

Wednesday, April 21, 2010

PLP represents Medical Justice¹ in connection with a challenge to the UK Border Agency's policy to grant less than the standard 72 hours notice removal (or no notice) in cases which fall within the 'exceptions' categories (the "exceptions policy").

The exceptions policy allows the UK Border Agency (UKBA) to give reduced notice or no notice of removal in five categories of cases including circumstances where there is medical documentation indicating that service of notice of removal directions will create a risk of suicide or self-harm and unaccompanied children where the UKBA believes that standard notification is not in the best interests of the child concerned because s/he is at risk of absconding. See section 3.1.1-3.1.5 of chapter 60 of the Enforcement Instructions and Guidance (EIG) (<http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/enforcement/detentionandremovals/>)

The challenge is being brought on a public interest basis and it will be argued that the exceptions policy is unlawful because:

- 1 it interferes with the constitutional right of access to justice. Parliament has not expressly and specifically authorised the Secretary of State to abrogate or fetter the right of access to justice to the categories of people specified in the exceptions policy;
- 2 the limited safeguards provided by the policy are wholly inadequate to make the policy lawful and rational;
- 3 the policy is in breach of the Secretary of State's duties under the Race Relations Act 1971 and the Disability Discrimination Act 1995; and
- 4 It is in breach of articles 5(4) and 6 of the European Convention on Human Rights (ECHR) and article 14 ECHR together with articles 5, 6 and 8 ECHR

The claim also included an application for a protective costs order on behalf of Medical Justice.

On 15 April 2010, Judge Thornton QC granted permission and in doing so stated:

“It is clear from the fully detailed and very helpfully drafted detailed grounds that this application raises important and difficult issues which it is in the public interest should be addressed in a judicial review. For those reasons, it is not necessary to await the Acknowledgement of Service since there is no realistic prospect that that will show that there is no prospect of success and, in any event, the public interest merits the claim being determined.”

He also made a protective costs order² in favour of Medical Justice, limiting it's liability to a very modest amount, and directed that the claim for judicial review should be heard on an expedited basis.

Further information and press enquiries – a.lukes@publiclawproject.org.uk

¹ Medical Justice is a non-governmental organisation which facilitates the provision of independent medical advice and independent legal advice and representation to those detained in immigration removal centres (see: <http://www.medicaljustice.org.uk>)

² For more information on PCO's <http://www.publiclawproject.org.uk/Downloads/CornerHouse.pdf>