



PRESS RELEASE

- **Public Law Project (PLP) acts for successful lead claimant in R (Lumba & Mighty) v Secretary of State for the Home Department [2011] UKSC 12**
- **Supreme Court finds Home Office detention of foreign nationals pursuant to “secret policy” was unlawful**

In a judgment delivered today the UK Supreme Court has effectively held that all foreign nationals detained by the UK Borders Agency on completion of their prison sentence, between April 2006 and September 2008, were falsely imprisoned.

A nine member panel of the Supreme Court delivered a scathing criticism of the Government for detaining otherwise time-served foreign nationals pursuant to a policy described as “secret” and “hidden”. The secret policy required detainees to be held indefinitely and regardless of whether they posed any risk to the public.

Lord Dyson, giving the leading judgment, held that there is “clear evidence that [UKBA] caseworkers were directed to conceal the true reason for detention” during this period and, in a reference to the then Home Secretary Jacqui Smith, that there was a “deliberate decision take at the highest level to conceal the policy that was being applied and to apply a policy which, to put it at its lowest, the Secretary of State and her senior officials knew was vulnerable to legal challenge” (163, 166).

Lord Walker, agreeing with Lord Dyson, held that this constituted a “serious abuse of power” on the part of the Home Secretary (194) and Lord Hope added that the conduct of the Government was “deplorable” (176).

The Court referred to a number of internal Government emails obtained in the litigation in which it was acknowledged that the policy was “increasingly vulnerable” to a finding that it was unlawful, but which determined to persist with it for political ends, so that “immigration judges take any hit” (of releasing any detainees) (see paras 156-7).

The claimants were awarded nominal damages to vindicate their rights, but PLP’s client Mr Lumba’s case has also been remitted to the High Court to consider afresh whether he should have been released sooner. Mr Lumba was detained under immigration powers for four and a half years beyond his release date.

Whilst this judgment has significant implications for all individuals detained under the secret policy, it also re-states historical principles of the law of false imprisonment. The lower courts had developed a new legal defence to a claim for false imprisonment. The Supreme Court rejected such an approach.

Jo Hickman, Mr Lumba’s solicitor, said:

“This decision is a vindication of the rule of law and of the fundamental principle that no-one should be deprived of their liberty by the abuse of executive power. The

Supreme Court has now made clear that all detention decisions must be properly, openly and lawfully made, or the resultant detention will be unlawful. This is a principled judgment in the context of individual liberty, and will help guard against any further abuse of the Home Office's detention powers."

Public Law Project (PLP)
22 March 2011

NOTES FOR EDITORS

1. PLP is an independent, national legal charity which aims to improve access to justice for those whose access is restricted by poverty, discrimination or other similar barriers.
2. Mr Lumba was represented by the PLP, and by Raza Husain QC, Martin Westgate QC, Laura Dubinsky, Tom Hickman and Alex Goodman of Counsel.
3. The secret policy was put in place by the Home Secretary, Dr John Reid MP and maintained by Jacqui Smith MP after revelations in the press that foreign nationals were being released without consideration for deportation, which led to the resignation of the then Home Secretary, Charles Clarke.
4. The High Court and the Court of Appeal had held that the detention of the Claimants pursuant to the secret policy did not constitute a false imprisonment. Those judgments have been overturned by the Supreme Court.

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