

14th June 2019

High Court declares Home Secretary's investigation into immigration detention abuse at Brook House inadequate

In a landmark judgment handed down on Friday 14 June 2019, the High Court has declared that a proposed Prisons and Probation Ombudsman (PPO) investigation instigated by the Home Secretary into serious mistreatment and abuse of detainees at Brook House Immigration Removal Centre (IRC), by officers of the private security firm G4S, is inadequate and lacks the powers to comply with the UK government's investigative duties under Article 3 of the European Convention on Human Rights (the right not to be subjected to inhuman and degrading treatment). The judgment raises the question of whether a full statutory inquiry is now necessary.

In her judgment, Mrs Justice May declared that the PPO needed statutory powers to compel witnesses, particularly the officers responsible for the mistreatment and abuse, in order for the investigation to comply with Article 3. She found that there was *"a real risk amounting to an overwhelming probability that former G4S staff will not attend voluntarily to give evidence."* She also held that the inquiry required hearings in public and proper funding for victims to be legally represented, both issues that the Home Secretary had refused to commit to.

Background

The judicial review challenge was brought by *MA* and *BB*, two ex-detainees who featured prominently on the documentary by BBC Panorama, "Undercover: Britain's Immigration Secrets", broadcast on 4 September 2017. The documentary followed an undercover detention officer secretly filming inside Brook House on behalf of the BBC. The footage revealed repeated, routine and appalling mistreatment and abuse including racial abuse of detainees by officers. Most shockingly, it showed one officer strangling *MA* and threatening to put him "to sleep" before detention and healthcare staff conspired to cover it up. *MA* was a young Egyptian asylum seeker with severe mental health problems who was supposed to be on constant watch at the time because of a high risk of suicide and self-harm.

MA and *BB* argued that an independent public inquiry with the power to compel and question witnesses was necessary to get to the truth, learn the lessons not heeded by previous repeated abuse scandals in IRC's and which is necessary to discharge the UK's obligations under Article 3 of the European Convention on Human Rights (the right not to be subjected to torture, inhuman or degrading treatment). Their claims were supported by the Equality and Human Rights Commission (EHRC).

Having resisted for over a year, in October 2018, the Home Secretary performed a U-turn and agreed to appoint the Prisons and Probation Ombudsman (PPO) to undertake an independent and bespoke investigation into abuse of detainees at Brook House IRC. The Home Office had previously insisted that the usual existing mechanisms, such as criminal proceedings, an internal investigation by G4S,

and a further review into immigration detention by Stephen Shaw (released in July 2018), were sufficient to meet their positive duties under Article 3 ECHR.

The judicial review proceedings were stayed whilst the Home Secretary determined the terms of reference, the scope of the investigation and the powers that the PPO would be given. They sought to have the claim dismissed but a final hearing was ordered to take place in May 2019 after *MA* and *BB* raised concerns that the proposed PPO investigation using its usual procedures and methodology would not comply with Article 3. These concerns included a failure to provide the PPO with the powers to compel witnesses, as well as insufficient guarantees on victim participation including access to legal representation, and holding hearings in public. *MA* and *BB* have argued that the compulsion of witnesses is particularly important to ensure that the significant numbers of officers involved in the abuse and cover up could be called to account for their actions and to explain why they believed they could get away with what they did. This is in circumstances where the Crown Prosecution Service (CPS) has refused to bring criminal proceedings against any of the officers.

Judgment

A two day hearing took place before Mrs Justice May on 2-3 May 2019. In her judgment handed down on Friday 14 June 2019, she allowed *MA* and *BB*'s claims declaring that the Home Secretary's proposed PPO investigation in its current form would not be sufficient to meet its investigative duties under Article 3. Mrs Justice May held that:

- The PPO needed the power to compel witnesses, to ensure the officers involved were called to give evidence so they could explain *“why and how they came to do it so openly, and so regularly, without complaint or criticism...”* She also held that it was right *“to afford the abused detainee an opportunity to see and confront their abuser on equal terms, as a means of restoring dignity and respect to the person from whom it has been so wholly stripped away.”*
- Sufficient public scrutiny and hearings were required during the inquiry particularly when interviewing key witnesses, noting that she *“would be concerned at whether private hearings could secure sufficient accountability, allay suspicions of state tolerance of mistreatment of the weak, and ultimately maintain confidence in the rule of law.”*
- Expert legal representation needs to be funded and made available for the victims, *MA* and *BB*, if they are *“properly to identify and confront the abuse which they say was meted out to them”*.

The Home Secretary will now have to consider how to give the PPO these powers, with the likelihood being that the investigation will have to be converted to a statutory public inquiry under the Inquiries Act 2005. This would be the first statutory public inquiry of its kind into immigration detention.

[Lewis Kett](#), Public Law Solicitor at Duncan Lewis, who represented MA, had the following to say regarding the judgment:

“The brutality of the abuse our client suffered and the openness in which it was not only carried out but boasted about has appalled everyone who has seen the footage. Today’s judgment ensures that those officers can be held to account for their actions and that the PPO will be better equipped to get to the heart of why this happened and how to ensure it is never repeated. We strongly welcome the judge’s findings that further powers are needed. If the Home Office are truly interested in learning lessons from this inquiry, they should welcome it too.”

Stephanie Harrison QC, of Garden Court Chambers, lead Counsel for MA said the following:

“The judgment, like the Panorama Programme itself, lays bare the shocking and shameful violence, mistreatment and abuse including racist abuse directed at detainees and in particular vulnerable detainee in the immigration detention system.¹ An independent inquiry with all the powers necessary to get to the full truth, to hold those responsible to account and to prevent this happening again should have been immediately ordered by the Home Secretary in September 2017. Both the [Home Affairs Select Committee](#) and the [Joint Committee on Human Rights](#) have identified continuing systemic failure to protect vulnerable detainees in immigration detention. The Home Office is recalcitrant to change and the culture of impunity must end. There is a strong cross party coalition in favour of strict statutory criteria and time limits for the Home Office’s exercise of immigration detention powers. This judgment makes clear why those limits are not only necessary but should be introduced as soon as possible.”

Representation

MA is represented by [Lewis Kett](#) and [Nicholas Hughes](#) of the Harrow Public Law team at Duncan Lewis Solicitors. They instructed Stephanie Harrison QC of Garden Court Chambers and Alex Goodman of Landmark Chambers.

BB is represented by Joanna Thomson and Mark Hylands of DPG Solicitors. They instructed Nick Armstrong of Matrix Chambers and Jesse Nicholls of Doughty Street Chambers

For further information please contact Lewis Kett – 075 3376 5950 or [Toufique Hossain](#) – 079 4050 2376.

¹ VC v SSHD [2018] EWCA Civ 57 - <https://www.bailii.org/ew/cases/EWCA/Civ/2018/57.html>
R(HA) (Nigeria) v SSHD [2012] EWHC 979 (Admin) - <https://www.bailii.org/ew/cases/EWHC/Admin/2012/979.html>



ENDS

About Duncan Lewis Solicitors

Duncan Lewis Solicitors, established in 1998, is a national law firm serving both corporate entities and private individuals from 52 offices across London and throughout the UK. In 2009 Duncan Lewis was the first law firm in the UK to achieve the Investors in People Gold Quality Standard Mark and is recognised by Legal 500 as a Top Tier firm for its immigration and human rights work.

Established areas of law are: action against public authorities, business immigration, child care, civil liberties, clinical negligence, community care, crime and fraud, dispute resolution, debt and insolvency, employment, family and divorce, housing, Islamic law, asylum and immigration, litigation, mental health, mental capacity, personal injury, prison law, professional negligence, public law and administrative law, regulatory matters, wills and probate and welfare benefits.

Contact

Name: Sangeeta Shanker

Position: Head of Marketing

Email: sangeetas@duncanlewis.com

Phone Number: 020 3114 1125