Administrative Court: Rolls Building London, COURT 28
Before MR JUSTICE WALKER Thursday, 14 March 2019

CO/543/2019 R (MEDICAL JUSTICE) v SECRETARY OF STATE FOR THE HOME DEPARTMENT

REASONS FOR GRANT OF INTERIM INJUNCTION

1. Medical Justice ("MJ") is an independent charity established in 2005 to facilitate the provision of independent medical advice and independent legal advice and representation to those detained in immigration removal centres. In these proceedings it seeks permission to apply for judicial review of the Defendant's Removal Notice Window (RNW) policy, and in addition an injunction prohibiting the Defendant from relying on it pending the outcome of the claim. The policy affects all persons liable to removal under three of the main immigration statutes. MJ's main complaint is that the policy gives the defendant a lengthy window in which, after the expiry of a short opportunity to identify any new ground for being able to stay here, such persons can be removed without any further warning at all.

2. This is not the first challenge to the RNW policy. In *R(FB) v SSHD* [2018] UKUT 428 the Upper Tribunal held that the immediate predecessor to the current RNW policy was, as a general matter, compatible with access to justice. For present purposes it was not materially different from the current RNW policy, and the two can be treated as the same. Permission has been granted to appeal to the Court of Appeal, and a hearing is expected in June or July.

3. In *FB* the tribunal examined anecdotal evidence in two categories of case falling within the RNW policy. In the present case, however, MJ relies on case studies concerning a much wider range of categories within the RNW policy. Among others, details of 11 case studies are set out in a witness statement which I shall refer to as Navarete 1. In each of them there is apparently cogent evidence that individuals who had good grounds to challenge removal were exposed to the risk of being removed without any ability to explain those grounds. On the face of those case studies there appears to be strong reason for a real concern that the policy unjustifiably impedes access to justice.

4. The defendant argues strongly that this real concern should not result in an interim injunction. Reliance is placed on *FB.* First, the lawfulness of the RNW policy is the central feature in both that case and this. I agree. Second, changes to the policy since FB are immaterial. I agree. Third, in *FB* we already have a judgment on the lawfulness of the policy. That is true, and it is also true that at a substantive hearing this court would think long and hard before disagreeing with it, especially at a time when *FB* was going to the Court of Appeal. However I do not accept that *FB* involves the same arguments as this case: see below. In particular, the 11 case studies just mentioned were not before the tribunal in *FB.* Accordingly I do not accept the defendant's fourth submission that they did not change the legal position. Similar arguments arise, but on a different factual basis.

5. Fifth, the defendant referred to an earlier case in which an injunction was granted. This was the decision of Cranston J in *R (Medical Justice) v Home Secretary*

[2010] EWHC 1425 (Admin) ("*Medical Justice 1*"). Interim relief was granted in that case, but it was distinguishable, said the defendant. Cranston J was considering a generally open matter, in which permission had been granted. It was on its way to a main hearing. But we already have a main hearing: the judgment in *FB*. I disagree: for the reasons given earlier, this case is significantly different from that case.

6. Sixth, the defendant said that MJ was having a second bite of the cherry. All relevant points should have been raised in *FB.* I disagree. An argument of that kind might be determinative in a civil case. Of course in a public law case the court will be astute to prevent abuse of process. It is at least arguable that there is no abuse of process when, as a result of concern about an earlier decision made on limited evidence, further evidence is gathered for a public law challenge.

7. In these circumstances I must consider the balance of convenience. It is to my mind very similar to the balance in *Medical Justice 1.* The defendant says that in many cases the proposed injunction would give no more than 72 hours notice of removal. But that is very different from the RNW policy, enabling removal without notice at all once the window begins. The defendant says that for the period 13 to 20 March, 153 people are due to be removed on enforced removal. The injunction would require 69 to be cancelled today and tomorrow. That will, however, do no more than require the defendant to give them explicit notice enabling any new points to be raised. There can be a danger of disruptive tactics, but that is not so great as to outweigh the danger that individuals who ought not to be removed will be deprived of access to justice.

8. In these circumstances I will grant an interim injunction until a substantive hearing in the week beginning 8 April 2019.