

Annex 4 to Duncan Lewis Closing Submissions – Table of Cases on Immigration Detention

Year	Case	Issues and findings
2006	<i>HK (Turkey) v Secretary of State for the Home Department</i> [2006] EWHC 980 (Admin) <i>(Also called D and K v SSHD)</i>	<p>The Home Office breached rules 34 and 35 of the Detention Centre Rules by denying detainees (who alleged that they were torture victims) medical treatment within 24 hours of their admission to Oakington Detention Centre in 2005.</p> <p>The court found that the Home Office’s conduct was “<i>not a rare and regrettable lapse in the circumstances of these two cases. Rather it reflected the cross-the-board failure to give effect to the requirements of Rule 34 (and applicable Standards): the [Home Secretary] regarding compliance as neither “necessary nor appropriate”. I repeat what I have said earlier: that is not acceptable.</i>” [95]</p> <p>The court observed that the Home Secretary displayed a “<i>disinclination to abide by the statutory Rules</i>” [97].</p>
2007	<i>R. (on the application of MH (Iraq)) v Secretary of State for the Home Department</i> [2007] EWHC 2134 (Admin)	<p>The Home Office failed to apply its own policy that persons suffering from mental illness are normally considered suitable for detention in only very exceptional circumstances. The court found that the Home Office’s decision did “<i>not indicate that any consideration was given to the implications of the diagnosis... . It simply says that there was at that time no risk of suicide. That is, in the light of the policy, insufficient</i>” (at [48] per Beatson J).</p>
2008	<i>R. (on the application of B) v Secretary of State for the Home Department</i> [2008] EWHC 364 (Admin)	<p>The Home Office’s failure to undertake a physical and mental examination of a torture victim within 24 hours of her admission to Yarl’s Wood IRC in breach of the Detention Centre Rules. Further, the Home Office failed to assess the Claimant’s allegation that she had been tortured abroad in pursuance of its own policy.</p> <p>The court found that the Home Office “<i>failed to apply its own policy to the claimant without any reasonable justification or excuse and acted unlawfully by such failure.</i>” [33]. Further, in respect to applying its own policy on reporting torture, “<i>...the real policy was not articulated and was not accessible to those [detainees] who would be affected by it... If a policy impacts upon detention it must, under Article 5 of the ECHR be accessible... The policy was not accessible and cannot therefore be relied on.</i>” [34]</p>

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2009	<u><i>R. (on the application of Anam) v Secretary of State for the Home Department</i> [2009] EWHC 2496 (Admin)</u> <u>(later went to Court of Appeal)</u>	<p>The Home Secretary failed to assess the Claimant’s mental health and therefore failed engage with his own policy not to detain mentally ill persons unless there were "very exceptional circumstances".</p> <p>The evidence of the Home Office’s official as to the assessment of the Claimant’s mental health “<i>gives the appearance of an ex post facto rationalisation and is unsupported by the contemporary records</i>” (at [65] per Cranston J).</p>
2010	<u><i>OM (Algeria) v Secretary of State for the Home Department</i> [2010] EWHC 65 (Admin)</u>	<p>The Home Office failed to apply its own policy that persons suffering from mental illness are normally considered suitable for detention in only very exceptional circumstances. The Claimant suffered from a mental illness for the purposes of the policy and a presumption against detention applied.</p> <p>The Court found it “<i>striking</i>” that “<i>hardly any</i>” of the detention reviews completed by the Home Office made “<i>any reference at all to the claimant's mental condition as a factor in deciding whether detention is to be maintained</i>” (at [37]).</p> <p>The court found that in failing to apply his own policy the Home Secretary had “<i>failed to establish that the claimant's detention was other than arbitrary</i>” (at [45]).</p>
2010	<u><i>R. (on the application of MC (Algeria)) v Secretary of State for the Home Department</i> [2010] EWCA Civ 347</u>	<p>The Home Secretary failed to consider its own policy that mentally ill persons should only be detained in very exceptional circumstances in detaining the Claimant. The court found that the Home Office’s attempt to argue that the Claimant suffered from a personality disorder rather than a mental illness was “<i>an ex post facto attempt to justify [its] inexcusable delay... in obtaining a psychiatric assessment of the Claimant</i>” [43].</p> <p>The court found that this was a “<i>very troubling case</i>” and criticised the Home Secretary’s conduct: “<i>The [Home Secretary] could, and should, have acted with greater diligence</i>” during the Claimant’s detention ([68] and [70]).</p>
2010	<u><i>R. (on the application of O) v Secretary of State for the Home Department</i> [2010] EWHC 709 (Admin)</u>	<p><i>It was appropriate to order the release of a failed asylum seeker, with conditions attached, as the grounds relied on to justify his continued detention pending his removal were not supported by evidence and certain assertions made by the Secretary of State for the Home Department justifying his detention were inaccurate.</i></p>

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2010	<i>R. (on the application of Nukajam) v Secretary of State for the Home Department</i> [2010] EWHC 20 (Admin)	<i>The detention of a Cameroonian family prior to removal was unlawful and in breach of the European Convention on Human Rights 1950 art.5, as the original basis for the detention was flawed due to the failure of the United Kingdom Border Agency to act in accordance with the policy of the secretary of state on the administration of anti-malarial drugs prior to removal, and there was no other basis upon which the secretary of state could rely that made the detention lawful.</i>
2011	<i>OM (Nigeria) v Secretary of State for the Home Department</i> [2011] EWCA Civ 909	<i>Although the detention pending deportation of a person suffering from mental illness had been rendered unlawful by the secretary of state's failure to consider her policy on mental illness, the person had suffered no loss as she would in fact, and could lawfully, have been detained in any event.</i>
2011	<i>R. (on the application of Raki) v Secretary of State for the Home Department</i> [2011] EWHC 2421 (Admin)	<i>As there was no prospect of an emergency travel document being obtained within a reasonable period of time, the continued detention of a foreign criminal who had been detained for four years and seven months after the expiry of his sentence was self-evidently unreasonable, and therefore unlawful.</i>
2011	<i>R. (on the application of Kambadzi) v Secretary of State for the Home Department</i> [2011] UKSC 23	<i>A foreign national's detention pending deportation was rendered unlawful when the only defect in the decision to continue detention was a failure to carry out reviews as required by the secretary of state's published policy. The detainee was entitled to damages for false imprisonment.</i>
2011	<i>R. (on the application of Lumba) v Secretary of State for the Home Department</i> [2012] 1 AC 245; [2011] UKSC 12	<i>The Secretary of State for the Home Department was liable for the false imprisonment of two foreign national prisoners pending their deportation, as she had applied an unlawful policy when exercising her power of detention. However, they were entitled to nominal damages only as they would have been detained if the published policy had been applied.</i>
2011	<i>R. (on the application of S) v Secretary of State for the Home Department</i> [2011] EWHC 2120 (Admin)	<i>The detention pending deportation of a foreign national who suffered from mental illness had been unlawful and in breach of the European Convention on Human Rights 1950 art.3 and art.5 since (i) the United Kingdom Border Agency had failed to notify him of the deportation order; (ii) the Secretary of State for the Home Department had failed to follow her own policies on the detention of those with mental health issues; (iii) the circumstances of his detention amounted to inhuman or degrading treatment.</i>

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2011	<i>R. (on the application of T) v Secretary of State for the Home Department</i> [2011] EWHC 370 (Admin)	<i>The claimant's detention pending his removal as an overstayer had been unlawful where the secretary of state had failed to have regard to her own policy, which provided that those suffering from serious medical conditions, as the claimant was, were suitable for detention only in very exceptional circumstances.</i>
2011	<i>R. (on the application of Qader) v Secretary of State for the Home Department</i> [2011] EWHC 1956 (Admin)	<i>The detention of an Iraqi national was unlawful for the period during which it was based on a policy other than the published policy. Although the lawful period of detention was long, it remained lawful for as long as the relevant factors demonstrated that detention was necessary.</i>
2012	<i>R. (on the application of AM (Angola)) v Secretary of State for the Home Department</i> [2012] EWCA Civ 521	<i>The Secretary of State for the Home Department had breached her published policy by detaining an asylum seeker despite there being independent evidence that the detainee had been subjected to torture in Angola. The secretary of state was therefore liable for the tort of false imprisonment.</i>
2012	<i>R. (on the application of Anam) v Secretary of State for the Home Department (No.2)</i> [2012] EWHC 1770 (Admin)	<i>The claimant's immigration detention, which had previously been declared to be unlawful on the ground that the secretary of state had failed to consider the implications of departmental policy concerning the detention of those who were mentally ill, had remained unlawful on the ground that those responsible for his detention had failed to take account of a medical report which dealt with the effect that detention was having on his mental health; he was entitled to substantial damages in respect of his detention from February 2010, as there had been a breach of Hardial Singh principles since that time.</i>
2012	<i>R. (on the application of D) v Secretary of State for the Home Department</i> [2012] EWHC 2501 (Admin)	<i>The secretary of state's failure to treat a detainee's mental health condition adequately whilst in immigration removal centres breached its public sector duty under the Equality Act 2010 s.149, its duty under the United Kingdom Border Agency Enforcement Guidance and Instructions Chapter 55.10, and the detainee's rights under the European Convention on Human Rights art.3 and art.8.</i>
2012	<i>R. (on the application of He) v Secretary of State for the Home Department</i> [2012] EWHC 3628 (Admin)	<i>A Chinese national detained pending deportation had been detained unlawfully for a period of 13 days when his detention review was missed because of delays transferring his file from one Home Office office to another.</i>

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2012	<i>R. (on the application of EH) v Secretary of State for the Home Department</i> [2012] EWHC 2569 (Admin)	<i>The Secretary of State for the Home Department had acted unlawfully in failing to consider whether an asylum seeker's detention should have continued under the terms of her mental health policy, given evidence that the asylum seeker had been suffering from a serious mental illness.</i>
2012	<i>FGP v Serco Plc</i> [2012] EWHC 1804 (Admin)	<i>Although the secretary of state's policy, contained in the Detention Services Order 08/2008, on the restriction on handcuffs and removal of restraints was imprecise and did not identify as clearly as it should have the presumption against restraints during medical consultations and treatment, that did not render it unlawful.</i>
2013	<u><i>R. (on the application of EO) v Secretary of State for the Home Department</i> [2013] EWHC 1236 (Admin)</u>	The Secretary of State breached her own policy in respect to the detention of victims of torture to the extent that the decision to detain the Claimants was unlawful.
2013	<i>Nyang v G4S Care & Justice Services Ltd</i> [2013] EWHC 3946 (QB)	<i>The treatment and care of a detainee in an immigration removal centre had been negligent in that a doctor and mental health nurse had failed to carry out an adequate mental health assessment and a supervising officer had failed to initiate a further assessment process. Those breaches of duty were not, however, causative of the injuries sustained by the detainee when he broke his spine after running into a wall: his act of self-harm would have happened in any event.</i>
2014	<i>R. (on the application of Detention Action) v Secretary of State for the Home Department</i> [2014] EWCA Civ 1634	<i>The secretary of state's policy of detaining all fast-track asylum seekers who satisfied the "quick processing criteria" in the Detained Fast-Track Processes Guidance pending their appeals against the refusal of their asylum claims did not meet the clarity and transparency requirements in R. (on the application of Lumba) v Secretary of State for the Home Department [2011] UKSC 12, [2012] 1 A.C. 245, [2011] 3 WLUK 727.</i>
2014	<i>R. (on the application of MD) v Secretary of State for the Home Department</i> [2014] EWHC 2249 (Admin)	<i>The detention by the Home Secretary of State of a foreign national suffering from a mental illness, was unlawful both at common law and under the European Convention on Human Rights 1950 art.5 and her treatment amounted to inhuman and degrading treatment in breach of art.3. The secretary of state had failed properly to apply her own policy in relation to those suffering from mental illness by not taking steps to inform herself of the nature of the condition and whether it could be satisfactorily managed in detention.</i>

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2014	<i>R. (on the application of Alemi) v Secretary of State for the Home Department</i> [2014] EWHC 3858 (Admin)	<i>An Afghan national's detention pending deportation only became unlawful after the Secretary of State for the Home Department received a psychiatrist's report suggesting that he was suffering from a mental illness and should be placed in a secure unit.</i>
2014	<i>R. (on the application of DK) v Secretary of State for the Home Department</i> [2014] EWHC 3257 (Admin)	<i>"There had been a breach of r.34, as he had been seen by a nurse not a GP, which rendered his detention unlawful, R. (on the application of Lumba) v Secretary of State for the Home Department [2011] UKSC 12, [2012] 1 A.C. 245, [2011] 3 WLUK 727 followed. His detention was unlawful from 24 hours after his admission until 5-6 weeks later when a r.34 examination was carried out."</i>
2014	<i>Mustafa Abdi (formerly known as MA (Somalia)) v Secretary of State for the Home Department</i> [2014] EWHC 2641 (Admin)	<i>"Where a Somali national had been detained pending deportation for four years and nine months, a court held that the detention ceased to be lawful in the nine months prior to his eventual release. At that stage, the prospect of removal was remote."</i> SSHD applied an "admittedly unlawful blanket detention policy that was in place until September 2008" [62].
2015	<i>Abraha v Secretary of State for the Home Department</i> [2015] EWHC 1980 (Admin)	<i>In an application by a foreign criminal for judicial review of his detention pending deportation, the court held that the Home Office had failed to comply with its duty of candour and co-operation with the court. A witness statement from an executive officer, describing the documentation required by the Eritrean authorities before they would issue an emergency travel document, conflicted with a witness statement given by his superior in a contemporaneous case concerning Eritrea.</i>
2015	<i>R. (on the application of S) v Secretary of State for the Home Department</i> [2015] EWHC 2063 (Admin)	<i>"A Malawi national had been unlawfully detained for two months in an immigration removal centre where the secretary of state had maintained her detention under the Detained Fast-Track procedure despite independent evidence under the Detention Centre Rules 2001 r.35 that she had been a victim of torture."</i>
2015	<i>Da Silva v Secretary of State for the Home Department</i> [2015] EWHC 1157 (Admin)	<i>"A failed asylum seeker was awarded only nominal damages in respect of a period of unlawful detention because, if he had not been detained in immigration detention for that period, his mental illness would have required his detention in a psychiatric hospital."</i>

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2015	<i>R. (on the application of AG (Somalia)) v Secretary of State for the Home Department</i> [2015] EWHC 1309 (Admin)	<i>The secretary of state had acted with conspicuous unfairness when failing to disclose relevant information relating to an asylum seeker's family members, who had been regarded as credible witnesses for the purposes of their own asylum claims but were cross-examined in his asylum proceedings on the basis that their accounts of persecution in Somalia were not credible. That breach of public law duty bore upon, and was relevant to, the decision to detain the asylum seeker pending deportation, and had caused him to be detained longer than he should have been.</i>
2015	<i>Xue v Secretary of State for the Home Department</i> [2015] EWHC 825 (Admin)	<i>"A Chinese national who had been convicted of criminal offences had been unlawfully detained in an immigration removal centre pending deportation as her continued detention, in the light of significant health problems which reduced the risk of her absconding or committing further offences, had not been reasonable in all the circumstances."</i>
2016	<i>R. (on the application of MMM) v Secretary of State for the Home Department</i> [2016] EWHC 2655 (Admin)	<i>"The court considered whether an Eritrean asylum seeker was entitled to substantial or nominal damages in relation to a period of unlawful detention pending his removal to Italy."</i>
2016	<i>B v Home Office</i> [2016] EWHC 1080 (QB)	<i>"During 2008 and 2009 a mother and three children were unlawfully detained pending their removal from the UK with their father, who was subject to a deportation order. The Secretary of State for the Home Department had not applied the relevant policy at the time, namely that detention could only be used for children when necessary and every alternative had been considered."</i>
2016	<i>R. (on the application of O) v Secretary of State for the Home Department</i> [2016] 1 WLR 1717; [2016] UKSC 19	<i>"The Supreme Court considered a Home Office policy relating to the detention of the mentally ill pending deportation. Although a failed asylum seeker's detention pending deportation had been procedurally flawed, a lawful application of the secretary of state's policy would not have secured her release from detention any earlier than the date of her actual release on bail."</i>
2016	<i>R. (on the application of Ibrahim) v Secretary of State for the Home Department</i> [2016] EWHC 158 (Admin)	<i>"The reasonableness of the continued detention of an asylum seeker who was due to be removed and had issued judicial review proceedings depended on an assessment of the obstacle constituted by the proceedings, and the risk of absconding if released. Continued detention was reasonable for a short period after the issue of proceedings, in the hope that</i>

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		<i>they could be expedited and removal could take place shortly, but detention became unlawful when it was accepted that the application could not be expedited.”</i>
2016	<i>Onos v Secretary of State for the Home Department</i> [2016] EWHC 59 (Admin)	A decision to remove a failed asylum seeker and her three children after she had entered the UK illegally had been lawful. However, their detention pending removal had been unlawful because the secretary of state had failed to follow her own published policy governing detention without good reason for departing from it.
2017	<i>R. (on the application of Medical Justice) v Secretary of State for the Home Department</i> [2017] 4 WLR 198; [2017] EWHC 2461 (Admin)	<i>The definition of torture in the Adults at Risk in Immigration Detention Statutory Guidance issued by the secretary of state was unlawful. The exhaustive list of indicators of when a person might be particularly vulnerable to harm in detention conflicted with the legislative purpose behind the guidance, and lacked any rational or evidence base.</i>
2017	<i>R. (on the application of TN (Vietnam)) v Secretary of State for the Home Department</i> [2017] EWHC 59 (Admin)	<i>The Administrative Court held that the Asylum and Immigration Tribunal (Fast Track Procedure) Rules 2005 were ultra vires and explained the effects of that ruling on appeal decisions made at a time when those Rules applied.</i>
2017	<i>R. (on the application of TM (Kenya)) v Secretary of State for the Home Department</i> [2017] EWHC 2267 (Admin)	<i>Where a detainee at an immigration removal centre had been removed from association, or segregated, under the Detention Centre Rules 2001 r.40, extension of the period of removal from association beyond the first 24 hours was unlawful because it had not been authorised by an officer of appropriate seniority or independence from the management of the centre. It was also an unjustified breach of the detainee's rights under ECHR art.8(1).</i>
2018	<i>R. (on the application of Aboro) v Secretary of State for the Home Department</i> [2018] EWHC 1436 (Admin)	<i>The secretary of state had acted unlawfully in continuing to detain pending removal a foreign criminal who had been assessed as suffering depression and at risk of self-harm. She had failed to address the policy in UK Border Agency Enforcement Instructions and Guidance r.55.10 that those suffering serious mental illness which could not be managed satisfactorily in detention could only be detained in very exceptional circumstances. However, had that policy been addressed, detention would have complied with it, meaning the detainee was entitled only to nominal damages.</i>
2018	<i>R. (on the application of Hussein) v Secretary of State for the Home Department</i> [2018] EWHC 213 (Admin)	<i>The lock-in regime at an immigration removal centre, under which practising Muslims who wished to adhere to mandatory prayer times had to do so in their rooms, in the presence of other detainees and close to an unclosed lavatory, breached ECHR art.9 and constituted indirect discrimination under the Equality Act 2010 s.19, which was not justified.</i>

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2018	<i>R. (on the application of VC) v Secretary of State for the Home Department</i> [2018] 1 W.L.R. 4781; [2018] EWCA Civ 57	<p><i>The judge erred in deciding that, notwithstanding the secretary of state's misinterpretation of her policy, the breaches only rendered the appellant's detention unlawful for the period 3 to 27 April 2015 (see para.39 of judgment). The appellant's detention was unlawful between the secretary of state's receipt of the first Rule 35 report on 30 June 2014 and 27 April 2015, and the judge erred in that regard (paras 49-56, paras 69-85). The secretary of state had not discharged the burden of demonstrating, on the balance of probabilities, that she could and would in any event have detained the appellant; The secretary of state had not demonstrated that she had complied with her duty to make reasonable adjustments for mentally ill detainees in respect of their ability to make representations on decisions regarding their continued detention and segregation. It was declared that the secretary of state had discriminated against the appellant by failing to make reasonable adjustments to the decision-making process in breach of s.20 and s.29 of the 2010 Act</i></p> <p>“I have great concerns about the overall fairness of the procedures for decision-making during his detention at the IRCs” [190]</p>
2018	<i>R. (on the application of KG) v Secretary of State for the Home Department</i> [2018] EWHC 3665 (Admin)	<i>The court awarded £19,500 to a Sri Lankan asylum seeker who had been unlawfully detained at an immigration removal centre for 30 days. If he had been provided with a medical examination in accordance with the Detention Centre Rules 2001 r.34 within 24 hours of his admission, the claimant's allegation that he had been tortured in Sri Lanka would have been known earlier and his vulnerable mental state would not have been exacerbated by his unlawful detention.</i>
2019	<i>R. (on the application of IS (Bangladesh)) v Secretary of State for the Home Department</i> [2019] EWHC 2700 (Admin)	
2019	<i>R. (on the application of ASK) v Secretary of State for the Home Department; R. (on the application of MDA) v Secretary of State for the Home Department</i> [2019] EWCA Civ 1239	<i>The secretary of state conceded that in the light of the decision in R. (on the application of VC) v Secretary of State for the Home Department [2018] EWCA Civ 57, [2018] 1 W.L.R. 4781, [2018] 2 WLUK 47 it was a breach of the duty to make adjustments not to give mentally ill detainees assistance in understanding the reasons for, or making representations in respect of, decisions to detain them, VC followed.</i>

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2019	<i>R. (on the application of Hemmati) v Secretary of State for the Home Department</i> [2021] AC 143; [2019] UKSC 56	<i>The secretary of state's policy in Chapter 55 of the Enforcement Instructions and Guidance (23 October 2015) concerning detention to effect removal did not satisfy the requirements of Regulation 604/2013 art.28(2) and art.2(n). Accordingly, asylum seekers who had been detained pending their deportation to Responsible Member States were entitled to damages for the tort of false imprisonment because the decision to detain them had been outside the scope of the exercise of discretion conferred by the Immigration Act 1971 Sch.2.</i>
2020	<i>R. (on the application of ZA (Pakistan)) v Secretary of State for the Home Department</i> [2020] EWCA Civ 146	<i>The Home Secretary's failure to comply with the Detention Centre Rules 2001 r.34 by making arrangements for an asylum seeker to undergo a physical and mental health examination by a medical practitioner within 24 hours of his arrival at an immigration removal centre automatically rendered his continued detention unlawful. However, if the examination had taken place, there was nothing that would have led to a report under r.35 and nothing that would have led to the conclusion that the appellant's continued detention should be reconsidered. He was entitled to recover only nominal, rather than compensatory, damages.</i>
2020	<i>Mohammed v Secretary of State for the Home Department</i> [2020] EWHC 1337 (Admin)	<i>The court ordered a claimant's release from immigration detention pending his removal from the country. Despite the claimant being high risk in terms of absconding, reoffending and harm, there was a strong claim that detention was in breach of the third Hardial Singh principle. Evidence that the claimant suffered from significant mental health disorders reinforced his case, continued detention being contrary to the secretary of state's own policy guidance.</i>
2021	<i>AA (Sudan) v Secretary of State for the Home Department</i> [2021] EWHC 1869 (Admin)	<i>It was arguable that it had been unlawful for the secretary of state to have had in place an unpublished policy which went directly against the terms of her published policy and which directly impeded her in her duty to consider whether asylum seekers had been trafficked en route to the UK.</i>
2021	<i>AO v Home Office</i> [2021] EWHC 1043 (QB)	<i>A period of a detainee's detention pending deportation had been unlawful pursuant to the Hardial Singh principles and ECHR art.5. The Secretary of State for the Home Department had also erred by acting in breach of her Adults At Risk policy and the Enforcement Instructions and Guidance concerning the position of a detainee's children, by breaching her duty under the Immigration and Asylum Act 1999 s.4 to provide accommodation, and by failing properly to take into account a recommendation from the Case Progression Panel that the detainee should be released.</i>

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