction for a sexual offence and the need for his licence conditions to be met as justifying the delay in finding suitable release accommodation.

13 The defendant further submitted in the summary grounds of defence that the period of detention since the decision to provide accommodation under Schedule 10 was reasonable and that, in the six weeks (at that time) since the defendant had agreed to provide suitable accommodation, three addresses had been proposed to the Probation Service, and that the defendant was endeavouring to find suitable accommodation as soon as possible. I note that there is no response by the Interested Party, the Secretary of State for Justice, on behalf of the Probation Service.

### **The licence conditions**

- 14 The suitable release accommodation conditions set by the Probation Service as a result of the claimant's licence conditions following his criminal conviction mean that the properties must not be in close proximity to lone females or schools, parks and playgrounds. I am advised by Mr Anderson that there are no other geographical restrictions or specific requirements in terms of the type of accommodation that is needed for the claimant as a single man. These licence conditions are well known to the defendant. It would appear that each of the properties so far identified by the defendant and forwarded to the Probation Service for approval have been refused on the basis of not complying with those conditions.

### **Interim relief**

- 15 The claimant now seeks interim relief in terms of an order that the defendant is to (i) source and provide an address for the claimant to be released to that is approved by the probation service and (ii) release the claimant to that address, within seven days, with a provision for liberty to apply to vary the order on 48 hours' notice supported by evidence.
- 16 The test for interim relief in the form of a mandatory injunction is set down in the decision of the House of Lords in *American Cyanamid v Ethicon* [1975] AC 396, with modifications to reflect the public law context, namely:

(a) is there a strong prima facie or strongly arguable case, and

(b) if so, where does the balance of convenience lie?

It is agreed by both parties that the remaining factor in *American Cyanamid* relating to whether damages would be an adequate remedy to either party is not a relevant consideration given the nature of this case.

- 17 The defendant submitted that the appropriate test should be a slightly more stringent one than submitted by the Claimant and relied on the case of *Zalys, R (On the Application of) v Secretary of State for the Home Department* [2020] EWHC 2029 on the basis that this application for interim relief is in reality a claim for final relief. Whilst I do not accept that submission as it was put because this application does not strictly amount to final relief in this case given the other relief being sought, as a mandatory interim order is being sought I consider a strong *prima facie* case is needed. I note the claimant has also used that same test in his statement of facts of grounds, so in practice there appears to be no significant difference between the parties on this point.

### **Relevant legal provisions**

- 18 The Secretary of State's power to detain the claimant as a person subject to a deportation order is provided by Paragraph 2(2) of Schedule 3 to the Immigration Act 1971. The power to detain is subject to the common law limits first described by Woolf J (as he then was), in *R v Governor of Durham Prison, ex p. Hardial Singh* [1984] 1 WLR 704, and known as "the Hardial Singh principles." They are summarised in *I, R (on the application of) v Secretary of State for the Home Department* [2002] EWCA Civ 888 but I do not propose to set them out in full here.

- 19 Section 12 of the Illegal Migration Act 2023, which came into force in September 2023, amended paragraph 2 of Schedule 3 to the Immigration Act 1971, to the extent that the detention of a person in the position of the claimant, whose deportation has been put on hold, is now subject to the following provision: “*The person may be detained under that subparagraph for such period as, in the opinion of the Secretary of State, is reasonably necessary to enable such arrangements to be made for the person’s release as the Secretary of State considers to be appropriate.*” This provision purported to ‘codify in part’ the Hardial Singh principles and create a statutory version of principles (ii) and (iii).
- 20 As a decision to grant bail has already been made by the First-tier Tribunal, and the Secretary of State has already agreed to provide Schedule 10 accommodation, I do not need to be concerned with the effect of that amended provision for the purpose of this hearing.
- 21 Schedule 10 of the Immigration Act 2016 gives the Secretary of State the power to provide, or arrange the provision of facilities for, the accommodation of a person on immigration bail in ‘exceptional circumstances’. As the defendant agreed to exercise this power in the present case, I also do not need to set out this provision in full. I note that it replaced Section 4(1) of the Immigration and Asylum Act 1999, which is referred to in many of the cases I have been referred to. The defendant accepts that once Schedule 10 accommodation is granted, it must be provided within a reasonable period of time and that the power to provide such accommodation must be exercised fairly and rationally.

### **Relevant case law on delay in providing accommodation**

- 22 I have been referred to a number of authorities in the parties’ written and oral submissions. The claimant relied in particular on *R (on the application of Humnyntskyy & Ors) v Secretary of State for the Home Department* [2020] EWHC 1912. The claimant states this is authority for the proposition that release accommodation must be provided within a reasonable period of time after the relevant decision has been made to grant it, and I note from that case that periods of no more than two weeks were considered reasonable for the provision of Schedule 10 accommodation, even in cases similar to the present one involving sex offenders on licence conditions.
- 23 The claimant also relied on the case of *Gasztony, R (on the application of) v Secretary of State for the Home Department & Anor* [2019] EWHC 2879, in which Chamberlain J outlined that in cases where “a medical need for release to suitable accommodation has been identified” :
- “...there must, in my judgment, be a special duty on the Secretary of State to ensure there is no unnecessary delay in locating and securing appropriate accommodation [in those cases]; and the longer the detention continues, the more stringent must be the duty.”
- 24 The defendant relied on the case of *Zalys* which I have already referred to, but I note that case involved a different factual scenario from the present application, as the claimant in *Zalys* sought immediate release from detention on the grounds of unlawful detention. It was not a case where bail had been granted and Schedule 10 accommodation had been granted. In that case, the court considered that the status quo was to maintain detention as no decision had been made to allow release and an expedited hearing was ordered instead of interim relief.

25 The defendant also relied on *R (on the application of Sathanantham) v Secretary of State for the Home Department* [2016] EWHC 1781, but again that was also a case involving a different factual situation in which the four claimants were each seeking support under Section 4, the predecessor to Schedule 10, in order to be able to make bail applications. In those cases, support had not already been approved and conditional bail granted by the First-tier Tribunal, as in the present case. That said, I do note that the court also emphasised in *Sathanantham*, the need for such a power (under what was then Section 4, and would now be Schedule 1) to be exercised fairly and rationally and without unreasonable delay.

### **Summary of the defendant's current position**

26 At the start of the hearing on Wednesday 5 June 2024 the court was advised that the defendant had provided some late disclosure to the claimant on the day before, and the morning of, the hearing, comprising a large bundle of Home Office records, only some of which were relevant to the issues before the Court at this hearing. A small number of those documents, including an Excel spreadsheet relating to the property searches undertaken to date and some further email exchanges, were sent to the court the evening before the hearing. After some helpful discussions between counsel, it was agreed that there was no need for the court to adjourn to review all this additional material, and a copy of one relevant document relating to the claimant's current mental health condition was provided to the court. The defendant also provided some further details and clarification during the hearing about the efforts made by the defendant to secure a suitable release address.

27 In summary, the evidence before the Court now indicates that in fact only two separate addresses, one in Sheffield and one in Bradford, had been sourced by the defendant and then rejected by the Probation Service since April 2024, when the claimant was offered Schedule 10 support. The records also revealed, and it is now accepted by the defendant, that the same Bradford property was in fact put forward to the Probation Service for consideration by the defendant twice, on 20 April and again on 17 May, despite having been rejected the first time and furthermore having been identified by the defendant's officer as being unlikely to be suitable due to its proximity to a school.

28 On each occasion the Probation Service refused the addresses proposed by the defendant on the ground they did not comply with the terms of the claimant's licence, due to their proximity to the very establishments set out in the defendant's request to their accommodation providers. Despite this, it would appear that neither the defendant nor their accommodation providers had completed any initial checks before sending the properties on to the Probation Service, or if they had done, it had not prevented the referral being made. The selection and duplication of two unsuitable properties and the resulting delays means that the claimant has now remained in detention for over two months since early April 2024 and nearly five months since bail was first granted on a conditional basis by the First-tier Tribunal.

29 The defendant has now confirmed that one further address in Doncaster has recently been identified since the order of Lang J. It has not yet been considered by the local probation service. The defendant's counsel was not able to refer to any evidence in the defendant's records indicating that any degree of priority or urgency had been attached to their search other than that the defendant had been following up on these enquiries. It is also clear from the evidence available to the court today that the defendant has only been seeking accommodation from one provider and in relation to one property at a time.

## **Impact of the delay**

- 30 In terms of the impact of the delay in securing a suitable address, the defendant had already confirmed on 30 January 2024 that it accepted that the claimant had been accepted as having an ‘Adults at risk in immigration detention policy’ Level 3 status. This decision followed a Rule 35 report on 13 January 2024 by doctors in the detention centre which recorded the claimant’s past torture and ill treatment and his history of post-traumatic stress disorder and concluded that “*His mental and physical health will continue to deteriorate significantly if he remains in the detention centre long term*”
- 31 The defendant has now disclosed evidence to the claimant and the court at the hearing on Wednesday in the form of an ACDT record of a psychological assessment on 17 May 2024, indicating that the claimant has been self-harming and is experiencing current trauma symptoms, and stating that “*his mental health difficulties are exacerbated by his current environment of detention and the unknown regarding his future*” and that “*there is a risk that his mental health will deteriorate further.*”

## **Discussion and conclusion**

- 32 The First-tier Tribunal judge ordered bail four and a half months ago on 18 January 2024, and that decision has been renewed four times since then, most recently on 3 May 2024. The directions on bail state that the applicant must be housed by the respondent (the Secretary of State) or the respondent must provide accommodation for him to reside at, and on the last occasion the tribunal additionally directed the respondent “*is to contact probation on a weekly basis to progress the approval of accommodation and evidence such in the next conditional bail update form*”.
- 33 It follows that there is no issue in this case that the claimant should be released from detention as soon as suitable accommodation is provided by the defendant. The purpose of this application for interim relief is to enforce his right which has already been established by the First-tier Tribunal. I am satisfied that this claim is strongly arguable in light of the time that has now passed since the First-tier Tribunal’s bail decision and the defendant’s decision on Schedule 10 support.
- 34 While I recognise and accept that a distinction must be drawn between simple administrative delay and unlawful delay, I consider the claimant has a strong *prima facie* case that the action, or rather lack of action, demonstrated by the defendant in seeking suitable release accommodation in this case goes beyond what could objectively be regarded as reasonable.
- 35 I must then consider the balance of convenience. The claimant is not seeking to be released to an unsuitable address which does not meet his licence conditions as this would leave him liable to be recalled to prison. So, there is no need for me to consider the balance between the claimant’s detention and the need to safeguard the public in light of his previous conviction, as that decision has already been made by the First-tier Tribunal.
- 36 The balance of convenience to be determined at this hearing is between the claimant’s continued detention and any prejudice to the Secretary of State in being required to source suitable accommodation more quickly. As the Secretary of State is already under an obligation to provide accommodation within a reasonable period following repeated orders

from the First-tier Tribunal, I am not satisfied there is any significant prejudice to the defendant in granting interim relief.

- 37 On the other hand, if interim relief is not granted and the claimant ultimately succeeds in his claim, I accept that he will have suffered a further irremediable period of loss of liberty and there is a real risk on the evidence he will suffer a further deterioration in his mental health.
- 38 The defendant sought to persuade me that an alternative route would be to adjourn this hearing for interim relief as a means of maintaining this court's supervision or to allow a longer period for compliance, or to list the matter for an expedited final hearing as happened in the case of *Zalys* but, for the reasons I have explained, that case related to a different factual scenario, where a decision to allow bail had not been granted. Having seen the lack of urgent action by the defendant prior to the involvement of this court, I am not persuaded that any further delay would be warranted.
- 39 Taking into account all the relevant factors raised in written and oral submissions, I am satisfied the balance of convenience lies in favour of an interim order being made today. As I have noted, the time since the grant of conditional bail is now nearly five months, and since the Schedule 10 decision, the time is now over nine weeks. Even allowing for the need to secure accommodation that meets the claimant's licence conditions, I consider an order for interim leave is now warranted. Having carefully considered the case law and the appropriate period and given the time since this hearing was listed and the defendant has been on notice, and the additional period since the hearing until my judgment today, I consider a further period of one week is sufficient, together with an appropriate provision for liberty to apply.
- 40 An order for interim relief will therefore be made in the following terms:
- (1) A mandatory order that the defendant do source and provide accommodation and support to the claimant, pursuant to Paragraph 9 of Schedule 10 of the Immigration Act 2016, to an address approved by the Probation Service, and release the claimant to that address by 4 p.m. on Friday, 14 June 2024.
  - (2) Liberty to apply to vary this order on 48 hours' notice to the parties. Any such application by the defendant to vary this order must be supported by a written witness statement, setting out what steps have been taken since the date of this order.
  - (3) The defendant is to pay the claimant's reasonable costs of and related to this application, to be subject to detailed assessment if not agreed.
- 41 I am going to ask counsel to draw up an order and send it to me for my approval this afternoon.

### **Post-script**

On 7 June 2024, following this oral judgment, I approved a draft order provided by counsel (with minor typographical amendments) which reflected the terms of the order set out in paragraph 40 above. On Monday 10 June 2024, the court received a request from the defendant, which was agreed by the claimant, to amend the order under the slip rule so that 'the Probation Service' was replaced by 'Perth and Kinross Council (PKC) Community Justice Social Work'. The amendment was requested on the basis that the latter Scottish body is the body from which the relevant



accommodation approval is required. On 12 June 2024, I agreed to make this amendment and the final order for interim relief reflected this amended wording.

**CERTIFICATE**

Opus 2 International Limited hereby certifies that the above is an accurate and complete record of the Judgment or part thereof.

*Transcribed by **Opus 2 International Limited**  
Official Court Reporters and Audio Transcribers  
5 New Street Square, London, EC4A 3BF  
Tel: 020 7831 5627 Fax: 020 7831 7737  
**CACD.ACO@opus2.digital***

This transcript has been approved by the Judge