R (on the application of Majera) v Secretary of State for the Home Department (bail conditions: law and practice) [2017] UKUT 00163 (IAC)

Upper Tribunal
Immigration and Asylum Chamber

Judicial Review Decision Notice

THE QUEEN
(ON THE APPLICATION OF MAJERA)

Applicant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

BEFORE

UPPER TRIBUNAL JUDGE PETER LANE

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Ms Amanda Weston, instructed by Birnberg Peirce Solicitors, appeared on behalf of the applicant.

Mr Sarabjit Singh, instructed by the Government Legal Department, appeared on behalf of the respondent.

(1) A defect in framing the primary condition of bail granted by the First-tier Tribunal under paragraph 22 of Schedule 2 to the Immigration Act 1971 does not render the grant of bail void. There has, rather, been a valid but defective grant of bail. In such a situation, it is the responsibility of the parties (in particular, the respondent) immediately to draw the defect to the attention of the Tribunal, so that it can be corrected.

(2) Paragraph 2 of Schedule 3 to the 1971 Act gives the respondent power to impose restrictions on taking employment etc in respect of persons who are subject to immigration control. It is difficult to see how any condition of bail granted by the First-tier Tribunal could affect this freestanding power.

(3) Licence conditions imposed by the National Probation Service serve aims wider and different from the conditions that may be imposed by the First-tier Tribunal on a grant of bail. Rather than imposing bail conditions "in the same terms as the licence", which is what the First-tier Tribunal's Bail Guidance recommends, the better course is for the First-tier Tribunal to state that its conditions of bail are without prejudice to any conditions contained in the licence, and for judges to ensure there is no conflict between bail conditions and licence conditions.

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JUDGMENT
(13 March 2017)

JUDGE PETER LANE:

A. Background

1. The applicant, who was born in 1982, arrived in the United Kingdom from Rwanda with his mother and siblings in 1997. His mother failed in her application for asylum but was granted exceptional leave to remain in the United Kingdom and, in 2005, indefinite leave to remain. So too was the applicant.

2. In September 2006 the applicant was convicted on ten counts of robbery, for which he was sentenced to ten terms of life imprisonment, with a minimum of seven years to be served. He was also recommended by the Crown Court for deportation.

3. In April 2007, the life sentences were quashed on appeal and varied to indeterminate sentences, with a minimum imprisonment of seven years. The deportation recommendation remained.

4. A deportation order was made by the respondent in respect of the applicant in November 2012. The applicant's appeal against the deportation decision was dismissed and the applicant became appeal rights exhausted in November 2014.

5. In April 2014 the Rwandan authorities informed the respondent that, although the applicant's previous passport was genuine, they did not accept the applicant as being a national of Rwanda, when he tried to renew his passport in 2009, since the passport had been issued outside Rwanda.

B. Release on licence/immigration detention

6. On 30 March 2015, the Parole Board directed that the applicant should be released on licence from the open prison in which he had been held since October 2013. After being transferred to HMP Ford, the applicant had undertaken unescorted day releases. Since November 2014, he had been working, outside the prison, five days a week as a community service volunteer, at the Age UK charity shop in Worthing.

7. Overall, the panel considered that the risk to the public posed by the applicant "has reduced to a level that is manageable in the community". The applicant's release was subject to the following "additional licence conditions":

    - To reside permanently at approved premises and not to leave to reside elsewhere, without obtaining the prior approval of the applicant's supervising officer; thereafter to reside as directed by the supervising officer.

    - To confine himself to an address approved by the supervising officer between the hours of 23:00 and 07:00 daily unless otherwise authorised. That condition would be reviewed by the supervising officer on a weekly basis "and may be amended or removed if it is felt that the level of risk that you present has reduced appropriately".

    - Not to seek to approach or communicate with certain named individuals, without prior approval.

8. Immediately upon release from imprisonment, the applicant was detained by the respondent under her immigration powers. At this point, those detaining the applicant considered they had sufficient documentation to effect his deportation to

Rwanda. Shortly afterwards, however, the officers concerned were made aware of the attitude of the Rwandan authorities. Nevertheless, on 24 April 2015 removal directions in respect of the applicant were set in error by the respondent. These were cancelled on 8 May 2015.

9. Attempts on behalf of the applicant to have him released on bail were hampered during the summer of 2015, as a result of a failure to identify suitable accommodation at which the applicant was to reside.

10. On 2 April 2015, the applicant's solicitors submitted a request to the respondent for her to revoke the applicant's deportation order. On 17 September 2015, the respondent decided to refuse to revoke the order but, following receipt of a Letter Before Claim from the applicant, the respondent, on 28 October 2015, withdrew the refusal decision. Since that time, the applicant's revocation request has remained outstanding with the respondent.

11. On 27 July 2015, a suitable bail address for the applicant was identified by the respondent. An application was made to the First-tier Tribunal for the applicant to be granted bail.

C. Bail application

12. The bail application came before First-tier Tribunal Judge Narayan, sitting at Hatton Cross on 30 July 2015. At the hearing, the respondent's Presenting Officer spoke to the bail summary prepared in respect of the applicant. The applicant was represented by Mr Furner of Birnberg Peirce Solicitors.

13. The bail summary sets out the reasons why the respondent opposed the application to the First-tier Tribunal. It stated that since the applicant "is now subject to a signed deportation order, and he became appeal rights exhausted on 27 November 2014, he no longer has access to public funds, nor is he permitted to work; this could increase his risk of committing further offences". Although the Parole Board had directed the

applicant's release, "this does not supersede the fact that he is subject to a signed deportation order". There is no guarantee that the applicant would receive another right of appeal in the United Kingdom against the decision of the respondent. Although the applicant may have complied in the past "while he was on open conditions", the Home Office was serious in its intention to deport him "once a travel document becomes available". It was also noted that the applicant was "subject to MAPPA conditions as he has been classed as level 2 due to the nature of their conviction (sic)".

14. The bail summary ended as follows:-

"Conditions Sought in the Event of Bail Being Granted

1. To live and sleep each night at: [specified address] approved by NOMS and only on offer until 10 August 2015.

2. To report on a reporting frequency basis to a Home Office Reporting Centre/Police Station at: TBC – Police Station

3. If, on licence, to report to the Offender Manager/Probation Officer at:

   National Probation Service
   National Offender Management Service
   90 Lansdowne Road
   Haringey
   Tottenham
   N17 9XX.

4. The applicant should cooperate with the conditions of electronic monitoring as issued by the Home Office and the Home Office request that bail in principle is granted allowing 48 hours or two working days for the Home Office to arrange to have the applicant electronically monitored by tag.

5. That in the event of the applicant applying for a variation of address or bail that the Home Office be notified of the details of the application.

6. Must not enter employment, paid or unpaid, or engage in any business or profession.

These restrictions are being sought:

a] To secure the subject's attendance at any further interview, and

b] to reduce to a minimum any potential delay in notifying the relevant authorities should the subject breach bail".

D. The FTT's bail decision

15. After hearing argument, the First-tier Tribunal Judge decided to grant the applicant bail, upon the recognisance of £300 of the applicant's mother. The signed and dated decision of the judge, set out in the First-tier Tribunal's standard bail form, contains the following:-

"**Primary Conditions of Bail**

Insert relevant section from Annex 8 with details

The applicant is to appear before his Offender Manager".

16. Over the page, we see the following:-

"Secondary Conditions of Bail

Insert relevant section from Annex 8 with details

- ✔ Bail is granted subject to (i) the applicant cooperating with the arrangement for electronic monitoring ('tagging') as set out in s.36 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 and (ii) the UK Border Agency arranging electronic monitoring within two working days of this grant of bail.
- ✔ Bail is granted in the same terms as the licence.
- ✔ That in the event of the applicant applying for a variation of address or bail that the Home Office be notified of the details of the application.
- ✔ Must not enter paid employment, or engage in any business or profession.

- ✔ The applicant is also required to comply with the terms of his licence.

and

1. The applicant shall live and sleep at the address set out above.

2. ".

E. The respondent's actions following the FTT's bail decision

17. Also on 30 July 2015, shortly after the judge's bail decision, the respondent gave the applicant the following:-

"**Notice of Restriction**

To: Sofian Sofian Majera Rwanda 10 January 1982

You are detained under paragraph 2 of Schedule 3 to the Immigration Act 1971.

The Secretary of State has decided that you should not continue to be detained at this time but, under paragraph 2(5) of Schedule 3 to the 1971 Act, she now imposes the following restrictions on you:

1. Within 24 hours of receiving this notice you must report in person to the Immigration Officer in charge of the Home Office Reporting Centre at address of Home Office Reporting Centre:

   Becket House, Becket House (sic), 60 – 68 St Thomas Street, London SE1 3QU.

2. You must then report in person to the immigration officer in charge of the Home Office Reporting Centre between the hours of 10am and 4pm on every Friday, or on such other day in each week as the officer to whom you made your last weekly report may allow.

3. You must live at:

   [specified address]

4. **YOU ARE TO BE MONITORED ELECTRONICALLY BY MEANS OF TAGGING/TRACKING**

5. You must be present at the address shown above for induction on 31 July 2015 between the hours of 1900 and 2100, when an officer from EMS will call at your address to install the Electronic Monitoring equipment and explain how the system operates.

6. Following induction you must be present at the address shown above between the hours of 2000 to 0700, every day thereafter.

7. You **may not** enter employment, paid or unpaid, or engage in any business or profession.

You should note that:

i. …

ii. If without reasonable excuse you fail to comply with any of these restrictions you will be liable on conviction to a fine not exceeding a maximum of level five of the standard scale (£5,000) or imprisonment for up to six months or both".

F. The formal terms of the licence

18. On 31 July 2015, the applicant was given by an assistant caseworker for the Secretary of State for Justice the formal terms of his licence under Chapter 6 of the Criminal Justice Act 2003. The document bears the applicant's signature, indicating that it had been given to him "and its requirements have been explained".

19. The document begins as follows:

"1. Under the provisions of Chapter 6 of the Criminal Justice Act 2003 you are being released on licence. Unless you are subsequently being detained under the Immigration Act 1971 for the purpose of your deportation/removal from the United Kingdom, you will be under the supervision of a nominated officer and

must comply with the conditions of this licence. The objectives of this supervision are to

(a) protect the public,

(b) prevent re-offending and

(c) help you to resettle successfully into the community.

2. Your supervision commences on **31/07/2015** and expires on **LIFE** unless this licence is previously revoked."

20. Amongst the requirements contained in the licence were the following:-

"5. While under supervision you must:

i. Be well-behaved, not commit any offence and not do anything which could undermine the purposes of your supervision, which are to protect the public, prevent you from re-offending and help you re-settle successfully into the community;

ii. Keep in touch with your supervising officer in accordance with any instructions that you may be given;

iii. If required receive visits from your supervising officer at your home/place of residence;

iv. Permanently reside at an address approved by your supervising officer and notify him or her in advance of any proposed change of address or any proposed stay (even for one night) away from that approved address;

v. Undertake only such work (including voluntary work) approved by your supervising officer and notify him or her in advance of any proposed change;

vi. Not travel outside the United Kingdom unless otherwise directed by your supervising officer (which will be given in exceptional circumstances only) or for the purposes of immigration deportation/removal".

21. The final provision to note is this:-

> "7. If you fail to comply with any requirement of your supervision (set out in paragraphs 3, 4 and 5 above) or if you otherwise pose a risk to the public, you will be liable to have this licence revoked and be recalled to custody until the date on which your licence would have otherwise ended. If you are sent back to prison and are re-released before the end of your licence, you will still be subject to licensed supervision until the end of your sentence".

G. Daniel Furner's witness statement

22. The applicant and his solicitors had concerns about the actions taken by the respondent on 30 July, as set out in the "Notice of Restriction" described above. In this regard it is necessary to turn to the witness statement of Daniel Furner:-

> "2. I represented Mr Majera at the bail hearing before Immigration Judge Narayan sitting at IAC Stoke on 30 July 2015. The Defendant relied on a document called a 'bail summary' in which she resisted the grant of bail and sought, in the event bail was granted, certain conditions. Those conditions included:
>
> 2. To report on a reporting frequency basis to a Home Office Reporting Centre/Police Station at: TBC – Police Station
>
> 3. If on licence, to report to the Offender Manager/Probation Officer at:
>
> National Probation Service
> National Offender Management Service
> 90 Lansdowne Road
> Haringey
> Tottenham
> N17 9XX
>
> …
>
> 6. Must not enter employment, paid or unpaid, or engage in any business or profession.
>
> 3. The bail summary explained that those conditions were sought:

a) to secure the subject's attendance at any further interview, and

b) to reduce to a minimum any potential delay in notifying the relevant authorities should the subject breach bail.

4. At the conclusion of the hearing the Judge announced that bail would be granted, and he heard submissions on the appropriate conditions to be attached. Unfortunately, as is the usual practice in the First-tier Tribunal, there is neither a bail judgment nor the facility to obtain a transcript of the proceedings. In the absence of the same, I have reviewed my manuscript notes from the hearing which I have used as an aide-memoire and I summarise the proceedings below. My contemporaneous notes are only very cursory because the fluid and discursive nature of bail hearings does not permit the recording of detail, but I do recall the hearing well.

5. It is my recollection that having agreed to the imposition of electronic monitoring, and a condition that Mr Majera must comply with his licence, the Judge turned to reporting conditions. The Judge asked the Home Office Presenting Officer whether additional reporting was really necessary in circumstances where Mr Majera was (a) tagged and (b) would already be reporting to his Offender Manager in any event and the Presenting Officer conceded that it was not necessary. It was on that basis that the application to impose a separate reporting condition to the Home Office was refused.

6. At that point the Judge began instructing his usher on the preparation of the bail grant form. I recall that I had to interrupt and ask the Judge to hear my submissions on the imposition of a prohibition on voluntary work. I made brief submissions, referring to the rehabilitative value of voluntary work and the significance placed by the Parole Board and Protection Service on the six-months' of voluntary work at an Age UK charity shop that he had already undertaken successfully while completing his sentence in Category D open conditions. I acknowledged that paid work was clearly inappropriate. Mr Majera not having leave to remain, but I submitted that there was no public interest whatever in preventing him from continuing his voluntary work while on bail. I noted that a prohibition on unpaid work did not further the object of the bail conditions as set out in the Defendant's bail summary, and if anything there was some value (in

terms of enforcement) of establishing a routine where Mr Majera's whereabouts would generally be known at particular times of the day.

7. I do not recall that the Presenting Officer had any submissions to make in response to mine, and the Judge then agreed that there would be no prohibition on unpaid work. He said he could see no reason why such a prohibition should be imposed, and if Mr Majera wanted to take part in productive social activities consistently with his licence then he should be encouraged to do so. The bail grant form was amended to this effect and signed by the Judge, Mr Majera and his surety.

8. I now know that on the same day as the bail hearing, a DO4 notice was issued by the Defendant purporting to release Mr Majera on restrictions under schedule 3 of the Immigration Act 1971. A copy of that notice was never sent to me, I only saw it on 30 September 2015 when I attended on my client for other purposes and he brought it with him.

9. Noting that the Defendant had purported to impose weekly reporting conditions and a prohibition on voluntary work, contrary to the conditions ordered by the Judge the same day, I made representations to the Defendant on 30 September 2015. I asserted that the Defendant either had no power to impose these conditions, or that it was irrational and/or abusive to vary them in these circumstances.

10. On 19 October 2015 the Defendant maintained her decision. She said:

> … it is noted your client is no longer on Immigration Judge bail and is now on restrictions imposed by Home Office. Consequently this allows the Home Office to make changes to your clients (sic) conditions without the need to making (sic) a further application to the court. Therefore the restrictions imposed on your client are maintained.

11. A supplementary letter before claim was sent the same day with a truncated deadline of 22 October 2015. The intention in doing that was to link this challenge to the proposed judicial review of the Defendant's decision refusing to revoke a deportation order, in which a pre-action letter had already been sent.

12. When there was no response to either, I sought and obtained an emergency legal aid certificate. Shortly after receiving the same however, I received a belated pre-action response in relation to the deportation issue, which confirmed that the refusal to revoke had been withdrawn for reconsideration.

13. On 4 November 2015 the Respondent replied to the supplementary letter before claim regarding conditions of release, maintaining her decision. In relation to voluntary work, the Respondent said:

> 27. With regard to your client being permitted to continue in unpaid work. It is noted your client became subject to a signed Deportation Order on 13 November; 2012. Your client lodged an appeal against the Deportation Order on 5 February 2013 which was dismissed on 3 July 2013. Your client was initially refused Permission to Appeal to the First Tier on 16 August 2013, however was later granted Permission to appeal to the Upper Tier on 5 September 2013. Nevertheless; the appeal was dismissed by the Upper Tier on 19 February 2014 and subsequent applications to appeal to the Court of Appeal were also refused. As such your client's appeal rights became exhausted on 27 November 2014.
>
> 28. As a result, of your client becoming appeal rights exhausted, on the same day the Deportation Order came into effect and your client's Indefinite Leave to Remain was revoked. Being subject to a signed Deportation Order prohibits any individual from engaging, paid or unpaid, in any business or profession.
>
> 29) In addition to the above, a signed Deportation Order means the individual has no right to remain in the United Kingdom. Your client is now the subject of a signed Deportation Order therefore there is an onus on him to leave the United Kingdom. Therefore it is nor considered unlawful to amend your client's restriction to include unpaid engagement in a business, such as voluntary work.

14. On 6 November 2015 I made further representations to the Respondent seeking the removal of the voluntary work prohibition. On this occasion, I enclosed a letter from the Probation Service dated 5 November 2015 which said:

> 'I would support amending Mr Majera's conditions to enable him to undertake voluntary work, as I believe this would have rehabilitative value and contribute towards further reducing the risk posed in the community.'

15. On 2 December 2015, there having been no response, I wrote to the Respondent chasing a decision.

16. On 3 December 2015 the Respondent again refused the application to remove the voluntary work prohibition. She says:

> 'The Immigration Judges bail condition specifically stipulated your client 'Must not enter paid employment, or engage in any business or profession.' Voluntary unpaid work would mean that he engages in a business or profession. Therefore, the Secretary of State agrees and upholds the Judges decision. Therefore it is not considered unlawful to amend your client's restriction to include unpaid engagement in a business, such as voluntary work.'

17. The decision refers to the Probation Service's letter, but appears to discount it solely on the basis that the probation service does not say the Applicant is a low risk of re-offending.

18. On 26 January 2016 I sent a letter before claim challenging the 3 December 2015 decision.

19. On 29 January 2016 I attended on the Applicant. On that occasion, he showed me a letter dated 4 January 2016 from the Respondent in which the Respondent refused an application made on 2 December 2015 by the Probation Service for a relaxation of his curfew. I have never seen the 2 December 2015 application, but the 4 January 2016 decision records that the Probation Service sought a relaxation of the Applicant's curfew from 8pm – 7am, to 11pm – 6am, on the basis that:

> There have been no concerns with regard to Mr Majera's behaviour and this is commendable. He is complying with the conditions of his licence.

20. The 4 January 2016 decision said that: 'The details contained within your correspondence dated 2 December 2015 have been considered in full by an official acting on behalf of the Secretary of State. However no reason can be found to vary his current conditions.' The decision continued:

> Whilst it is accepted that Mr Majera had not re-offended since 2006, this must be considered in light of the fact that he has remained liable to deportation since 13 November 2012. Mr Majera's appeal rights became exhausted on 27 November 2014 and his signed Deportation Order then came into force, invalidating any leave granted to him. As such he has had no legal grounds to remain in the United Kingdom since that date. It is considered that his precarious state would be affected by any further offending and *it* is also considered that as he is subject to license conditions for life due to '*imprisonment for public protection*', that it is in his own best interests to abide by these conditions or risk any negative reports from the Probation Service.

21. On 29 January 2016 I sent a supplementary letter before claim, challenging the refusal of the Probation Service's application to relax the Applicant's curfew.

22. On 4 February 2016 the Respondent replied to the 26 January 2016 letter before claim (concerning the voluntary work prohibition), maintaining her decision. There has been no response to the supplementary letter before claim on 29 January 2016 (concerning the curfew)".

H. The challenged decisions

23. The decisions under challenge in this judicial review are contained in the respondent's letters of 3 December 2015 and 4 January 2016. So far as the earlier letter is concerned, the respondent had this to say:-

> "The Immigration Judge's bail condition specifically stipulated that your client '*must not enter paid employment, or engage in any business or profession*'. Voluntary unpaid work would mean that he engages in a business or profession. Therefore, the Secretary of State agrees and upholds the judge's decision. Therefore it is not considered unlawful to amend your client's restriction to include unpaid engagement in a business, such as voluntary work".

24. Although consideration had been given to the probation workers' views in the letter of 5 November 2005, with regard to rehabilitation and risk of re-offending, the letter of 5 December said that the applicant "has a significant, abhorrent and extensive

criminal history", amounting to 30 offences and ten convictions for driving offences; theft; offences relating to the courts/prisons/police and robbery.

25. Since the applicant's deportation order "revokes his previously (sic) leave that was granted to him … without valid leave to remain in the United Kingdom he has no legal rights to work paid or unpaid or work in any business or profession".

26. Having stated that the applicant "has no lawful basis to remain in the UK" the writer warned that if the applicant "decides to stay, then his life in the UK will become increasingly more difficult". Amongst the consequences of not immediately leaving were said to be the applicant's inability to work, checks required to be made by landlords, penalties for letting to an illegal migrant; an inability to claim benefits; and a charge for any secondary healthcare.

27. The letter of 4 January 2016 addressed a number of matters, including the "curfew" imposed on 30 July 2015. The letter "noted [that] Judge Narayan set the primary condition for Mr Majera to appear before his Offender Manager". The letter then set out the secondary conditions of bail, as described above. It was stated that the applicant was, in fact, "not subject to electronic monitoring which was a condition set by the Immigration Judge. This is because the address supplied by him was unsuitable. It is therefore still deemed appropriate that his weekly reporting continue and his curfew is still a suitable alternative to electronic tagging which was imposed on him".

I. The grounds of challenge

28. The grounds accompanying the applicant's application for judicial review contend that the decision in the letter of 3 December 2015 to refuse to withdraw the condition prohibiting voluntary work is based on a misapprehension of the law, is irrational and *ultra vires* "in that the respondent has no power in law to attach additional conditions to bail which a bail judge, seized with a bail issue, has declined to order". The decision of 4 January 2016 to refuse to vary the curfew hours is said to be

"irrational and disproportionate and is an unnecessary and unjustified restriction on the applicant's liberty". Furthermore, the statement in the letter of 3 December 2015 that the applicant's failure to leave the United Kingdom would result in "life in the UK [becoming] increasingly more difficult" was said to demonstrate "an improper purpose in putting pressure on a person with a legitimate outstanding claim to leave the UK". The respondent was still considering the application to revoke the applicant's deportation order.

29. The applicant further contended that the prohibition on voluntary work was "undermining the function of the Probation Service and the applicant's right to rehabilitation", as well as being "against the statutory scheme and the public interest".

30. An order was sought quashing the condition prohibiting voluntary work, together with a mandatory order "that the respondent adhere to any variation of licence conditions (i.e. he has a curfew) imposed by the NPS on behalf of the MOJ".

J. Grant of permission to bring judicial review proceedings

31. Permission to bring judicial review proceedings was refused by the Upper Tribunal on the papers but granted when the application was renewed orally before Upper Tribunal Judge Smith on 22 August 2016. Before Judge Smith, the respondent's position was that the application should be refused because the applicant had "an alternative remedy"; that is to say that the applicant "has not set out why this is a matter which should properly come before the Upper Tribunal exercising its judicial review jurisdiction, rather than [the applicant] making an application to the First-tier Tribunal in the ordinary way". In the alternative, the respondent submitted that the respondent's decisions were not unlawful in their terms.

32. Judge Smith granted permission only on the following ground:-

"In summary, it is arguable that, the bail order of First-tier Tribunal Judge Narayan dated 30 July 2015 having provided as a primary condition that 'the applicant is to appear before the Offender Manager', this does not require the applicant to surrender to the Secretary of State and arguably does not therefore permit the respondent to impose different conditions or vary the conditions in that order. It is arguable that on the facts of this case, the ratio of the Court of Appeal's judgment in Raza v The Secretary of State for the Home Department [2016] EWCA Civ 807 does not apply and that it remains for the First-tier Tribunal to vary conditions or impose new conditions. It is arguable therefore that the Secretary of State's position as set out in her letter dated 4 November 2015 that, on the applicant making contact with his Offender Manager, Immigration Judge bail ceased and CIO bail commenced is unlawful".

33. We shall have occasion to revert to the case of Raza. First, however, it is necessary to set out the detention and bail provisions contained in the Schedules to the Immigration Act 1971. This is necessary because, as we shall see, the respondent's stance in her detailed grounds of defence, following the grant of permission, is strikingly different from that assumed by her up to that point. These grounds, drafted by Mr Sarabjit Singh, continued to represent the respondent's position at the hearing on 25 January 2017. They necessitate detailed consideration of the nature and scope of immigration bail.

K. Powers of detention

34. The powers of immigration detention relevant in the present proceedings are contained in paragraph 2 of Schedule 3 to the 1971 Act:-

"(2) Where notice has been given to a person in accordance with regulations under [section 105 of the Nationality, Immigration and Asylum Act 2002 (notice of decision)] of a decision to make a deportation order against him, [and he is not detained in pursuance of the sentence or order of a court], he may be detained under the authority of the Secretary of State pending the making of the deportation order.

(3) Where a deportation order is in force against any person, he may be detained under the authority of the Secretary of State pending his removal or departure from the United Kingdom (and if already detained by virtue of sub-paragraph (1) or (2) above when the order is made, shall continue to be detained unless [he is released on bail or] the Secretary of State directs otherwise).

…

(5) A person to whom this sub-paragraph applies shall be subject to such restrictions as to residence [, as to his employment or occupation] and as to reporting to the police [or an immigration officer] as may from time to time be notified to him in writing by the Secretary of State.

(6) The persons to whom sub-paragraph (5) above applies are -

(a) a person liable to be detained under sub-paragraph (1) above, while by virtue of a direction of the Secretary of State he is not so detained; and

(b) a person liable to be detained under sub-paragraph (2) or (3) above, while he is not so detained".

L. Bail powers

35. The relevant bail powers are contained in paragraph 22 of Schedule 2:-

"22.-

(1) The following, namely -

(a) a person detained under paragraph 16(1) above pending examination; […]

(aa) a person detained under paragraph 16(1A) above pending completion of his examination or a decision on whether to cancel his leave to enter; and

(b) a person detained under paragraph 16(2) above pending the giving of directions, may be released on bail in accordance with this paragraph.

(1A) An immigration officer not below the rank of chief immigration officer or the First-tier Tribunal may release a person so detained on his entering into a recognizance or, in Scotland, bail bond conditioned for his appearance before an immigration officer at a time and place named in the recognizance or bail bond or at such other time and place as may in the meantime be notified to him in writing by an immigration officer.

(1B) …

(2) The conditions of a recognizance or bail bond taken under this paragraph may include conditions appearing to the immigration officer or the First-tier Tribunal to be likely to result in the appearance of the person bailed at the required time and place; and any recognizance shall be with or without sureties as the officer or the First-tier Tribunal may determine.

(3) In any case in which an immigration officer or the First-tier Tribunal has power under this paragraph to release a person on bail, the officer or the First-tier Tribunal may, instead of taking the bail, fix the amount and the conditions of the bail (including the amount in which any sureties are to be bound) with a view to its being taken subsequently by any such person as may be specified by the officer or the First-tier Tribunal; and on the recognizance or bail bond being so taken the person to be bailed shall be released.

(4) A person must not be released on bail in accordance with this paragraph without the consent of the Secretary of State if –

(a) directions for the removal of the person from the United Kingdom are for the time being in force, and

(b) the directions require the person to be removed from the United Kingdom within the period of 14 days starting with the date of the decision on whether the person should be released on bail".

36. Persons detained under paragraph 2(2) or (3) of Schedule 3 may be granted bail because paragraph 22 of Schedule 2 is stated by paragraph 2(4A) of Schedule 3 to

"apply in relation to a person detained under sub-paragraph (1), (2) or (3) as they apply in relation to a person detained under paragraph 16 of that Schedule".

M. FTTIAC's Presidential Bail Guidance

37. The First-tier Tribunal (Immigration and Asylum Chamber) Presidential Guidance Note No 1 of 2012 comprises "bail guidance for judges presiding over immigration and asylum hearings". Paragraph 3 of this guidance makes it clear that it does not seek to be exhaustive and is not binding because "First-tier Tribunal Judges must apply the law and, if there is any divergence between the law and this guidance, the law will always be preferred".

38. Amongst the Guidance is the following:-

> "15. Where an applicant for immigration bail has recently completed a prison sentence, there may be licence conditions applicable. The judge should be aware of such licence conditions before imposing bail conditions. It would be unfair if the judge imposed conditions which were inconsistent with those imposed by the licence. Stringent bail conditions may not be necessary if there is already an obligation to report to a probation officer regularly".

39. For our purposes, the following provisions concerning bail conditions are relevant:-

> "32. The Tribunal will always set some conditions when granting bail to ensure that the person concerned answers when required to do so. However, the stringency of the conditions set will vary according to the circumstances and the level of monitoring of the applicant that may be required.
>
> 33. The first condition is to specify when bail will end. Where no immigration appeal is pending, a First-tier Tribunal Judge should grant bail with a condition that the applicant surrenders to an Immigration Officer at a time and place to be specified either in the bail decision itself or in any subsequent variation.

34. The Judge will usually specify the immigration reporting centre nearest to where the applicant is to reside when released and will often specify that the applicant should answer to an Immigration Officer within seven days.

35. Once the applicant has answered to an Immigration Officer in accordance with that primary condition, the duration of any further grant of bail will be made by a Chief Immigration Officer rather than the Tribunal. It is to be expected that the Tribunal's decision as to the principle of release will be followed in the absence of a change of circumstances. If a person does not answer as directed, then forfeiture proceedings are likely to commence in the Tribunal.

…

37. To enable the Tribunal to promote the achievement of the primary condition, a First-tier Tribunal Judge is likely to impose a secondary condition. Secondary conditions usually relate to the place of residence of the person to be released on bail and how the person released on bail should maintain contact with the immigration authorities.

38. …

iv. A First-tier Tribunal Judge will take into account any licence conditions that apply to a person to be released on immigration detention. A First-tier Tribunal Judge should not grant bail with bail conditions that are contrary to any licence conditions. Details of the licence will be held by the Criminal Casework Directorate and should be provided by the presenting officer (as per the Probation Guidance contained in Annex 3).

…

vi. In addition to such reporting conditions, a First-tier Tribunal Judge can direct that a person be subject to electronic monitoring ('tagging'). The relevant provisions for electronic monitoring are set out in s.36(4) of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004. This condition is most likely to be imposed if bail is to be granted to a person who has previously committed a criminal offence where the immigration authorities have requested it as an additional safeguard for the protection

of the public. However, it remains for a First-tier Tribunal Judge to consider if such additional safeguards are required and the immigration authorities must substantiate such a request. Judges will also take into account the guidance in Annexes 5 and 8 regarding the terms of the bail conditions that should be imposed if electronic monitory is deemed necessary.

ANNEX 8

EXAMPLES OF STANDARD BAIL CONDITIONS

Primary conditions of bail

Where a First-tier Tribunal Judge grants bail but no appeal is pending:

The appellant is to appear before an Immigration Officer at [INSERT ADDRESS] at [INSERT TIME] on [INSERT DATE] or any other place and on any other date and time that may be required by the UK Border Agency or an Immigration Officer.

…

Secondary conditions of bail

Where tagging is required as a condition of bail.

Bail is granted subject to (i) the applicant cooperating with the arrangement for electronic monitoring ('tagging') as set out in s. 36 of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 and (ii) the UK Border Agency arranging electronic monitoring within two working days of this grant of bail.

Where bail conditions are to be linked to licence conditions.

Where the licence conditions provide sufficient monitoring and control:

Bail is granted in the same terms as the licence.

Where the licence conditions are more general or the licence is due to end in the near future:

The applicant is also required to comply with the terms of his/her licence".

N. The respondent's position: FTT's grant of bail is void

40. In the detailed grounds of defence, the respondent's position (per Mr Sarabjit Singh) is that the First-tier Tribunal Judge's grant of bail was void. The "purported" grant was *ultra vires* paragraph 22 of Schedule 2 to the 1971 Act. The First-tier Tribunal's power to release on bail has to be "in accordance with this paragraph" in order to be valid. In the present case the judge's imposition of the primary condition of bail as a requirement to appear before the applicant's Offender Manager was manifestly non-compliant with paragraph 22(1A). As a result, the First-tier Tribunal must be found by me not to have bailed the applicant. Accordingly, its purported conditions of bail are of no effect. Accordingly, when the respondent imposed restrictions on the applicant on 30 July 2015, she had no obligation to impose conditions that paid any regard to the void conditions of the First-tier Tribunal.

O. Discussion

41. Ms Weston submitted that the need for certainty was of particular importance in matters concerning liberty of the person. The respondent's present stance, if upheld, would lead to serious problems. It could not be right, she said, for parties to be left free to ignore bail decisions of the First-tier Tribunal, on the basis that these were void. It was plain from cases such as Rochdale Metropolitan Borough Council v KW (No 2) [2015] EWCA Civ 1054 that any order of a court or Tribunal was binding until it was set aside or varied in accordance with the principles of finality and certainty necessary for the administration of justice.

42. For his part, Mr Sarabjit Singh relied upon R (AR (Pakistan)) v The Secretary of State for the Home Department [2016] EWCA Civ 807. In that case, the First-tier Tribunal had granted bail with a primary condition that AR was to appear before the Chief Immigration Officer on 15 October 2014. A subsequent application by AR to the

Tribunal to vary the secondary conditions of his bail was rejected by the Tribunal in July 2015 on the basis that the Tribunal lacked jurisdiction.

43. The Upper Tribunal, however, held that the First-tier Tribunal had been wrong to decline jurisdiction and that, on the contrary, the respondent had no power to remove or relax bail conditions imposed by the First-tier Tribunal. The Upper Tribunal considered that the species of bail in question was one of non-finite duration, such that the First-tier Tribunal had a continuing role for as long as the bail order existed.

44. The Court of Appeal disagreed. Having considered paragraphs 32 to 35 of the President's bail guidance (see above) the court held as follows:-

> "24. It can be seen that this Guidance does not support the Upper Tribunal's second sub-scenario of FTT bail of non-finite duration. The Guidance expressly contemplates that, if no appeal is pending before the FTT, duration of bail after surrender to an immigration officer is for 'a Chief Immigration Officer rather than the Tribunal' and that the responsibility for considering variation 'lies with an Immigration Officer in all other circumstances' than while an appeal is pending.
>
> 25. The Upper Tribunal, although citing these provisions, does not directly address the question whether the provisions are wrong in law but, by implication, the Upper Tribunal has held that they are.
>
> 26. For my part I cannot agree with the Upper Tribunal's views about this. I do not get much assistance from para 21 of schedule 2 which deals with temporary admission to the United Kingdom by an immigration officer but does not deal with bail or bail conditions in connection with 'a person detained' such as AR was. That is the province of para 22 which authorises a Chief Immigration Officer or the First Tier Tribunal to release a detained person
>
> > 'on his entering a recognizance … conditioned for his appearance before an immigration officer at a time and place named in the recognizance …'

This is a time-honoured form of words to express the idea of surrendering to bail. Once a bailed person surrenders to his bail (whether to magistrates or the Crown Court in a criminal case or to an immigration officer in an immigration case) it is then for the person to whom he surrenders to re-fix bail, if he or she considers it appropriate to do so and to determine any appropriate conditions.

27. It is fair to say that there are no express words in paragraph 22 saying that bail conditions are to cease on surrender but in my view Mr Clement's (sic) guidance correctly states the position as a matter of necessary inference from the terms of paragraph 22 and particularly 22(1A). It follows that there is no sub-scenario of FTT bail of non-finite duration in a case where there is no pending appeal to the FTT. It follows further that, if and to the extent conditions of bail imposed by the FTT continue after surrender, they are to be treated in law as imposed by the immigration officer to whom the detained person surrenders and can be varied, if appropriate, by another immigration officer and that the Secretary of State was therefore entitled to discharge the conditions as she did on 9th October 2015.

28. What then of Mr Sarabjit Singh's submissions that if this is right there is no need for the FTT to impose secondary conditions and that the 2014 Rules make it clear that adversarial argument about conditions is to be conducted in the FTT rather than at the time of surrender? The answer is that secondary conditions (such as residence and submission to electronic tagging) are required because there is inevitably a lapse of time between release from detention and the date of surrender. During that lapse of time, conditions such as that imposed by the FTT in this case will, in any event, be necessary. Any conditions imposed by the FTT will also be important guidance to an immigration officer to whom a bailed person surrenders. He is likely to continue the terms; any departure from them to the prejudice of the bailed person would have to be justified and could be amenable to judicial review. That might have been important in this case if the Secretary of State had sought to maintain the curfew condition which, as I have said, was not imposed by the FTT at all".

45. Mr Sarabjit Singh submitted that since, in the present case, the judge's primary condition of bail – "to appear before [the applicant's] Offender Manager" – was

invalid, the purported grant of bail was one of non-finite duration and was, accordingly, void.

46. The respondent's contention that the judge's grant of bail was a nullity does not mean that a person may ignore a bail decision of the Tribunal which he or she considers invalid. As a judicial action (albeit by a body of limited jurisdiction) the Tribunal's order has effect unless and until a court or Tribunal seized of jurisdiction in respect of the matter decides that it was invalid.

47. If, however, a court or Tribunal does so find, then the decision to grant bail falls to be treated as a nullity from the outset; it has never had legal effect. In other words, the Tribunal's decision is void, not voidable: F Hoffmann La Roche v SSTI [1975] AC 295; Boddington v British Transport Police [1999] 2 AC 143.

48. The consequences of finding that a decision to grant bail is, in fact, of no legal effect are likely to be serious. Quite apart from the basic fact that a person will have been unlawfully released from detention, action may have been taken against the person and/or sureties (eg for breach of bail conditions). The task of deciding what, if any, subsequent decisions are affected by the finding that bail was a nullity may be far from straightforward: see, in this regard, Ouseley J's detailed analysis in TN (Vietnam) & Anor v Secretary of State for the Home Department & Anor [2017] EWHC 59 (Admin).

49. The fact that finding a bail decision to be a nullity has very serious potential consequences is, I find, relevant to the task of interpreting the relevant legislation; namely, paragraph 22(1) and (1A) of Schedule 2 to the 1971 Act. Was it Parliament's intention, in enacting those provisions, that defects in the grant of bail should vitiate the decision to grant? Alternatively, is the proper reading of paragraph 22 that such defects – even concerning the so-called "primary condition" in sub-paragraph (1A) - mean that there has been a valid but defective grant of bail, which the parties (in particular, the respondent) should immediately draw to the attention of the Tribunal, and which the Tribunal has a duty immediately to correct?

50. With respect to Mr Sarabjit Singh, I do not consider that AR (Pakistan) has anything material to say about this question of statutory construction. The fact that "there is no sub-scenario of FTT bail of non-finite duration", in a case where there is no pending appeal to the First-tier Tribunal (paragraph 27 of the judgments), does not mean that bail is necessarily void if, through error, a judge fails to comply fully with the legislative requirements.

51. I therefore approach the issue of statutory construction on the basis that, absent clear provision to the contrary, Parliament is unlikely to have intended bail decisions to be nullities and that AR (Pakistan) does not compel acceptance of Mr Sarabjit Singh's submissions.

52. I do not find that the words "in accordance with this paragraph" in paragraph 22(1) have the effect for which Mr Sarabjit Singh contends. Although the description of sub-paragraph (1A) as the "primary condition" is not to be found in the 1971 Act, it is clear from sub-paragraph (2) that sub-paragraph (1A) is one of the "conditions of a recognizance or bail bond taken under this paragraph". There is, thus, a conceptual difference between the power to release on bail and the conditions to be imposed, including the primary condition.

53. It is self-evident that the words "in accordance with this paragraph" in paragraph 22(1) cover the entirety of sub-paragraphs (1A) to (4) of that paragraph. Accordingly, if Mr Sarabjit Singh is correct, then the same consequence must follow in respect of any condition, not just the primary condition. Therefore, the imposition under sub-paragraph (2) of an irrational condition would mean that bail had not been granted "in accordance with" paragraph 22. But, as can readily be appreciated, it would be highly problematic if any unlawful condition were to have the effect of rendering the entire grant of bail void.

54. The way in which sub-paragraph (3) is framed serves to underline the difference between "taking" the bail, which when done results in release, and fixing the "conditions of the bail", which does not automatically have that result.

55. Although not determinative, it is, I consider, noteworthy that the respondent's contention that the judge's grant of bail was void from the outset found no expression in the correspondence of the respondent with the applicant's solicitors or, indeed, in the skeleton argument filed by the respondent at the oral permission hearing. The respondent's officers and legal advisers were of the view that Judge Narayan's bail decision was legally effective.

56. As a matter of statutory construction, I have accordingly reached the conclusion that the respondent is now wrong to contend that Judge Narayan's grant of bail falls to be treated as a nullity. I decline to hold that the judge's error in the imposition of the primary condition of the applicant's bail means that the Upper Tribunal should find the bail decision was void.

57. It is therefore necessary to consider whether the applicant's bail lasted longer than 30 July 2015, the day on which it was made. As we have already seen, the respondent, in her "notice of restriction" of that day, seems to have taken the view that the Tribunal's bail had come to an end. The contention in the correspondence was that this was because the applicant had, by that time, fulfilled the primary condition of appearing before his Offender Manager. This contention is, however, unsupported by any documentary evidence that I have seen. In any event, it is common ground between the parties that the requirement to appear before the Offender Manager is not a "primary condition" that can be imposed under paragraph 22(1A). Although it is a condition that could validly be imposed under paragraph 22(2), compliance with sub-paragraph (2) would not terminate the judge's grant of bail. Accordingly, this asserted reason of the respondent for regarding the judge's bail as ending on 30 July 2015 cannot be correct.

58. It is apparently the case that, later on 30 July 2015, the applicant came into contact with an Immigration Officer, who gave the applicant the notice of restriction. Mr Sarabjit Singh's stance before me necessarily precluded him from submitting that the applicant's coming before an Immigration Officer had the effect of bringing the

Tribunal's grant of bail to an end. In view of my finding at paragraph 56 above, it is nevertheless necessary for me to consider this issue.

59. Whilst there might be some superficial attraction in finding that this contact with the Immigration Officer brought the First-tier Tribunal's bail to an end, I believe it must be rejected. As I have already sought to make clear, the proper response, faced with the judge's manifestly defective bail decision, was for the respondent immediately to return to the Tribunal in order to secure a primary condition that complied with paragraph 22(1A). The respondent, like any other party, has an obligation under the Procedure Rules 2014 to cooperate with the First-tier Tribunal with a view to securing the overriding objective of dealing with cases justly and fairly. The present proceedings are, I consider, an object lesson in the importance of that obligation, particularly in a matter as important to the individual and to the public as the grant of bail.

60. The result of my analysis is I agree with Ms Weston that the judge's grant of bail on 30 July 2015 is valid and remains in force. Its defective nature must be remedied. The proper body to do this is the First-tier Tribunal.

61. As can now be seen, there was much to be said for Judge Smith's decision, when granting permission to bring judicial review proceedings, to stay the proceedings for fourteen days in order "to permit the respondent to consider whether to make an application to the First-tier Tribunal for variation of the bail order". As will be evident, the respondent declined to do so.

62. The overall result of my finding is, in effect, the mirror image of the situation in AR (Pakistan). There, the First-tier Tribunal's bail had ended, having given way to the bail jurisdiction of the Immigration Officer. Here, by contrast, the Tribunal's bail jurisdiction has not ended, albeit that it must be regularised.

63. The continued existence of the Tribunal's bail means the respondent's purported bail conditions, set out in the notice of restriction and subsequently defended in the impugned decisions, can have no legal effect. Neither Counsel urged me to find that

the scheme of the 1971 Act is such that, during the currency of Tribunal bail, an Immigration Officer has power to amend the conditions of that bail and I can detect nothing in that Act to suggest this is possible. Moreover, such a proposition derives no support from the judgments in AR (Pakistan).

64. In view of these findings, it is strictly unnecessary to consider the applicant's arguments as to the ability of the respondent to impose conditions of bail which differ from those imposed by the First-tier Tribunal. The legal position is that this stage has not been reached.

65. It is, nevertheless, desirable for me to say something in this regard, not least because the First-tier Tribunal will need to revisit the contentious secondary condition regarding the applicant's unpaid employment.

66. As we have seen, the judge imposed the following condition on the applicant:-

> "Must not enter paid employment, or engage in any business or profession".

67. Despite the respondent's earlier attempt to argue the contrary, it is manifest that Judge Narayan, in imposing this condition, intended to achieve the result that the applicant could continue working unpaid in the charity shop, as he had been doing during the last stages of his open imprisonment. The respondent's earlier contention, that such work was prohibited by the requirement not to "engage in any business or profession", is obviously devoid of merit.

68. The problem with the judge's employment condition is that it does not appear to be one which, given the circumstances of the applicant, could be made pursuant to paragraph 22(2) of Schedule 2. The condition not to enter paid employment etc. appears to have nothing to do with securing the applicant's appearance at a time and place required by sub-paragraph (1A). There is, as far as I am aware, no suggestion that the applicant would be less likely to surrender to his bail if he had been working in a paid, as opposed to an unpaid, capacity.

69. I find myself in agreement with Mr Sarabjit Singh that responsibility for operating the statutory regime concerning restrictions on employment etc. in respect of those who are subject to immigration control lies with the respondent. Section 1(2) of the 1971 Act provides that those not having the right of abode in the United Kingdom "may live, work and settle in the United Kingdom by permission and subject to such regulation and control of their entry into, stay in and departure from the United Kingdom as is imposed by this Act". Responsibility for regulation and control lies with the respondent, not only directly under the Act but also under the immigration rules made in accordance with it.

70. As we have already seen, paragraph 2(3) of Schedule 3 to the 1971 Act is the provision that enabled the respondent to detain the applicant, upon his release from imprisonment. For the purposes of paragraph 2(6)(b), the applicant was, accordingly, a person liable to be detained under paragraph 2(3) who, by reason of his bail, was not so detained. Therefore, paragraph 2(5) applies to the applicant. This states that such a person "shall be subject to such restrictions as to residence, as to his employment or occupation … as may from time to time be notified to him in writing by the Secretary of State". Thus, the respondent has power to restrict the employment or occupation of the applicant, even while he is on bail. As a result, quite apart from my concerns as to the rationale, in bail terms, for imposing an employment condition, I do not see how any such bail condition could affect the respondent's freestanding ability to impose restrictions on employment or occupation under paragraph 2(5) of Schedule 3.

71. I am entirely unpersuaded that the word "work" in section 1(2) and the word "employment" in paragraph 2(5) of Schedule 3 cover only remunerated work or employment. It is unnecessary for the respondent to pray in aid for this purpose the interpretation provisions of the immigration rules. It is, in my view, obvious as a matter of English language that work can be paid or unpaid. Likewise, the expression "paid employment" presupposes that one may be employed in an unpaid capacity. Even if that were not so, there is no necessary requirement for a person's "occupation" to be remunerated.

72. As has been seen, it is suggested in the First-tier Tribunal's Bail Guidance that, where a person is on licence, any bail should be granted "in the same terms as the licence". What Judge Narayan did in the present case went beyond the provisions of the then existing licence position, as contained in the Parole Board's letter of 31 March 2015. That letter did not contain any specific condition relating to employment. The licence granted on 31 July 2015, however, had a condition as follows:-

> "v. Undertake only such work (including voluntary work) approved by your supervising officer and notify him or her in advance of any proposed change".

73. As will be apparent from what I have said earlier, I have concerns about the suggestion in the Guidance that bail should be granted "in the same terms as the licence". The licence conditions imposed by the National Probation Service are designed to serve different, wider aims than the conditions that may be imposed by the First-tier Tribunal on a grant of bail under paragraph 22(2). It seems to me to be inappropriate to encourage bail judges to impose conditions (whether expressly or by reference to the licence conditions) which, upon analysis, may lack statutory validity.

74. In my view, the better course would be for the bail decision to state that the conditions of bail are without prejudice to any conditions contained in the licence and for bail judges to ensure, in each case, that there is not any conflict between bail conditions and the licence conditions.

75. In paragraph 1 of the document dated 31 July 2015, it is stated that:

> "unless you are subsequently being detained under the Immigration Act 1971 for the purpose of your deportation/removal from the United Kingdom, you will be under the supervision of a nominated officer and must comply with the conditions of this licence. The objectives of this supervision are to (a) protect the public, (b) prevent re-offending and (c) help you to resettle successfully into the community".

76. Paragraph 3 provides that on:

> "release from prison (including, if applicable, any release from detention under the 1971 Act during the currency of your licence, whether or not leave has been granted for you to remain in the United Kingdom), unless otherwise directed by your supervising officer, you must report without delay to [named supervisor and address]".

77. As well making clear the wider purposes of the licence regime, compared with immigration bail, the provisions just quoted show that release on licence does not mean the person concerned cannot be detained for deportation or other removal from the United Kingdom. During such detention, the conditions of the licence would, of course, be of no effect. But once the person concerned is on immigration bail, the position is that the licence conditions remain effective, with the consequent need to ensure that bail conditions do not cut across them.

78. Finally, because of my findings, the present proceedings would be incapable of providing a forum for testing the applicant's contentions about the relationship between bail conditions that may be imposed by the respondent, following the applicant's surrender to an Immigration Officer, and any conditions that may have been imposed by the First-tier Tribunal as conditions of its immigration bail. This matter has, in any event, been authoritatively settled by the Court of Appeal in AR (Pakistan):-

> "Any conditions imposed by the FTT will also be important guidance to an Immigration Officer to whom a bailed person surrenders. He is likely to continue the terms; any departure from them to the prejudice of the bailed person would have to be justified and could be amenable to judicial review".

P. Decision

79. The decisions of 3 December 2015 and 4 January 2016 fall to be quashed. I make a declaration that the applicant remains on bail granted by the First-tier Tribunal on 30 July 2015.

80. I shall hear Counsel on the issue of costs, if these cannot be agreed.~~~~*0*~~~~