THE PUBLIC LAW PROJECT

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Today, in the case of *R (Medical Justice) v Secretary of State for the Home Office*[1], the High Court quashed the UK Border Agency (UKBA) policy to give less than the standard 72 hours notice of removal from the UK in certain "exceptions" categories (the "exceptions policy").

The exceptions policy operated by UKBA since January 2010 has been to give reduced notice, or no notice, of removal in five categories of case. These categories include vulnerable people who are at risk of suicide or self-harm and unaccompanied children. This has been on the basis that the Home Secretary believes that giving the standard notification is not in their best interests. The Home Secretary justified the policy on the basis that whenever the exceptions policy was operated certain safeguards were in place, in particular to ensure that those due to be removed had "effective access to the courts".

Mr Justice Silber held that for a person subject to a removal direction to be in a position to challenge the decision in the courts, means that the person must be able to find a lawyer who is:

- *ready* to provide legal advice (which might entail ensuring that the lawyer providing the advice would be paid),
- *willing and able* to provide legal advice under the seal of professional privilege, and
- if appropriate, *ready, willing and able* to challenge the removal directions, all in the limited time available prior to removal.

The court considered evidence of the practical difficulties of obtaining legal assistance in such a short space of time: first, an immigration lawyer would have to be contacted; second, s/he may not be able to take on the case at such short notice; third, crucial documents were likely to be unavailable; fourth, financial assistance (legal aid) would be difficult to obtain; and, fifth, it would be difficult for a legal adviser to be able to advise and obtain an injunction stopping removal in the limited time available. The exceptions policy made no provision to defer removal if a person with possible grounds to challenge the removal had been unable to make contact with a lawyer despite using her best efforts to do so. All of this meant that there "is no adequate right to justice where reduced notice of removal is given pursuant to [the exceptions policy]".[2]

When the policy was introduced the Home Secretary had said that its operation would be monitored. However, the judge found that the monitoring was defective and had not taken place from August 2009 onwards. This meant that the Home Secretary could not show that the policy was being operated lawfully because there was a high risk of those to whom little or no notice of removal was given (including children)being denied access to justice.

The claim was brought by, Medical Justice, a charity which facilitates the provision of independent medical and legal advice to immigration detainees (http:/www.medicaljustice.org.uk) . It is represented by the Public Law Project, an independent, national legal charity whose aim is to improve access to public law remedies for those whose access is restricted by poverty, discrimination or other similar barriers (http://www.publiclawproject.org.uk).

For further information please contact Diane Astin on 0207 843 1262.

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[1] Case No: CO/4321/2009

[2] Para [80]