

**Judgment of VS v the Home Office [2014] EWHC 2483 (QB)**

*Claimant was represented by Shu Shin Luh of Garden Court Chambers, instructed by Jessica Whitehead and Victoria Pogge Von Strandmann of Maxwell Gillott Solicitors*

On 22 July 2014, the High Court handed down judgment in VS v the Home Office [2014] EWHC 2483 (QB) and found that the Claimant, a child at all material times during the claim, was unlawfully detained by the Home Office.

The claim originated as an application for judicial review issued on 7 August 2012 to challenge the decision of the Home Office to detain the Claimant on 17 July 2012, certify his asylum claim on Third Country grounds and seek to remove him as an adult to Italy. The Home Office's decision to treat the Claimant as an adult was predicated on a pro forma age assessment result sheet and an assurance from Kent County Council which purported to have assessed the Claimant to be an adult, not a child as claimed. On the Claimant's claimed age, he was 16 years old.

An injunction was sought to stop the removal and release him into the care of Kent County Council's social services. Kent had at the time of the judicial review claim been an interested party, having agreed to re-assess the Claimant's age. The Home Office consented to the interim relief sought by the Claimant, that is to cancel the removal directions and to release the Claimant in the care of Kent social services. Kent eventually re-assessed and accepted the Claimant's claimed age. The Home Office accepted the outcome of the re-assessment but contended that it was justified in detaining the Claimant on 17 July 2012 and continuing. The parties agreed that what remained live was a claim for declaratory relief and damages and that claim was transferred to the QBD.

On receipt of disclosure from the Home Office, it became apparent that the Claimant was not just detained from 17 July – 10 August 2012 on account of the Home Office's treatment of him as an adult, he was also detained when he first arrived at Dover port on 2 July 2012. On that day, 2 July 2012, there was no dispute that the Claimant was a child and the Defendant treated him as such.

The particulars of claim contended that 2 periods of immigration detention were unlawful: (i) on 2 July 2012; and (ii) from 17 July – 10 August 2012.

***Findings of the Court:***

**In relation to the 1<sup>st</sup> detention**, the Home Office unlawfully detained the Claimant from 17.50 – 19.10. This was the period of time when the Claimant was detained *not*

for the purposes of arranging his care as a child but for the purposes of arranging an interview with him as to why he came to the United Kingdom.

Applying the Court of Appeal's judgment in AN and FA v Secretary of State for the Home Department [2012] EWCA Civ 1636, the Judge held that:

- (i) An immediate referral to Kent social services should have taken place very soon after 17.30 when the Claimant was booked in to the Dover port holding area operated by the Home Office. This is because after booking-in the Claimant's basic details had already been taken by the Defendant, including his date of birth, showing that he was, at least was claiming to be, a minor. It was also established that there were no welfare concerns in relation to him which might have justified a delay in referring him for child welfare services: para 96 of the judgment.
- (ii) The interview he was subjected to, known as the 'Children's Current Circumstances Interview' was "*simply not necessary*" and "*the period between completion of booking-in and conclusion of the interview could, and should therefore have been avoided.*": para 96.
- (iii) The Judge confirmed the dicta of the majority in the Court of Appeal's judgment in *AN and FA*. Whilst noting that the interview that the Claimant was subjected to was shorter than that which the appellants in *AN and FA* were subjected to, that is beside the point. This is because the dicta in the Court of Appeal's judgment is that it was *not necessary* to interview because the Defendant already had the information required in order to act (i.e. to refer to child welfare services) and thus the Defendant "*did not need more information and so did not need to carry out an interview for the child's care and safety.*": para 99.
- (iv) Insofar as the Home Office immigration officer believed that it was necessary to ask the questions in the 'Children's Current Circumstances Pro Forma' and specifically the question asking "why you left your home country", the immigration officer was "probably mistaken" that there was formal policy requiring her to do so: paras 103-105.

In relation to the 2<sup>nd</sup> detention, the Court made important findings about the age assessment practices of both Kent social services and the Home Office:

- (i) The Home Office was not entitled to rely on a Pro Forma Age Assessment Results sheet from Kent County Council because there was "nothing" in that pro forma that discloses the reasons directed at why the Claimant

specifically had not been found to be a child: paras 130 and 131 of the judgment.

- (ii) Specifically in relation to the pro forma, “*there is no way ... of the Defendant knowing whether what was described as being a Merton-compliant assessment had actually be undertaken. On that basis, it seems to me that the Defendant is in no position to make any independent evaluation as to whether what Kent CS was saying about having performed such an assessment was correct.*”: para 131.
- (iii) The judge went on to hold that “*what the Defendant was provided with in this case (i.e. the Kent pro forma) was inadequate and not what the Assessing Age guidance (of the UKVI) requires.*”: para 131.
- (iv) At para 142, the Judge held explicitly that “the Age Assessment Results” document was not sufficient to be relied on for the exercise of immigration powers.
- (v) The judge further held that “*there is a difference between stating a conclusion (including in relation to the individual factors), on the one hand, and giving the reasons for that conclusion (including in relation to the individual factors), on the other hand.*”: para 131.
- (vi) The judge held that there was an independent duty on the Home Office immigration officers to comply with what is required under the *Assessing Age* policy. The immigration officers did not do so in this case: see para 142.
- (vii) The judge found that what was required in respect of the Home Office’s published *Assessing Age* police was to ensure that the child was given an opportunity to address adverse points (para 133), and that the reasons given to the child and to the Home Office were full reasons which are the “type of document which is contemplated by the ‘at the very least’ wording in [para 5.3] of the *Assessing Age* guidance.”: para 133.
- (viii) Given the Home Office failed to comply with her own policy, there was no basis for the Home Office to have treated the Claimant as an adult as at 17 July 2012 and continuing. The Claimant had until Kent’s age assessment concluded on 17 July 2012 been treated by the Home Office as a child. The Claimant should have been regarded as a child within the meaning of article 2(h) of the Dublin II regulations. Under article 6, para 2, the responsibility lies with the UK to examine his asylum claim. The Defendant had “no entitlement to give removal directions under paragraph 16(2) of schedule 2 to the 1971 Act, and there was no power to detain, with the effect that the detention was unlawful (and in breach of article 5(1) of the ECHR): para 136.

The assessment of damages has been put off to a later date.

Three very significant findings arose from this judgment:

- 1) That the Home Office continues unlawfully to conduct illegal interviews at port in respect of children arriving at Dover port.
- 2) That Kent's pro forma age assessment results do not on the face of it disclose the basis for showing that there has been a Merton-compliant age assessment.
- 3) That the Home Office's reliance on 'pro forma age assessment results' from Kent social services is unlawful and contrary to its published policy. Home Office is not entitled to detain on the basis of the pro forma age assessment results.

**Dated 22 July 2014**

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