

**R (on the application of Medical Justice) v Secretary of State for the Home Department**

**– Summary**

(This is not part of the judgment)

1. Medical Justice, which is a charity which facilitates the provision of advice and representation to those detained in immigration removal centres, challenges the policy of the Secretary of State for the Home Department which came into effect on 11 January 2010. This policy gives individuals who fall into certain specified categories and who have made unsuccessful claims to enter or remain in the United Kingdom little or perhaps no notice of their removal directions which are specific arrangements made for their removal from the United Kingdom. This new policy to a large extent constitutes an exception to its previous policy but it does to some extent repeat existing exceptions.
2. The main ground of challenge to the new policy is that the rights given to remove people with little or no notice is a breach of their constitutional right of access to justice. In other words, it is the claimant's case that under the new policy in the very limited time period between the service of the removal directions and the actual time of removal, there would not be enough time for those receiving the abridged period of notice to obtain legal advice and if need be then to challenge the removal. This is a matter of importance because first there are under the present regime a proportion of cases in which the removal directions should not have been given and where the person receiving them is entitled to have them quashed and second once a person is removed, he or she will in practice be unable to bring proceedings or to return to the United Kingdom
3. Under the system in force, before the January 2010 exceptions came into force, the basic rule was that in the ordinary run of the mill cases, a minimum of 72 hours notice had to be given between notification of the removal directions and the actual removal and this would have to include at least two working days with the last 24 hours including a working day. Ms Lin Homer the Chief Executive of UKBA stated in 2007 that the 72 hour time frame was "*quite tight*" and it was regarded as "*the minimum time frame.... to ensure proper access to court*". This right by those about to be removed of access to legal advice and to the courts was acknowledged by the Secretary of State in

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the 2007 policy document which stated that “*we need to ensure that persons, subject to enforced removals have sufficient time between the notification of the [removal directions] and the date/time of removal to seek legal advice and/or to apply for [judicial review]*”.

4. Yet those falling within the 2010 exceptions constituted a special category, who had no right to receive any particular period of notice and who could be removed in such a short time frame that it would be impossible for them to receive legal advice and if need be to challenge the removal directions. Those falling within the categories covered by the 2010 exceptions were first unaccompanied children who were at risk of absconding and where it was considered to be in their best interests to receive a reduced period of notice of removal, second it was thought that service of the removal directions would create a medically documented risk of suicide or self-harm and that giving the abridged period of notice would reduce or eliminate that risk, third where a reduced period of notice was necessary to maintain order at a removal centre, fourth where an abridged period of notice was required in the best interests of another required it was a threat or credible risk of harm to other detained persons and finally an abridged period was justified in cases where the person subject to removal had consented to that course.
  
5. The importance of the loss of the 72 hour period of notice has to be considered against the very important background that it was common ground that a citizen’s right of access to justice is an important constitutional right. Indeed as was stated by the House of Lords, the individual affected by any decision (and that would include removal directions) must be in a position to challenge it in the courts if he or she wishes to do so. In order to be able to do this, the person served with the removal directions has to be able to find a lawyer who in the limited time available prior to removal would be ready, willing and able first to provide legal advice and second who in appropriate cases would within the limited time available be able to challenge the removal directions by an application to a judge.

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6. The reduction in the period between service of the removal directions and the actual removal has to be considered against the background that in many cases first those about to be removed would know no or very little English, second they would be likely to be heavily stressed at the prospect of being removed from the United Kingdom against their will and third they would be desperate not to be returned to the country and the place referred to in their removal directions. There was clear evidence that the 2010 exceptions which reduced the 72 hour period had a very serious effect, which was described by an experienced immigration lawyer of “*depriving people facing removal of the opportunity to obtain access to legal advice and if so advised access to the court*”.
7. Indeed Mr David Stobbs the Law Society’s Director of Legal Policy made a witness statement concluding that invoking the 2010 exceptions “*will seriously inhibit a person’s access to justice by removing their ability to contact a legal representative thus inhibiting their right to resort to appropriate judicial remedies*”. None of the significant parts of the claimant’s evidence on these issues was disputed by the Secretary of State.
8. The view of the Secretary of State in January 2010 is that to make the new regime fair, the Government would “*ensure that clear safeguards are put in place*”. Unfortunately no such safeguards have been put in place. It is striking that there is, for example, no provision which states that removal would be deferred where it would be impossible for a person who has been given very short notice pursuant to the 2010 exceptions to obtain legal advice and to obtain access to the courts in the limited time available before the appointed time for removal.
9. The evidence shows that invoking the 2010 exceptions or its predecessors will have the consequence that save in very few circumstances the people affected by it will not be able to obtain legal advice.

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10. In the case of **R (M & T) v Secretary of State for the Home Department** [2010] EWHC 435 (Admin), Collins J granted permission to proceed in a case in which two unaccompanied minors from Eritrea had been taken from their homes at 4am for removal that morning in the case of **T** for removal at 7.30am and in the case of **M** at 9.30am or thereabouts. All these events obviously occurred outside working hours. **M** managed to prevent her removal taking place but she suffered some physical injury when attempts were made to remove her but her legal representative persuaded the UKBA to cancel removal directions. **T** was not so fortunate and having been removed from the United Kingdom, she then arrived in Italy where she contacted her solicitors who had represented her explaining to them that whilst on the street in Bergemo, she had met a male stranger with whom she was living. She appeared to be in some distress although it was not suggested that she had been molested. It is disturbing that she was removed in circumstances in which it was impossible for her to contact her lawyers. This case shows that the right of access to justice was infringed when limited notice was given and also that sometimes removal directions are issued incorrectly or have to be stayed.
  
11. Another case referred to is that of **Nyam**, who was arrested at approximately 11pm on 27 April 2010 and he was then told that he would be removed at 6.30am but he asked his room mate to contact his solicitor who was duly contacted. Having received a copy of the removal directions and the immigration factual summary at 00.37 on the following morning, the claimant's solicitor was surprisingly, but impressively, able to obtain an injunction from the duty judge at 1.30am prohibiting removal. Mr Nyam was exceptionally lucky as within the very limited time available in the middle of the night first he had a solicitor acting for him, second he had his personal telephone number and third the solicitor was able to obtain information necessary to obtain an injunction from the duty judge within the very limited time available in the middle of the night. This case is ongoing but this case also shows that removal directions are sometimes incorrectly served or in

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circumstances in which they have to be set aside if there is enough time to make the appropriate application.

12. There must be many people served with abridged notice under the 2010 exceptions who would not be so lucky and who would have been removed without being able to obtain legal advice in the limited time available between service of removal directions and actual removal. It is clear that the new policy fails to ensure that those who receive reduced periods of notice will be able to obtain legal advice in the time available before they are removed.
13. There is another ground why some parts of the 2010 exceptions must be quashed
14. So the policy is unlawful and must be quashed. I must stress that nothing in the judgment relates to the lawfulness of the 72 hour minimum period of notice or cast any doubt on it.