

## Covid-19 and the Adults at Risk Policy



**Philip Nathan**

## R (Detention Action) v SSHD [2020] EWHC 732

### Summary of SSHD Steps taken to address Covid-19:

- First, guidance on hygiene had been issued to detainees, cleaning materials were to be provided, and individual IRCs were to devise plans for isolating individuals at increased risk
- Second, guidance had been issued to the SSHD's caseworkers whereby individuals from countries to which removal was not possible were not to be brought into detention unless considered to pose a high risk of public harm
- Third, the Adults at Risk guidance was to be applied to anyone identified as being at heightened risk from COVID-19 so that by the date of hearing the number of immigration detainees had been reduced from 1200 on 01 January 2020 to 736 while a number of other detainees had been identified for release and / or review.

## R (Detention Action) v SSHD [2020] EWHC 732

- Fourth, for those at heightened risk who were not released steps were being taken to reduce contact with others and support to self-isolate
- Fifth, the detention of those not in high risk groups was to be reviewed by reference to whether the proposed country of return was accepting removals, applying the *Hardial Singh* principles, and
- Sixth, guidance had been issued regarding symptomatic individuals in the IRC estate, providing for isolation for seven days and, if necessary, hospitalisation.

## R (Detention Action) v SSHD [2020] EWHC 732

Judgment at paragraph 19:

*“The Claimants contend that because the Secretary of State has decided as a general rule not to initiate detention for persons who would be removed to countries who, because of COVID-19 are not presently accepting removals, it must follow that detention of any person in an immigration detention centre pending removal to such a country is already unlawful. We do not agree. The two classes are not in materially the same position.”*

Is this logical?

Judgment at paragraph 35:

*‘In our view, a sensible co-operation before this case would have led to the same result.’*

Claimants Ordered to pay Defendant’s Costs. Was this really fair? Subsequent Cases suggest not.

## Detention Action Second Step

No Detention where Removal impossible unless High Risk

- Policy remains undisclosed
- During the first lockdown 1800 individuals brought into immigration detention between 01 April and 30 June.
- All removable? If not, then all of those High Risk? Seems unlikely.

## Detention Action Third Step

Adults at Risk

[R \(Bello\) v SSHD EWHC 950 \(Admin\)](#) and [2020] EWHC 3014 (Admin)

Final Judgment at paragraph 49:

*“However, both Mr Payne and Mr Buley, rightly in my judgment, contend that the question of whether a person has been subject to a four year plus custodial sentence is not to be considered in isolation and certainly does not, in and of itself, justify a decision to detain. Rather it is a trigger to an assessment of whether they pose a public protection concern.”*

## Bello Interim Relief [2020] EWHC 950 (Admin)

Judgment at paragraph 30:

*“Mr Byass properly concedes that Mr Bello's mental health condition makes him a level 2 risk in term of the AAR Policy. But... his condition is stable. As to his vulnerability to COVID-19, there is a real question of interpretation as to whether every person identified as vulnerable by reason of comorbidities ipso facto falls to be categorised as a level 3 risk...I see some force in Mr Buley's suggestion that the answer to that question is yes, but I do not think the answer is **obvious.**”*

Interim relief refused. Case adjourned to expedited rolled up hearing.

## Bello – Final Hearing [2020] EWHC 3014 (Admin)

Shortly before the hearing, SSHD disclosed the Step 3 policy. See paragraph 35 of final Judgment:

*" . . . particular account must now be taken of the latest [Public Health England] guidance and the risk factors contained therein, which are believed to increase the risk of severe illness from COVID-19 . . . Where these specific risk factors are identified . . . individuals should be considered and assessed as an Adult at Risk Level 3."*

Things were obvious. Confirmed Level 3. Order for Claimant's release.



## R (O and Others) v SSHD [2020] EWHC 1243 (Admin)

Two Claimants released before hearing and claims likely to be transferred to County Court – See [ZA \(Pakistan\) v SSHD \[2020\] EWCA Civ 146](#)

Third Claimant, E, pursued claim on 3 basis but first two of interest:

- Trafficking and Adults at Risk Policy
- Torture and Discrepancy between Adults at Risk Policies

## AAR Policies and Torture

- [Internal AAR Guidance](#): The decision maker must assess what evidence there is to support the individual's account by using the levels of evidence referred to below in this guidance. Where there is professional evidence of torture, the individual should be regarded as being at level 2 in the terms of this policy. Where the professional evidence indicates that a period of detention would be likely to cause harm they should be regarded as being at level 3.
- [Statutory AAR Guidance](#): 11. The following is a list of conditions or experiences which will indicate that a person may be particularly vulnerable to harm in detention.
  - having been a victim of torture (individuals with a completed Medico Legal Report from reputable providers will be regarded as meeting level 3 evidence, provided the report meets the required standards)

# Thank you for listening

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