Neutral Citation Number: [2020] EWHC 2086 (Admin)

Case No: CO/2344/2020

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 29 July 2020

Before :

MR JUSTICE FORDHAM

- -

Between :

R (MICHAEL OSADEBAY)	**Claimant**
- and -	
SECRETARY OF STATE FOR THE HOME DEPARTMENT	**Defendant**

- -
- -

DAVID JONES (instructed by Duncan Lewis Solicitors) for the **Claimant**
JACK ANDERSON (instructed by Government Legal Department) for the **Defendant**

Hearing date: 29 July 2020

Judgment as delivered at the hearing

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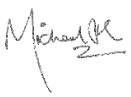
Approved Judgment

I direct that no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.



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THE HON. MR JUSTICE FORDHAM

Note: This judgment was produced for the parties, approved by the Judge, after using voice-recognition software during an ex tempore judgment in a Coronavirus remote hearing.

MR JUSTICE FORDHAM:

1. This is an application for interim relief which I have adjourned to a date and time provisionally fixed for Friday, 7 August 2020 at 2pm with a time estimate of 1 hour. It is my hope that a fixture with that date and time allocation will be able to be found by listing, but my order expresses that as a "provisional" listing "to be confirmed as soon as possible by the party's solicitors with Administrative Court Office listing". That allows for the fact that, if there is some practical difficulty, it will be possible to deal with it. It makes clear that, as at this moment, that is not a fixture cast in stone.

2. I am not dealing today (as everyone agrees) with the legal merits of the application for interim relief, still less with the underlying legal merits of the claim for judicial review. It is sufficient if I record these 'bare bones' of the position, so far as the claimant is concerned. The claimant was granted bail in principle by the FTT on 22 May 2020 which was extended on 18 June 2020 but expired on 25 June 2020, in circumstances where appropriate accommodation had not been identified. Meanwhile, he had applied on 3 June 2020 for section 95 support, had made an application for asylum and had on 16 June 2020 received a positive section 95 decision. A "medium" risk assessment was recorded on 13 July 2020. He had been recognised on 24 April 2020 as an 'adult at risk (level 3)'. A different judge in the FTT granted bail in principle on 15 July 2020 which, as things stand and unless extended, expires on 12 August 2020. There are disputes about the steps that have been being taken, so far as their legal adequacy is concerned, and as to whether this court in its supervisory jurisdiction ought today to have been making an order for mandatory interim relief requiring release in a given timeframe (the claimant's papers before the court referred to release 'within 7 days'). The court received a witness statement at around 4 o'clock yesterday afternoon with some documents which described the position from the defendant's perspective. At 13:22 today an email from the defendant's solicitors explained that section 95 accommodation has now been identified and the claimant will be released subject to appropriate approval requiring liaison between the National Probation Service (in London) and the relevant police force (in Birmingham). Mr Jones has accepted that such liaison and appropriate checks are essential and that appropriate time is needed to conduct them. In light of that development, the one hour timeslot for the oral hearing of this application for interim relief today has, ultimately, been used by the parties to consider the position and liaise and having done so, with the court, to identify the appropriate terms of an order with directions as to the progress of this case.

3. As to the directions, having heard the submissions from the parties, I decided that it was necessary, appropriate and proportionate to direct that "the defendant should update the claimant's solicitors by 4 o'clock Monday, 3 August 2020 and update the court by 12 noon Wednesday, 5 August 2020". So far as the latter update is concerned, I am not going to prescribe the form which that update should take. The defendant may consider it appropriate to provide a further witness statement. Whatever form the update takes, the duty of candour applicable in judicial review proceedings will apply to it. That has relevance in relation to what underlying materials are made transparent to the claimant and to the court. That important duty is one owed by the defendant and its legal representatives and is a familiar duty discharged on a self-policing basis by those who well understand its nature.

4. There are a number of possibilities as to what will happen next in this case. Paramount, in the circumstances, is clear and prompt communication between the parties, and good sense in reflecting on whether and if so at what stage it is appropriate that a judge should be seized with this case at a further hearing. The fact that I have adjourned this case, provisionally, to Friday 7 August 2020 at 2pm does not mean that that hearing will be necessary. One possibility, which would be a very welcome one to everyone, would be that the position is resolved by prompt action continuing the existing momentum in the meantime. It would be very regrettable, I can say on the face of it, if that momentum were now lost. Another possibility, at the other end of the spectrum, is that it proves impossible to resolve matters between now and 7 August 2020. In those circumstances too, it does not follow that a further hearing will be appropriate. The claimant's representatives can be expected, and are expected, to deal realistically – as they have done today – with the position that is described in updates that they receive. Both parties can be trusted to reflect on what is necessary and appropriate, including so far as the incurring of further legal costs is concerned, and including the position so far as further hearing time being necessary is concerned.

5. It is vital that the Court is kept informed as to whether the further hearing is necessary or not, and that communications come in good time so that, if that hearing is not needed, the matter can be stood out. It is vital that any further materials or written submissions are provided to the Court in good time. Should the parties be in a position where it is necessary for some further direction to be made, they are strongly encouraged to liaise with a view to agreeing an order, to the extent it can be agreed. If there are matters which are controversial, those can then be considered on the papers by the Court. So far as timing is concerned, I have had regard to the fact that the current FTT bail order is set to expire on 12 August 2020. Mr Jones accepted that if a High Court order were needed and were made on any day prior to 12 August 2020, the High Court order would supersede and survive the lapse of the FTT bail. It is not necessary to go into that, still less resolve any questions relating to that, but the link to 12 August 2020 explains the timeframe that I have directed.

6. Finally, I mention the mode of hearing. This was a BT telephone conference call hearing at my direction. The parties were satisfied that that was a suitable mode of hearing, which would not be to the detriment of the interests of either of them. So was I. I was also satisfied that the open justice principle was secured. The hearing was published in the cause list, with its start time and giving an email address which could be used by any member of the press or public who wished permission to be able to observe the hearing by dialling in (as indeed has happened). The mode of hearing eliminated any risk from any person having to travel to the court building or be in the court room, and there was no need for anyone to do so, including any interested member of the press or public. One incidental virtue or advantage of the remote hearing was that I was able to circulate, through the magic of electronic communication, a draft order which the parties were able to discuss with me "live" during the hearing.

7. It was in all those circumstances, and for those reasons, that I made the order that I did. I have included within the order "liberty to the parties to apply in writing on notice to vary or discharge this order". That enables either side to bring to the attention of the court promptly any circumstance which justifies varying any aspect of

the order. Again, the parties can be expected to liaise and cooperate, and any appropriate variation can be made. The costs are reserved.

29 July 2020