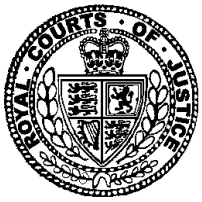

Neutral Citation Number [2021] EWHC 288 (QB)

Case No: QB-2017-000015

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 12/02/2021

Before :

HIS HONOUR JUDGE COTTER Q.C.

- -

Between :

SAM LOUIS **Claimant**

- and –

THE HOME OFFICE **Defendant**

- -
- -

Greg Ó Ceallaigh (instructed by Wilson Solicitors LLP for the Claimant)
Russell Fortt (instructed by Government Legal Department) for the Defendant

Hearing dates: 18th, 19th, 20th, 23rd, 24th November and 14th December 2020

- -

APPROVED JUDGMENT

Covid-19 Protocol: This judgment was handed down remotely by circulation to the parties' representatives by email and release to Bailii. The date for hand-down is deemed to be on 12th February 2020.

His Honour Judge Cotter QC :

Content

Introduction

1. The Claimant, a national of the Democratic Republic of Congo ("DRC") claims entitlement to damages for false imprisonment and personal injury following unlawful immigration detention by the Defendant. In accordance with the order of Farbey J the sole issue considered at the hearing was liability.

2. The Claimant challenges the lawfulness of his detention (after he had completed a criminal sentence), during two periods;

   a. Between 18 May 2011 and 21 May 2015 ("the first detention") and

   b. Between 5 October 2015 and 20 January 2016 ("the second detention").

3. As it is not in issue that the Claimant was detained during both periods the Defendant must prove that each day of that detention was lawful[1].

4. The issue of liability required consideration of the following questions:

   a. First, was any part of the Claimant's first detention unlawful by reference to common law limitations?

   b. Second, was any part of the Claimant's first detention unlawful as in breach of a public law error bearing on the decision to detain?

   c. Third, if any part of the Claimant's first detention *was* unlawful by reference to a public law error bearing on the decision to detain, can the Defendant prove that the Claimant could and would have been detained in any event?

   d. Fourth, was any part of the Claimant's second detention unlawful by reference to common law principles?

   e. Fifth, was any part of the Claimant's second detention unlawful as in breach of a public law error bearing on the decision to detain?

   f. Sixth, if any part of the Claimant's second detention *was* unlawful by reference to a public law error bearing on the decision to detain, can the Defendant prove that the Claimant could and would have been detained in any event?

   g. Seventh, did the Defendant cause the Claimant to suffer personal injury?

[1] See **Lumba** [2011] 2 WLR 671 at paragraph 65.

5. It can immediately be seen that the first period of detention of just over four years was exceptionally long in any event. The Claimant had completed a sentence imposed by HHJ Hand QC for robbery of mobile phones (when aged 20) and was then detained for five times as long as his length of time in custody.

6. After his release from detention he was detained again for a period of three and a half months before his release on bail.

7. His appeal against the deportation order was eventually upheld by the First Tier Tribunal and unlike many other challenges to immigration detention after spending 1,573 days detained, much of this time within prisons, the Claimant has not eventually been deported.

8. The power of the executive to administratively detain without charge or trial is one of the most draconian powers exercised by the state over the individual. In **R (Lumba) v SSHD** [2012] 1 AC 245, Lord Brown (at paragraph 341) endorsed Lord Bingham's well-known statement that:

> "freedom from executive detention is arguably the most fundamental and probably the oldest, the most hard won and the most universally recognised of human rights"

It is a right derived from Chapter 39 of Magna Carta (1215) and the Statute of Westminster (1354). The right to be free from arbitrary deprivation of liberty ranks high in the hierarchy of rights under the ECHR : see **A v SSHD** [2005] 2 AC 68 (at paragraph 36)). The Court is under a correspondingly high duty to:

> "regard with extreme jealousy any claim by the executive to imprison a citizen without trial"[2]

9. It is the Defendant's case that although the first period of detention was very lengthy, it followed conviction for a serious offence and was caused for the most part by the Claimant's deliberate and repeated deception to evade deportation. Until May 2013 the Claimant was entirely responsible for the length of his detention. He had, as one detention reviewer noted, led the Defendant on a 'merry dance' with attempts to establish his nationality. Although it was two years before a deportation order was made the Claimant had made assertions during that period that he was Belgian, Congolese and Somalian during that period. In fact the deportation order was made shortly after the Claimant withdrew his asylum claim based on his claimed Somali citizenship and confirmed that he was from DRC. The Defendant acted diligently throughout detention in the face of prolonged and significant deception. Once the Claimant co-operated with the ETD process from 16th August 2013 onwards the prospects of removal increased significantly and detention remained justified.

[2] **R v Home Secretary ex parte Khawaja** [1984] AC 74 per Lord Bridge

10. Further, his repeated attempts to evade immigration controls prior to his detention, use of aliases and his previous conviction for failing to surrender to custody, and deception whilst in detention plainly suggested that his risk of absconding if released was of the highest order.

The law

11. The Defendant's power to detain is subject to:

    a. The implied common law limits to read into the power following the decision in **Hardial Singh** [1984]1 WLR 704 (commonly referred to as "the Hardial Singh principles");

    b. The limit arising from any unlawfulness caused by a breach of a public law rule bearing on the decision to detain, such as a relevant policy; see generally **Lumba v SSHD** [2011] 2 WLR 671.

12. The Hardial Singh principles were conveniently summarised in **R(I) v Secretary of State for the Home Department** [2002] EWCA Civ 888 (at paragraphs 46-48):

> 46. There is no dispute as the principles that fall to be applied in the present case. They were stated by Woolf J in Hardial Singh … in the passage quoted by Simon Brown LJ at paragraph 9 above. This statement was approved by Lord Browne Wilkinson in Tan Te Lam v Tai A Chau Detention Centre [1997] AC 97, 111A-D in the passage quoted by Simon Brown LJ at paragraph 12 above. In my judgment, Mr Robb correctly submitted that the following four principles emerge:
>
> i. The Secretary of State must intend to deport the person and can only use the power to detain for that purpose;
>
> ii. The deportee may only be detained for a period that is reasonable in all the circumstances;
>
> iii. If, before the expiry of the reasonable period, it becomes apparent that the Secretary of State will not be able to effect deportation within that reasonable period, he should not seek to exercise the power of detention;
>
> iv. The Secretary of State should act with the reasonable diligence and expedition to effect removal.
>
> 47. Principles (ii) and (iii) are conceptually distinct. Principle (ii) is that the Secretary of State may not lawfully detain a person "pending removal" for longer than a reasonable period. Once a reasonable period has expired, the detained person must be released. But there may be circumstances where, although a reasonable period has not yet expired, it becomes clear that the Secretary of State will not be able to deport the detained person within a

reasonable period. In that event, principle (iii) applies. Thus, once it becomes apparent that the Secretary of State will not be able to effect the deportation within a reasonable period, the detention becomes unlawful even if the reasonable period has not yet expired.

48. It is not possible or desirable to produce an exhaustive list of all the circumstances that are or may be relevant to the question of how long it is reasonable for the Secretary of State to detain a person pending deportation pursuant to paragraph 2(3) of schedule 3 to the Immigration Act 1971. But in my view they include at least: the length of the period of detention; the nature of the obstacles which stand in the path of the Secretary of State preventing a deportation; the diligence, speed and effectiveness of the steps taken by the Secretary of State to surmount such obstacles; the conditions in which the detained person is being kept; the effect of detention on him and his family; the risk that if he is released from detention he will abscond; and the danger that, if released, he will commit criminal offences.

13. A useful summary of the factors which are in play when considering the reasonableness of a period of detention (or the likely period of detention) is to be found in the judgment of **Ganesharajah v SSHD** [2014] EWHC 3497 (QB). Ms Cheema QC (as she then was) stated:

> 89. Further useful principles can be gleaned from other leading cases (such as R (Lumba and Mighty) v SSHD [2011] UKSC 12 and Richard LJ's judgment in R (MH) v SSHD [2010] EWCA Civ 1112):
>
> (1) There can be a 'realistic' prospect of removal without it being possible to specify or predict the date by which removal can reasonably be expected to occur and without any certainty that removal will occur at all ((MH) at [65]).
>
> (2) The extent of certainty or uncertainty as to whether and when removal can be effected will affect the balancing exercise, but there must be a sufficient prospect of removal to warrant continued detention when account is taken of all other relevant factors ((MH)) at [65]).
>
> (3) The risks of absconding and re-offending are relevant considerations, but the risk of absconding should not be overstated, otherwise it would become a trump card (Lumba at [108]-[110] and [121] citing Dyson LJ in R(I) at [53]).
>
> (4) The weight to be given to time taken up by an appeal depends on the facts, but much more weight should be given to detention during a period when the detained person is pursuing a meritorious appeal than to detention during a period when he is pursuing a hopeless one (Lumba at [121].

(5) A detainee who will not comply with the ETD process or other requirements of detention and is doing everything he can to hinder the deportation process, may reasonably be regarded as likely to abscond (Lumba at [123]; MH at [68(iii)]).

(6) Refusal of voluntary return does not necessarily permit an inference of risk of absconding (Lumba at [123]).

(7) Where return is not possible (for reasons that are extraneous to the person detained), the fact that he is not willing to return voluntarily cannot be held against him, since his refusal has no causal effect (Lumba at [127]).

(8) Where a person has issued proceedings challenging his deportation, then it is reasonable that he should remain in the UK pending determination of those proceedings and his refusal to accept an offer of voluntary return is irrelevant (Lumba at [127]). Even where there are no outstanding challenges, refusal of voluntary return should not be regarded as a trump card for the SSHD's wish to detain. If it is relevant, its relevance is limited (Lumba at [128]). A breach of a principle of public law will render the detention unlawful but it must be a material breach, that is, a breach which bears on and is relevant to the decision to detain (Lumba at [66,68]).

(9) There is no maximum period after which detention becomes automatically unlawful.

14. Pertinent to this case Ms Cheema QC also stated:

> 90. Although I have been referred to a considerable number of other cases where periods of detention were or were not held to be unlawful this is plainly an area where the relevant facts will be very specific to the Claimant concerned. There is no maximum period of allowable detention. This case represents one of the longest actual periods of detention, however, apart from principle, there is limited assistance to be drawn from other cases

15. The length of what is/was a reasonable period of detention in any case will depend on the relevant factors/circumstances unique to that case, but a review of the authorities reveals that often the central considerations are the person's compliance with attempts to remove him, his risk of absconding and of committing further offences.

16. In **Chuck v SSHD** [2015] EWHC 1103 (Admin), Her Honour Judge Walden-Smith gave a fuller summary of the position in relation to non-cooperative claimants:

> In R (NAB) v Secretary of State for the Home Department [2010] EWHC 3137, Irwin J said:
>
> "Faced with a recalcitrant person whom it is proposed to deport, the authorities can and should be free to make strenuous efforts to obtain the assent of the individual concerned. They can and should seek any way around his consent, for example by persuading his country of origin to issue travel documents without a disclaimer or any other indication of willingness on the part of the subject. But if no such action produces results, then, depending upon the facts of the case, it may be necessary for the authorities to face up to the fact that all of the shots in their locker, if I may use that expression, have been expended."
>
> In other words, even if the detainee frustrates the attempts to deport and seeks, by failing to co-operate, to delay deportation, such lack of co-operation does not mean that the Secretary of State can detain indefinitely. There has to be some coherent plan towards deportation which does mean,

however unpalatable it sounds, that a detainee could in principle, through his lack of co-operation or provision of false information, delay deportation to the point of denying it. Such lack of co-operation is, as is the risk of further offending, something that is to be taken into account in determining whether detention should continue and it is plainly something which can lead to an extension of what is considered to be a "reasonable" period for detention (Lumba) and R (Kajuga) v Secretary of State for the Home Department [2014] EWHC 426 per

His Honour Judge Blackett, sitting as a Judge of the High Court, said the following: (see paragraph 18 of the judgment):

> "As a matter of principle I do not entirely agree with the approach taken by John Howell QC in Sino. It is a matter of common sense that if a person obstructs the deportation process and fails to cooperate with the Secretary of State then the 'reasonable' period will be longer and probably much longer. While it may not be indefinite, it may certainly extend to a period covering, if necessary, a number of years, provided the Secretary of State makes real and continuous efforts to ascertain where the detainee has come from and should be deported to. The period would continue to be reasonable until those efforts are finally exhausted."

It is important to note that in both Sino and NAB the Secretary of State was entirely reliant upon the detainee co-operating in order to be able to deport. In this case, as well as obtaining information from the detainee, the Secretary of State was capable of undertaking her own enquiries to identify the detainee and his country of origin.

17. The risks of absconding and reoffending are "*paramount*", although neither constitutes "*a trump card*". As for the risk of absconding, in **A v. SSHD** [2007] EWCA Civ 804 (at paragraph 54) Toulson LJ said that:

> …where there is a risk of absconding and a refusal to accept voluntary repatriation, those are bound to be very important factors, and likely often to be decisive factors, in determining the reasonableness of a person's detention, provided that deportation is the genuine purpose of the detention. The risk of absconding is important because it threatens to defeat the purpose for which the deportation order was made.

18. However, although a relevant factor, it must not be overstated. In the case of **R(I) v SSHD** [2003] INLR 196, Lord Dyson said:

> "the relevance of the likelihood of absconding, if proved, should not be overstated. Carried to its logical conclusion, it could become a trump card that carried the day for the Secretary of State in every case where such a risk was made out regardless of all other considerations, not least the length of the period of detention. That would be a wholly unacceptable outcome where human liberty is at stake."

19. As to the risk of reoffending, Toulson LJ stated in ***A v. SSHD*** [2007] EWCA Civ 804 that:

> A risk of offending if the person is not detained is an additional relevant factor, the strength of which would depend on the magnitude of the risk, by which I include both the likelihood of it occurring and the potential gravity of the consequences. Mr Drabble submitted that the purpose of the power of detention was not for the protection of public safety. In my view that is over-simplistic. The purpose of the power of deportation is to remove a person who is not entitled to be in the United Kingdom and whose continued presence would not be conducive to the public good. If the reason why his presence would not be conducive to the public good is because of a propensity to commit serious offences, protection of the public from that risk is the purpose of the deportation order and must be a relevant consideration when determining the reasonableness of detaining him pending his removal or departure.

20. In **Fardous v SSHD** [2015] EWCA Civ 931 the Court of Appeal held that there are no particular yardsticks during which detention will be presumed lawful;

> "Each deprivation of liberty pending deportation requires proper scrutiny of all the facts by the Secretary of State in accordance with the Hardial Singh principles. Those principles are the sole guidelines."

21. The absence of diligence on the part of the Secretary of State is relevant to Hardial Singh principles (ii), (iii) and also (iv). The absence of diligence in attempts to remove a detainee alone is sufficient to give rise to a false imprisonment (see **JS(Sudan) v SSHD** [2013] EWCA Civ 1378).

22. A breach of a principle of public law may also render detention unlawful but it must be a material breach i.e. one which bears on and is relevant to the decision to detain. In the present case the Claimant submits that his detention was unlawful as it breached the Defendant's published policy.

23. The Secretary of State's policy at the material time was primarily contained within the policy "*Chapter 55 Enforcement Instructions and Guidance".* The policy confirms that:

> a. That detention be used "*sparingly, and for the shortest period necessary*";
> b. That there is a presumption in favour of release;
> c. That those suffering from medical conditions that could not be satisfactorily managed in detention would not be detained save in exceptional circumstances;
> d. That reasonable alternatives to detention must be considered.

Evidence

24. I heard from the Claimant and, on behalf of the Defendant, Mr Kates, a case progression manager in the criminal casework team responsible for considering and progressing deportation action against foreign national offenders. Where foreign national offenders are detained beyond the completion of the custodial sentence "case owners" manage the period of detention with their reports being reviewed by a case progression manager every 28 days as required by the Defendant's detention review policy. Mr Kates undertook some of the reviews of the Claimant's detention.

25. I also heard from two consultant psychiatrists on the issue of mental health and personal injury.

26. At an early stage within cross-examination of the Claimant it became clear that the whole of his social service records were not in the bundle. The full records were then obtained.

Assessment of the lay witness evidence

27. Given that his truthfulness and credibility were in issue, and that he was extensively cross examined and criticised, it is necessary, before descending into findings of fact, to provide an overarching assessment of the Claimant's evidence.

28. When approaching the evidence from a witness whose testimony has been challenged it should be broken down into its component parts. If one element is incorrect it may mean, but does not necessarily, that the rest of the evidence is unreliable. It should be recognised that apart from lying there are a number of reasons why an incorrect element can have crept in. Apart from the obvious loss of recollection due to the passage of time, which may have had greater impact if the events took place in childhood, there may have been the impact of traumatic experiences, or a process of conscious or subconscious reconstruction or exposure to the recollection of another (here family members) which has corrupted or created the recollection of an event or part of an event.

29. It is also necessary, particularly in immigration cases, to consider whether, and to what extent, allowance should be made for the fact that a person may have had a limited education and that English is not, or was not, the language with which they are/were most comfortable. Care must also be taken to recognise the impact the very different customs and practices of other countries may have on what has happened in a person's past and their ability to furnish information. By way of example in many countries there is no national registry office where copies of birth, marriage, and death certificates are kept. Local authorities issue these documents but do not keep copies for their records.

30. I have taken into account that the Claimant was asked in detail (quite properly) about matters, some of which occurred when he was a child. It would not be unusual if he had not appreciated all that was happening at the time (e.g. the use of false documentation) and/or cannot now remember. He was also challenged about entries made about what he had said at a time when he spoke very little English.

31. The Claimant had (and probably still has) a family bond and loyalty which meant that he tried to avoid creating trouble for his family. This is despite the fact that, from the very outset, his brother has not been entirely reliable and chose to claim to be only the Claimant's cousin. Added to this factor he also had a troubled adolescence with disrupted schooling.

32. Further, and as will be covered in detail in due course, during his first period of detention his mental health declined badly.

33. Although the Claimant has at times lied on occasions in respect of his nationality, which he has admitted, and also, I am satisfied, in relation to other matters to immigration officers and others (e.g. the Claimant has not been a consistent historian as to how he came to enter the UK referring at different times to having entered in 1999, 2001 and 2002) it is my judgement that he was largely (but far from entirely) honest and as helpful as he could be with his evidence before the Court. As one case officer was to suggest it is likely, given his age when he came to the UK and reliance upon social services that he has been heavily dependent upon information provided by others and that he does not have detailed knowledge of some aspects of his history. I reject the characterisation of him within the records as essentially an untruthful and/or devious man who has consistently deceived people in the UK since he was 13 years old and throughout detention. It was and is a lazy and superficial analysis which fails to reflect the detailed history of his time in this country and specifically within administrative detention.

34. Much of Mr Kates' evidence was based upon the content of the documents, although he did have some limited personal involvement. I found him a most helpful witness willing to make concessions when appropriate.

Chronology

35. The following chronology reflects my findings of fact.

Events before detention

36. The Claimant is a national of the DRC born on 5th July 1989.

37. On 18th July 2002 (so when aged 13 years) the Claimant was encountered entering the UK on a coach using the Eurotunnel. He presented a Belgian identity card in the name of Lusangu Tshivadi, born on 2nd April 2002. What were referred to as "immigration records" identified the Claimant as Mayela Sambea date of birth 5th July 1989. He was returned to France. An entry in

the Defendant's records set out that the following reasons were provided to the Claimant for his refusal of entry:

> You have presented Belgian identity card number 085024085966 in the name of Lusanga Tshivadi but you have admitted that you are not the rightful holder of the document you have produced to me. Furthermore you have sought to enter the United Kingdom in order to claim asylum but your application has been made in France and the United Kingdom has no obligation to consider your claim.

38. Within his witness statement Mr Kates stated:

> "The Claimant came to the adverse attention of the immigration authorities on 18 July 2002 when he sought entry to the United Kingdom at the port of Coquelles, France in 1999 (sic) using the identity of "Lusangu Tshivadi", born 4 April 1990, Belgium.
> Immigration records were obtained and identified the claimant as Mayela Sambea with his date of birth noted as 5 July 1989. The Claimant was questioned and found to be impersonating a Belgian national. The Claimant stated he had sought entry to claim asylum but as he had already made a claim in France, decision was made not consider his asylum claim, he was refused entry and removed from the United Kingdom on the same day,"

39. So immigration records were available which referred to Mayela Sambea as a Congolese national with a date of birth 5 July 1989. It is not known what documentation the Belgian authorities retained. Mr Kates conceded that at no stage during the four years of detention were the Belgian records sought; he could give no explanation why not. This despite the fact that it was the conclusion eventually reached that the Belgian authorities had been wrong and the claimant was not Mayela Sambea, but Sam Louis.

40. On 24th February 2003 a PC Ball (based in Forest Gate) received a telephone call from the Claimant (who spoke only very limited English) who stated that he was homeless. The Claimant was still only 13 years old. PC Ball informed Newham Social Services that the Claimant had said that he had arrived in the UK two weeks previously and had been sent to his cousin in Forest Gate who lived in a single person's hostel so could not have him to stay. He claimed to have been sleeping on the streets for the past week. When a social worker attended the police station he found the young man, described as Louis, with his "cousin" and his cousin's girlfriend. Dady Neski-Sambea, the "cousin", produced a tenancy agreement that showed he was allowed only single occupancy.

41. The social worker seems to have quickly been able to ascertain that the story (as somehow provided) was not correct, that "*the facts are quite different*". She recorded:

> "Louis has been here for six months and is attending Rokeby school. He stayed with both Dady (cousin/brother) and with Miss Mathy another cousin whose address I didn't get… telephone number is…. Dady told me that Louis had stayed with her for most of the time and stayed there last night. ……. I spoke to Miss Mathy but she was adamant that she would not take him and told me he should stay with his brother[3] …
>
> I tried to explain the housing difficulties and asked that they just let Louis stay tonight and we would deal if necessary tomorrow. She refused saying that Dady was his brother and he often had his girlfriend staying therefore why couldn't he have his brother…….Dady surprised me by still refusing and also denied they were brothers. I think his girlfriend does stay there however so it is inconvenient to have Louis there. I tried Miss Mathy again. She now denied she was related and told me that I could find out from Rokeby School who Louis's next-of-kin was."

The social worker concluded:

> "Louis has been in the UK for six months staying with family so far. Now it seems they are no longer willing to keep him, each regarding the other as responsible. Both seem to feel so strongly about this that it is unlikely they would agree to having him much longer. Louis is settled in a school here so he ideally he should be able to stay in this area….. Both are very intransigent though in the longer term Dady seems willing to have him and the younger sister (4 years) who is also living elsewhere…. Dady told me Louis came to the UK as an asylum seeker in which case he may be dealt with by the asylum team, though he is not so much an unaccompanied asylum seeker as an abandoned one. In which case it may be for CAIT to deal with. I have given asylum team's details to Dady initially… I have expected to hear more but so far I haven't so hopefully one or other has relented… I went to Forest Gate about another matter Louis had just arrived, alone. I've tried just about everywhere and cannot find a place for him. I will therefore let him stay here and bring him to an asylum office later in a.m. I think this is better than going to school. Louis does not unfortunately speak much English."

42. I have set this record out at length because it reveals that the social services had established the following as long ago as February 2003 (the interview with the Claimant being brief as he spoke little English but information was clearly obtained from the two people attended the police station with him):

    i. The Claimant appears to have entered the country in/about August 2002. It seems he lived with Dady who was either his cousin or his brother. He went to school although he spoke little English.

[3] Underlining in the original document.

ii. He was an asylum seeker.
iii. His date of birth was stated to be 5 July 1989 and he was from the Congo[4].
iv. There was uncertainty as to the relationship between the claimant and Dady (who was accused of lying about not being his brother) and Miss Mathy.
v. The Claimant is said to have a sister.
vi. The Claimant's father (Louis Sambea[5]) was dead.
vii. The Claimant's mother (Mary Jose Mayela Samba) lived in Zaire[6] (Democratic Republic of the Congo) and he had telephone contact with her[7].
viii. The Claimant was also known as Sam or Sam Louis[8].
ix. Contact telephone numbers for family members in the UK.

43. The Claimant's social services records commenced under the name "Sam Louis Mayela-Sambea"[9]. At this stage it does not appear as though there was any corroborative documentation to support the history given. Reference was made to his father having died, no details were recorded in relation to his mother but his cousin was referred to as Dady Nseki - Sambea with an address at 9 P*****n Road, E7 and a mobile number (which has remained the same to date). The Claimant was provided with accommodation under section 20 the Children Act 1989 at Holbrook Crescent residential unit. He was registered with a general practitioner at Forest Gate in October 2003.

44. It is interesting to observe that the information above gleaned by the social services in February 2003 is, according to the evidence the Claimant gave to me, essentially correct, although Dady continued to be referred to (including by the Claimant) as his cousin and not his brother. Indeed consideration of Newham's records provided a wealth of information about the Claimant. At some stage the social services came into possession of a document, an "Attestation de Naissance". This gave the identity of Louis Mayela Samba.

45. As the Claimant pointed out at this stage he was 13 and spoke little English. Sadly, his brother Dady, who appeared to have charge of him, was quite prepared to lie and state that he was a cousin and not a brother. His version of events when asked whether the Claimant had any documents or passports which he travelled with when he came to England was recorded as follows:

> "a man whom he did not know brought Louis to England and when the man returned to Congo took Louis's passport with him. However Dady

[4] See e-mail of 25th February.
[5] See fostering scheme referral form.
[6] See report of 27th February.
[7] Also said to be on a regular basis
[8] See report of 27th February which gives his name as Louis Mayela Sambea but in the body of the report refers to him as Sam Louis.
[9] It is also what was entered on the teenage fostering scheme form within the box requiring "young person's full name also any other names used".

> explained that the passport was not an official passport. Dady said that eventually Louis will apply for asylum seeker status."[10]

46. During cross examination of the Claimant Mr Fortt was able to establish a number of inconsistencies in what the Claimant is reported to have said over the next few years about his family members and circumstances. At various times he is recorded as stating that he had an older brother "Geajoy Matela Sambea" in Zaire who he could contact by telephone. Also that his father died when he was a baby and he did not know what his father died of and that he had a lot of family in Zaire which included grandparents, aunts and uncles, he went to school in Zaire, and had many friends[11]. Alternatively that the Congo rebels killed his father and his mother fled to another part of the Congo with the Claimant and his older brother. However, the essential ingredients of who he was, where he was born and that he had a cousin/brother and also a cousin in this country in the local area have been a relatively consistent theme, save for a period when he lied about being Somalian which I shall deal with in due course.

47. Newham Social Services decided to support the Claimant through the provision of accommodation under section 20 of the Children Act 1989. Somewhat surprisingly given his age, no further steps were taken thereafter to regularise the position either in terms of care proceedings or regularising immigration status and the local authority continued to support the Claimant under this section alone for the next seven years. I am conscious that there was no witness from Newham or explanation of why matters remained as they did. To a degree it may have reflected a practice used widely at the time. In 2015 the President of the Family Division highlighted the long-term use of section 20 in **Re A (A Child), Darlington Borough Council v M** and stated:

> "There is, I fear, far too much misuse and abuse of section 20 and this can no longer be tolerated."[12]

In **N (Children) (Adoption: Jurisdiction)[13]** the President stated, in the context of the use of section 20 powers for 8 months (as opposed to the seven years the power was used in respect of the Claimant);

> Section 20 may, in an appropriate case, have a proper role to play as a *short-term* measure pending the commencement of care proceedings, but the use of section 20 as a prelude to care proceedings for a period as long as here is wholly unacceptable. It is, in my judgment, and I use the phrase advisedly and deliberately, a misuse by the local authority of its statutory powers.

[10] Record of 31st March 2003.
[11] Fostering referral form.
[12] [2015] EWFC 11 at paragraph 100.
[13] [2015] EWCA Civ 1112.

48. The reason why this has some relevance is that on any reasonable evaluation for many years the Claimant was not under the radar of the public authorities in the country or somehow "at large" or demonstrating "total disregard for the UK laws" and/or using "deception" or "5 aliases" as the Defendant's officers subsequently characterised his past. Rather he was the subject of statutory intervention, under regular and close scrutiny, and the fact that more was not done (as should have been done) cannot be attributed to any attempt by the Claimant to avoid contact with any government agency. As early as 11th April 2003 it was noted in his records that:

> "Louis' immigration status is unclear. He has not applied for asylum, and to date no one has taken responsibility be taking the matter up with the Home Office. Dady agreed to get advice from a solicitor specialising in immigration matters as a matter of urgency."

49. In my view it is both surprising and regrettable that, given that the Claimant was under statutory provision of care under section 20, no steps were taken by Newham Social Services[14] to ensure that his immigration status was addressed for a further four years, when an application was submitted (but then not addressed by the Defendant). The situation was just allowed to continue with an uncertain immigration status through to the Claimant reaching age 21 in July 2010, by which stage he had already committed a robbery. I will return to the importance of the social services records in due course.

50. On 8th September 2004 the Claimant received a warning from the police for criminal damage of property at the home at which he was living (he damaged a TV, computer, wall unit and dining table). He used the name 'Sam Louis' at the time of that warning.

51. On 29th June 2007 the Claimant submitted an application for indefinite leave to remain ("ILR") relying on Articles 3 and 8 (the former due to the instability in Congo and the risk of being forcibly recruited as a child soldier). In the application form he indicated that he had a settled existence having arrived in the UK in 2001 aged 12. He gave his name as 'Louis Mayela Sambea' and stated that his father was dead and his mother still lived in the Republic of Congo. His application included the birth registration document and a letter from Newham Social Services stating that the Claimant had been accommodated by them since 25th February 2003.

52. It is, in the context of what was later to happen, to say the least regrettable that despite being chased, this application was not addressed by the Defendant for four years and only then, prompted by the Claimant's intervening conviction, by which time the outstanding application had been sitting on a metaphorical shelf for two years

[14] Which appears to have had a "Children's Rights Team".

untouched. Mr Kates conceded that the standard response should have meant an answer within six months.

53. On the 22nd February 2008 and 3 August 2008 there were internal records in relation to the outstanding application by the Claimant for leave to remain (as Mayela Sambea), but no action was taken.

54. The Claimant's solicitors chased up progress of the application on 19th August 2009 as they had heard nothing since submitting the application two years previously.

55. It is important to note that if, at this stage, the application of Mayela Sambea had been considered it would have recognised that it was supported by the registration of birth document and the letter from Newham Social Services, who had been providing statutory assistance for well over six years during which time he had been educated and accommodated. Adequate cross-referencing would have brought up the records in relation to the attempt to enter the country in 2002.

56. No excuse could be given by Mr Kates for the failure to deal with an application made by this young man in 2007 within an appropriate timescale. It was the first of three immigration applications which took years to be addressed by the Defendant and which seemed to get "lost in the system", such that the Defendant's case officers who were taking decisions in relation to the Claimant's detention were unaware of them.

57. On 31st October 2009 the Claimant committed three offences of robbery and an offence of attempted robbery. He was arrested and released on bail.

58. On 18th November 2009 at Redbridge Magistrates Court the Claimant was convicted of failing to surrender to custody and sentenced to one days' detention at court. His explanation was:

> "I remember that when I had to report Barkingside police station, I got confused and thought I was supposed to go to Barking police station. When I went to Barking police station, I was told I was supposed to be going to Barkingside. The officer gave me a note to show the station at Barkingside to explain I had missed my reporting widow due to an honest mistake."

59. Significantly, given the importance that the Defendant was later to place upon this conviction, and on any reasonable view consistent with a view having been taken by the Magistrates that he would not abscond or commit further offences, he was then released back on bail.

60. On 15th November 2010 (so almost a year after the conviction for failing to surrender) the Claimant was convicted of three counts of robbery and one count of attempted robbery. For some reason he was not sentenced until 15th April 2011 (this may be due to the fact that his co-defendant did not answer to bail). He was sentenced in total to a term of 18 months

imprisonment[15]. It is apparent from the transcript of the sentencing hearing before His Honour Judge Hand QC that the robberies related to an incident on a bus when the Claimant and others took mobile telephones from three boys and attempted to take one from a fourth. The Judge described the offence as a

> 'relatively spontaneous low-level street robbery carried out on a bus'.

61. In contradistinction to his time in immigration detention (spent in prison and immigration centres), the Claimant did not suffer any issues with his mental health whilst serving his custodial sentence. He accepted that punishment was due and regretted the crime. He stated:

> "I didn't have anything to complain about. Prison made my life better. I learned a lot whilst I was in prison like how to live my life better. I engaged in courses and exercised, I worked. I was young and dumb and prison taught me how to be smart. I feel that those courses and jobs helped me. It kept me active and focused on something. I got my head down and worked towards my release date. I still have the skills now that I learned from that time."

62. The Claimant's conditional release date (from Pentonville Prison) was 19th May 2011.

63. On 17th May 2011 the Defendant decided that the Claimant met the criteria for automatic deportation and a notice of his liability to deportation was sent to him on that date. On 18th May 2011 a Minute of Detention was completed which included the following:

> Subject has used 5 known alias names. He is known to have lied to Police by stating that his place of birth was Forest Gate …
> Should the subject not prove to be an EEA national, pending exhaustion of appeal rights and the issue of travel documentation it is considered his removal can be effected within a reasonable period …
> He has clearly used deception in the past, having stated to Police his place of birth is Forest Gate and then stating to an IO that it was in fact the Congo. His use of alias names is also noted. Given this it is considered that he presents a risk of absconding, mitigated by his detention under Immigration Service powers …
> The nature of his offending indicates a risk to the public good if released from Immigration Service detention …

64. From the very start of the detention the review records paint a picture at significant variance to that contained in the Newham Social Services Records (and, as regards the risk of absconding and/or committing further offences, the view of the Magistrates).

[15] He had been remanded in custody since 18th August 2010, which impacted on the remaining time to be served.

65. The Claimant duly entered immigration detention upon the completion of his custodial sentence on 19th May 2011. He was detained for the purposes of the making of a decision as to making of a deportation order under section 32 of the UK Borders Act 2007). He stated:

> *"When immigration got involved that is when things became really stressful and started impacting my mental health. I did not know that I could be detained indefinitely and I was not ready for it."*

The first period of detention

66. First period detention can be subdivided as follows:

(a) 18th May 2011 to 29th February 2012
(b) 1st March 2012 to 24th July 2012
(c) 25th July 2012 to 16th May 2013
(d) 17th May 2013 to 19th July 2013
(e) 20 July 2013 to 21st May 2015.

67. On 19th May 2011 an interview under caution was conducted. The Claimant is recorded as having stated that:

> "The subject confirmed his name: Sam Louis, DOB : 05/07/1989. He stated that he was born in Kinshasa, Congo and moved to Belgium aged seven with his maternal aunt Matti Louis. He stated that he travelled on his Congolese passport and that all documentation was arranged by his aunt. He confirmed his mother's name as "MJ Louis" who was unable to travel to Belgium due to an illness. The subject stated that his mother died when he was nine years old but claimed that his mother had Belgian residency but was unable to verify details or provide aunt's address in Belgium. Father's details unknown.
> The subject stated that he resided in Belgium with his aunt for approximately four years and attended educational centres but unable to confirm details. He claims have travelled to the UK aged 11/12 years old with his aunt on a Belgian passport which was allegedly gained due to his mother's Belgian residency. The subject stated that he was too young to remember details regarding his entry to the UK, but reiterated that his aunt arranged all documentation and is currently in possession of both his COG & BEL passports.
> The subject stated that his brother "Daddy Louis" and sister Lisa Louis both reside near Stratford, East London but unable to confirm full details.
> The subject stated that he has been under the care of Newham Social Services following his arrival in the UK……
> He stated he was never removed or deported. He claimed to have used no aliases.
> The subject claims have been in touch with the Home Office through his solicitors Davina based in Manor Park".

68. The detention decision is recorded as follows:

> "Subject claims to be an EEA national but has provided no evidence of this. The onus of proof is on the subject. He has clearly used deception in the past, having stated to police his place of birth is Forest Gate and then stating to an IO that it was in fact the Congo. He use (sic) of alias names is also noted. Given this it is considered that he presents a risk of absconding, mitigated by his detention under immigration service powers……. The nature of his offending indicates a risk to the public good if released from immigration service detention.
> We will continue to make enquiries regarding his claimed nationality. Subject is aware that the onus of proof remains with him."

69. The Claimant was subsequently to be consistently characterised within detention reviews as a person who had given "*no assistance at all*" to the Defendant. However, this is simply not correct. From the very outset of immigration detention he provided information that his name was Sam Louis, he was born in Kinshasa on 5th July 1989 and that he had been in the care of Newham Social Services and that his solicitors had been in touch with the Home Office. These matters were broadly correct, but in any event they provided adequate information to unlock a wealth of information within the Newham records and to allow cross referencing with the outstanding application and the 2002 records, with the ability to obtain the Belgian records.

70. Remarkably no attempt was made to contact Newham Social Services. It was an obvious step and the failure to take it was not consistent with the pursuing of matters with reasonable diligence. Had the step been taken then shortly after the interview in May 2011 the Defendant would have been aware of the Claimant's nine years of accommodation in an area of London close to his brother and sister, that he had an outstanding application, made four years previously, for indefinite leave to remain and as a result had an incentive not to abscond. It would also have produced the birth registration document and established from the records that whilst his birth/family name was believed to be Mayela Sambea that he had consistently liked to be known as Sam Louis from when he was a child (and this was indulged to a degree by social services). This would surely have put the perceived use of aliases in a completely different light and should have weighed against the likelihood of the Claimant absconding.

71. The failure to take basic steps to follow up on information within their possession meant that case officers did not cross reference to the Defendant's own documentation and that of other countries. Mr Kates conceded that despite the fact the Belgian authorities had positively identified the Claimant in 2002 no attempt was ever made to make contact with them, and could provide no explanation as to why the records of the Belgian authorities were never sought during the first four years of detention. In my judgment the reason was that steps to allow cross-referencing were not taken.

72. Within the detention review document of 15 June 2011 the view of the case officer is as follows:

> "Having considered his immigration history, his criminality, the likelihood of reoffending, the seriousness of the crime, and protecting the public, the subject should remain in detention until such time as when we can remove him from the UK. The subject presents a serious risk of harm to the public given the nature of his crime namely four counts of robbery. It is strongly believed that the subject could reoffend. Furthermore subject has demonstrated a total disregard for the UK laws, moreover he is aware that the UK border agency intends on deporting him. It is considered the subject would have little incentive to comply with any release restrictions which may be placed upon him."

73. Any investigation with Newham Social Services and consideration of the outstanding application would have put matters in a different light. It is difficult to understand the justification for the stated strong belief that the Claimant could reoffend given his limited criminal record or what was thought to justify the statement that the Claimant had shown "total disregard of UK laws". Certainly this description could not have been legitimately maintained if it were known that he had been in social services care for well over six years and had made a legitimate application for leave to remain.

74. On 24th May 2011 the Claimant told an immigration official that he had contacted his brother and sister to locate his passport but to no avail. He said that his sister would contact his aunt in Belgium but he could not provide the official with contact details for her. The Claimant requested transfer from prison to a UKBA detention centre "*as he feels frustrated being detained in the prison"*. It was explained to him that the onus of proof lay on him and that the sooner he verified his identification, nationality or lawful basis to remain "*the better for him*". It is recorded that the Claimant stated that he would only complete the automatic deportation questionnaire (ICD.0350) following legal advice (he did not subsequently return it until January 2012).

75. On 10th June 2011 the Claimant was moved to IRC Morton Hall. On 16th June 2011 the Claimant was served with his first monthly progress report. The second detention review took place on 8th July 2011 with no material progress having been made or any further investigations undertaken. No steps had been taken to investigate his status in light of the information he had provided.

76. On 25th July 2011 the Claimant underwent an induction interview at Colnbrook IRC during which he stated that he had family in the UK, his sister, Lisa Louis, and also a brother living in Belgium.

77. On 11th August 2011 there was a detention review. The statement made in May 2011, three months earlier, that:

> *"we will continue to make enquiries regarding his claimed nationality"*

was repeated, but was not reflective of the reality of the first three months of detention, which was investigative inaction. Under "action points" it stated in relation to a decision to deport:

> *"caseworker to please ensure that status interview be conducted with IO as priority to ensure that decision can be made on case within one month".*

It took until July 2013, approaching two years later, before a deportation order was signed.

78. On the 7th September 2011 the SEO Ops Manager approving the detention review (also recorded in the GCID case record sheet) noted:

> "Mr Louis has been convicted of robbery. He has been completely uncooperative with any reasonable request of the UK Border Agency. He has failed to provide evidence of legal entry. He has provided no evidence of subsisting relationships in the UK. There is no doubt he would not comply with reporting restrictions if he was released despite no evidence of previous absconding. Bearing these facts in mind, I have considered the presumption to liberty… in this case the presumption is on balance outweighed by the risk of harm to the public should he reoffend, the likelihood of reoffending and the significant risk of absconding. I concur with the proposal that detention remains proportionate to this time."

The statement that the Claimant had been completely uncooperative was incorrect (and it is difficult see how it could have been made on any adequate review of the file) as was the comment that the Claimant had provided no evidence of subsisting relationships in the UK. Given the extant application for ILR, the history of having been under the care of Newham Social Services for years and living in a single area, and also the existence of his brother/cousin and sister, any liaison with Newham Social Services would have meant that it would not have been possible to say that *"there is no doubt that he would not comply with reporting restrictions*". The statement could not reasonably be made in any event given that he had been on bail for the robbery offences with reporting restrictions.

79. The actions to be made prior to the next review on 5 October 2011 were stated to be

> "conduct CRS/CID/Warehouse checks on claimed brother and sister
> ….
> Check his NIC the last known address then speak/write to the council involved for information on who pays council tax, electoral register information."

80. This ignored the obvious step of contacting Newham Social Services to obtain the Claimant's records.

81. The detention review of 7 September 2011 shows no material progress and again repeats the phrase:

> "we will continue to make enquiries regarding his claimed nationality".

In my judgment this phrase was probably automatically added; again it did not reflect the true position.

82. The detention review of 27 October 2011 added nothing to the picture, save that an interview had been chased up and was now scheduled for that day. Yet again there is reference to the caseworkers continuing to make enquiries regarding his claimed nationality.

83. On 27th October 2011 the Claimant underwent a nationality interview. It is recorded that the Claimant stated he was born in Kinshasa, DRC. His father was Congolese, but his mother was dual nationality Belgian/Congolese as her father was a Belgian national. The Claimant stated that he attended school in Congo. When he was seven years old his father died and his mother was very sick (and later died). An aunt from Belgium took him to Angola where she was working, where he remained for a year. He could not recollect much of this time. From Angola his Aunt took him to Belgium where he lived for around two years. He then travelled to the UK with his Aunt and was left with his brother who he thought was studying in the UK: "Dadde". He attended Rockaby School in Stratford East London and was sent to Newham Social Services. He remained in the care of Newham until his offence resulted in a prison sentence. It was recorded:

> "I have asked the subject, what nationality he believes himself to be, given his original birthplace and his mother's claim to Belgian nationality. Again, he says that he has no idea. I asked the subject for his parents details. Namely the mother who may have passed on her nationality. He is unsure of the spelling of her name, but she is known as, M.J. Calome(?). I then asked him if his Aunt, brother or social worker had ever applied for leave to remain in the UK on his behalf. He claims that his social worker had lodged an application via an immigration solicitor, but was unsure when or indeed under which category. He was under the impression that the application still outstanding.
> The subject is very vague, he is unable to give any detail whatsoever. He has no knowledge of his status in the UK and although this might be seen as a deliberate attempt to avoid detection I am convinced that the subject has just been relying on social workers to guide him whilst in the UK.
> It is obvious that we are not any further forward following this interview. I have established some details which may assist our enquiries.
>
> School Records –'Rockaby' School, Stratford East London
> Brother - "Dadde 07**********
> Social Worker – 'Patrick', Newham Social Services

84. It is necessary to now consider what information the Defendant had access to in relation to the Claimant. Perusal of the file should have alerted any case worker to the following:

a) The Claimant was born in Kinshasa, DRC. He was not stating he was Belgian; rather he did not know what his nationality was given his history.
b) He had been in the care of Newham Social Services (and a name had been provided) so there must be records.
c) He had attended school, so there must be records.
d) His bother/cousin's details.

As already indicated it was stated within the detention reviews (before and after this interview) that the Claimant had been completely uncooperative throughout and provided no assistance. This record again shows that these were inaccurate comments. Further if adequate and straightforward enquiries had been made the Defendant would have had access to:

e) The Claimant's outstanding application.
f) The birth certification documentation.
g) Details from the Belgian authorities.

So a wealth of information should have been available. In my judgment if put together this information would have provided the same detail as that which later satisfied the DRC officials that the Claimant was a DRC national.

85. Within the detention review dated 31st October 2011 it is stated:

> "The risk of absconding outweighs the presumption in favour of his release. There is a history of unreliability, the subject has a record of serious criminal offending which manifest (sic) a total disregard for law and order. He would have little incentive to comply with any conditions of release."

Given the Claimant's history of residence since 2003 under the care of Newham Social Services, that his convictions for robbery arose from a single occasion and his release on bail (including after he failed to attend an appointment said to be due to a mistake when he confused Barking Police station with Barkingside) it is difficult to see how he could accurately be regarded as having a total disregard for law and order. Such hyperbole is to be deprecated. It obscured the facts and also evidences a failure to consider the full details of the Claimant's case. If the additional information were known it would have been appreciated that due to the outstanding application he did have an incentive not to abscond. The review continues:

> "there are claims of family ties within the UK, if this were true, I still would not be satisfied these individuals would provide sufficient control over him given his history, circumstances and expectations.
>
> I consider that the subject is someone who has an undisputed criminal record for four counts of robbery. He was sentenced to 18 months imprisonment. In my view the subject would pose a materially greater than average risk of absconding and reoffending."

This is a worrying and unjustified prejudging of what information may be available and evidences an intention to detain regardless of the Claimant's history since 2003. He had not absconded despite the likelihood of an impending custodial sentence. It is difficult to understand how the view can be taken that the Claimant posed a greater than average risk (presumably the risk posed by other foreign national offenders) of absconding and reoffending.

86. Significantly the person who authorised the detention continued:

> "I note the subject was interviewed on 27 October 2011 regarding nationality. He did not divulge all relevant information, however, he has mentioned... a school, his alleged brother and the social worker, this information must be further investigated and might just be the opening we had envisaged, I would appreciate if you could update in your next detention review". (underlining added)

87. The potential importance of the information had now been appreciated by the officer authorising detention. As I have indicated the investigation which was considered essential at this stage would have produced the Newham Social Services records, the family details, the 2007 application and the birth certification document. It should have prompted enquiries to be made of the Belgian authorities. However the step which it was stated must be taken was never taken. In my judgment this unarguably constituted a failure to progress matters with due diligence. The Claimant had at this stage spent more than five months detention. In my view the results of an adequate investigation could have been obtained and assessed within four weeks.

88. On 23 November 2011 the detention review recorded that:

> "I have contacted Mr Louis' solicitors and requested them to provide documentary evidence if they believe that he is a Belgian national".

The document also contains the stock phrase:

> "We will continue to make enquiries regarding his claimed nationality."

Remarkably, there was no reference to the matters which the last review stated "must" be investigated. This evidences a failure of the caseworker and authorising manager to undertake an adequate review of the file.

89. The request was made of the Claimant's solicitor on 23rd November and Duncan Lewis responded the same day stating:

> "we have spoken to our client today and confirm that he is not a Belgian national. We note he is a national of Congo and has been in the UK since he was 10 years old."

90. At this stage the Claimant had been detained for over six months. Contrary to what is later stated in reviews he had provided information which enabled access to a wealth of information concerning his history and he had

confirmed, correctly, that he had been born in Kinshasa and was a national of Congo. There was no material deception or attempt to hide his nationality and he was being co-operative. He also had an outstanding application for ILR which had not been addressed, had been resident since 2003, had family connections within the UK (his brother had a British passport) and history of bail with only one failure (which the Claimant put down to mistake and after which he was re-bailed). The Defendant not only had all the necessary information to make a decision upon deportation (and to have sought emergency travel documentation), but had a Claimant who was stating through his solicitors what his nationality was (this being consistent with all the information that should, by this stage have been in the Defendant's possession).

91. In my judgement there had been repeated and clear failures to progress matters with reasonable diligence, one of the necessary **Hardial Singh** principles for lawful detention, and on careful close scrutiny much of the first six months was characterised by an inactivity and, specifically, a failure to investigate on the part of the Defendant which did not come close to satisfying the high duty upon a body administratively detaining without charge.

92. It is necessary to note, in terms of causation of personal injury, which I shall deal with in due course, that at this stage (after six months of detention) there was no indication of a significant deterioration in the Claimant's mental health.

93. On 7th December 2011 the Claimant's solicitor wrote to the Defendant asking for release. It was pointed out that the Claimant's criminal sentence had been completed seven months earlier and no removal directions had been set so removal was not imminent. Reference was made to the presumption in favour of temporary admission or temporary release and that the Claimant's liberty should only be restricted if it was essential to do so. A temporary release address was given. Had all the information which should have been available been considered (including the outstanding application for ILR) it is my view that any adequate or proper review abiding by the Defendants own guidance should have resulted in the consideration of release from detention. In any event, given a proper review of the file it should have been appreciated that the Claimant had co-operated and provided information yet he could not be removed before a reasonable period had expired (a deportation decision had not been made) requiring consideration of the third **Hardial Singh** principle.

94. Instead of undertaking an adequate review of the detention the GCID case record sheet has an entry on 8 December 2011:

> "Following my interview in October, I have requested information from the caseworker on how the case is progressing, or if further enquiries have been made with certain contacts which were established?"

95. The Claimant's solicitors wrote again on 16 December 2011 asking for up-to-date reasons for continued detention and release on temporary admission with an offer of reporting requirements. It was repeated that the Claimant was born in the Democratic Republic of Congo, that his parents were dead and the only family members he had were in the UK being his brother, his brother's partner and their children. It was stated that his mother was a Congolese national and not a Belgian citizen as initially indicated and it was pointed out that the Claimant had been in the UK from a young age and was unlikely to reoffend or harm the public interest in the future. The Claimant also sent a personal letter stating that his offence was out of character and he had learned his lesson. It bears repetition that the Claimant was later characterised as having provided no information to the Defendant and of having been totally un-cooperative throughout.

96. Within the detention review of 28th December 2011 it is stated that the Claimant had failed to provide evidence to substantiate his claim of being an EEA national:

> "nor of any other nationality, as such his nationality remains unspecified".

Given what had been stated by the Claimant and his solicitors this was an inaccurate entry. Further, no reference was made to the outstanding matters which it had been considered required mandatory investigation. Again there was repetition of the now clearly inaccurate defensive phrase:

> "we will continue to make enquiries regarding his claimed nationality"

Also it is again stated:

> "it is strongly believed that the subject could reoffend"

without justification i.e. for the "strong" belief (which ignored the Claimant's letter) and that:

> "Furthermore the subject has demonstrated a total disregard for UK laws, moreover he is aware that the UK Border Agency intends on deporting him, it is considered the subject would have little incentive to comply with any release restrictions which may be placed upon him. All known facts of this case have been considered and there are no compassionate circumstances to prevent further detention pursuant to deportation action."

Again it is difficult to understand what underpins the assertion of a total disregard for UK laws given. This review was in part formulaic and certainly inadequate.

97. Mr Kates accepted in cross-examination that the Claimant would have been treated as a DRC national but stated that at this point in the chronology matters had not been "fully verified". However, that was due to the Defendant's lack of diligence. There was no good reason why the decision to deport could not have been made by this stage and the Defendant cannot pray in aid its own manifest failures to investigate. No further significant information was obtained before the interview which eventually took place

in May 2014 (two and a half years later) with the Congolese authorities when it was accepted that the Claimant was a Congolese national. So there also was enough information to be able to make a decision to deport the Claimant and enough information for an emergency travel document to have been obtained.

98. When seeking to justify continued detention Mr Fortt relied upon the fact that the Claimant had not filled out the deportation questionnaire. However, as Mr Kates accepted a person is given a significant amount of time to fill out the document but ultimately the Defendant has to proceed on the information she has. He stated he did not know if there was a particular timeframe and though this would be six months plus. In my judgement the failure to complete the questionnaire was a feature which presented some difficulty, but it had to be seen in the context of other available information and the detail of the Claimant's own outstanding request for ILR (which had been languishing on the metaphorical if not literal, shelf for over four years).

99. On 23rd January 2012 a request was submitted by CCD for an ETD interview to be carried out with the Claimant.

100. There was a detention review on 24 January 2012. The author confirmed that the Claimant's solicitor had told him that the Claimant's nationality was DRC. Reference was made to the high risk of reoffending in order to support himself financially. There is repetition of the view that he has shown a total disregard for UK laws and would have little incentive to comply with any release restrictions and was a high risk of absconding. The supervising officer Ms Todd who co-signed the document stated (after a misunderstanding and early reference in the document to a partner and children) that:

> "In addition, can you ensure all details of the brother are obtained, as this may shed light on Mr Louis' status in the United Kingdom and provide further evidence of his nationality."

101. In my judgement this evidences an unacceptable failure to have regard to the content of the earlier detention reviews. Indeed on balance it is likely that these were not even read. There was a lamentable failure to adequately review the file.

102. An entry in the GCID on 25th January 2012 stated:

> "Further attempts at completing an ETD following a request from caseworker…. I did obtain further information of his life in the UK including contacts, schooling and Social Services to look into and try and establish details further as subject states it is a possibility social services hold more info on his background since he was brought into the UK as a child. He states that his previous and current reps are collating information which may again help UKBA confirm his background."

103. There is no explanation by the author as to why no steps had been taken to look into or try and access the information that had been obtained.

104. On 27th January 2012 the Claimant's solicitor returned his completed ICD.0350AD questionnaire. It stated that the Claimant's nationality was the DRC. The accompanying letter asserted that the Claimant qualified under exceptions 1 and 2 of s.33 of the UK Borders Act 2007 in that (i) removal would breach his Article 8 rights and (ii) the Claimant was under the age of 18 at the date of conviction (the latter point is plainly wrong). So the Claimant had now stated for months that he was a national of DRC and had given details of his history in the UK. The picture was a far cry from the facts in several of the cases cited to me of foreign nationals refusing to co-operate with the Defendant. It also further evidences the inaccuracy of the statements in the later reviews that the Claimant was completely uncooperative with any reasonable request of the UK Border Agency.

105. On 29th January 2012 a GCID note sets out that there is a Home Office file under the "alias name" Louis Mayela Sambea matching the Claimant's details. It is stated that no decision could be made until that file was received. The application for leave to remain on 2nd July 2007 was noted. Had the Newham Social Services records been obtained, as they should have been, this step could and should have been taken many months earlier.

106. By the end of February 2012 the Claimant had been in detention for nine months; matching the length of the custodial element of the sentence for robbery. Despite all the details provided, correspondence from the Claimant's solicitor and the completion of the questionnaire, no action appears to have been on the horizon. It should have been apparent (as turned out to be the case) that the Claimant could not be removed before a reasonable period had expired. Continued detention was in my judgment in further and clear breach of the **Hardial Singh** principles and of the Defendant's own policy. On 20 February 2012 a detention review revealed no material progress had been made on matters. Its authors merely repeated many comments previously made in earlier reviews. In my judgment there was a clear failure to properly progress matters with reasonable diligence. Months were passing without any critical scrutiny of the deprivation of liberty.

107. As I shall set out in due course it is my view that detention was not lawful from 29th February 2012 due to breach of **Hardial Singh** principles (ii), (iii) and (iv).

108. On 29th February 2012 an ACDT was opened as the Claimant was noted to be presenting as uncommunicative and hinting at self-harm. His mental health had started to deteriorate. The clinical medical officer noted

that the Claimant stated he was feeling fine now and not suicidal but that he complained of being under a lot of stress and wanted to be moved to London to be closer to his family. The diagnosis was "*frustration of detention and inability to meet his family*". Given that he was in prison and nothing appeared to be progressing as regards the regularisation of his immigration status or attempts at his removal, notwithstanding the information that he had provided, such frustration was understandable. Release at this stage would have prevented the subsequent deterioration and avoided depression developing.

109. Within the next detention review on 20th March 2012 it was incorrectly stated that the Claimant was yet to respond to the questionnaire request. As with other erroneous entries such a mistake should not be present within a report analysing whether deprivation of liberty should continue. It reveals an inadequate review of the file and a failure to critically review detention. Instead it points towards the completion of a detention review being treated by the caseworker as a necessary administrative step to justify continuing detention which could be completed after a cursory assessment of the file.

110. The reviewing director Mr Hearn requested that the ETD interview be chased as a priority. Given all the information now available (a fortiori potentially available after relatively straightforward enquiries) his review was also manifestly inadequate.

111. The next review was on 19th April 2012. Again there was an incorrect reference to the need for the solicitor to get the questionnaire completed as soon as possible. It is stated in relation to release that the Claimant did not have:

> "any close family in the UK to ensure that he would comply with reporting restrictions placed upon him in the eventuality that he were to be released (he claims have a brother in the UK but has failed to provide any documentary evidence to substantiate this claim)".

112. This entry can, in my view, only have been written by someone who had not read the letters of 7th and 16th December 2011 sent by the Claimant's solicitors. Further, the author seems unaware of the existence or details (mobile phone number) of the Claimant's brother, and the history with Newham Social Services, the files of which should, according to earlier reviews, have already been obtained.

113. The next review was on 14th May 2012, approaching the first anniversary of the Claimant's time in detention. Tellingly, yet again there is reference to a failure to reply to the questionnaire, reflecting an inadequate review of the documents. The supervising manager Mr Whyte stated that the current barriers to removal were the making of a deportation decision and the obtaining of an ETD. For reasons set out above it is my judgement there was no barrier to either. Mr Whyte continued:

> "case owner, please ensure that initial decision is made on this case and submitted to our SCW prior to next month's detention review. In regards

> to the ETD aspect of the case Mr Louis has been non-compliant with the ETD process recently by refusing to provide any documentary evidence to confirm his nationality and identity and he has thus prolonged his time spent in IS detention.*"*

114. It is difficult to understand how Mr Whyte could come to the conclusion that the Claimant had continued to be non-compliant with any process touching upon his detention or deportation unless he erroneously relied upon the statement that the Claimant still had not returned the questionnaire. Yet again the picture is of a cursory and inadequate review of the information available and not only a lack of reasonable diligence or urgency but a want of care; this despite the fact that the Claimant had now spent a year in detention.

115. The next detention review was on 13th June 2012. The record still incorrectly records that the Claimant had not responded to the questionnaire. Other content of the document merely repeats what has been stated before and again detention appears to be authorised without any adequate consideration of all information and with a failure to ensure the decision was made in line with the previous review.

116. The next review was on 9th July 2012 and made reference to the failed attempt to gain entry in July 2002 and the outstanding application dated 20th June 2007 requesting leave to remain on discretionary grounds. Thereafter much of the content was the same as before e.g. demonstration of a total disregard for UK laws and little incentive to comply with any release restrictions and "*no evidence of subsisting relationships*" (this despite all the information in relation to his brother). It was recognised the Claimant had been in detention for 15 months and reported that he "*still refuses to comply with the re-documentation exercises".* Further that:

> "We therefore need to consider arranging an assertive interview which was recommended in the last reviewers comments. And given his connections in Belgium and France we should enlist the help of CSIT to investigate these leads which will help in our construction of biodata which is also mentioned in the last reviewer's comments".

117. As set out above the Defendant had the ability to seek information from Belgium from the outset, or certainly shortly after the outset, of detention.

118. In his closing submissions Mr Fortt referred to the delay in making the deportation order (eventually made on 19th July 2013) as

> "entirely the product of the claimant's deception and inaction".

I have reviewed the period up to the end of July 2012 in some detail to demonstrate why it is my view that this broad brush overview of the initial 15 month period is unsustainable. In my judgment careful analysis reveals a failure on the part of the Defendant to act on available information, conduct straightforward investigations or to conduct adequate reviews on a monthly basis. Had the Defendant acted with reasonable diligence matters such as the

Claimant's nationality and identity could and should have been substantially progressed within six months enabling decisions to be taken. As it was, even when the questionnaire was provided the Defendant failed to recognise this fact for months.

119. I also believe that it is necessary to appreciate the detail of what happened over the first 15 months of detention, a long period, when considering the next stage of the chronology path when the Claimant lied about his nationality. He stated in his evidence:

> "Both before and throughout my detention, the Home Office officials kept asking me the same questions but nothing changed in my situation. I continued to be detained with no answer to my ILR application. This was very frustrating and it made me feel powerless and desperate. I think that it is unfair to say that I was misleading the Home Office by providing differing information. If there were misunderstandings or discrepancies between the records and what I had said, investigation into the information provided could have cleared that up."

And

> "After I had been in detention for over a year, I still had no decision on my ILR application and had no idea when I was going to be released or removed from the UK. I claimed asylum on the basis that I was from Somalia and feared being returned there. I did this because I did not want to be in detention any more did not want to return to DRC. The thought of returning to DRC was making me feel very depressed and anxious. People I was detained with told me it would help me get out of detention and stop me from being sent to DRC. I was desperate had been detained a long time so I did it."

I accept this as essentially an honest recollection. Given the amount of documentation that the Defendant had access to through the information the Claimant had already provided, and the fact that he had an outstanding application for ILR, it was a rather poorly thought through attempt to deceive. Having heard his evidence it is my assessment of the Claimant (which I suspect that he may agree with) that he is neither well educated nor particularly clever and on occasions has done (in his words) some "stupid" things which he later came to regret. The claim to be from Somalia, which cannot in any way be condoned as it was a deliberate attempt to be obstructive through lying, fits into that category. When it was pointed out by the immigration officer that he stated in the past he had admitted he was from the DRC he simply stated he could not remember what he had said in the past. He said nothing in detail about Somalia other than he knew that he had been born there.

120. I find as a fact that had the Claimant not been in detention, as he should not have been, he would not have claimed to be from Somalia. His desperation at continued detention was the main cause of the lying. Had he been in the community his focus would in all likelihood have been his outstanding application.

121. On 23rd July 2012 the Claimant underwent an ETD interview during which he claimed that he was from Somalia. On 7th August 2012 an urgent request was made to carry out a nationality interview in view of the Claimant's latest claim to be Somalian rather than Congolese.

122. On 9th August 2012 a further attempt at interview was made but could not proceed as the Claimant was unwell. On 30th August 2012 the Claimant was interviewed and maintained that he was Somalian. A note on 18th September 2012 noted that the Claimant now wished to claim asylum on the basis that the war in Somalia put his life in danger.

123. A screening interview request form dated 19th September 2012 included the following details in answer to the question of whether the Claimant had a history of violence:

> "DRC advise subject has a history of violence and incitement. Is a high risk of committing acts of violence to other detainees. 16 Aug 2012: Sub made direct threats to assault a member of staff and produced a razor blade stating he intent (sic) to use it."

124. On 5th October 2012 the Claimant underwent a screening interview during which he continued to maintain that he was Somalian. His asylum screening interview was rescheduled for 9th November 2012.

125. On 5th November 2012 the following information is recorded about the Claimant:

> "Mr Louis has been getting very frustrated lately because he has been turned down for a transfer to and IRC in the London area … He told me to contact UKBA and tell them to give him his transfer or he would do 'something stupid' in order to get a transfer. He said that he didn't want to do something because he respected staff here but he would do something to get a ship out, even if it meant he would be sent back to prison."

126. On 9th November 2012 the Claimant refused to leave his room to attend an asylum interview. The record states:

> "Detainee became very angry when spoken to by UKBA. He produced a razor and stated that unless he was transferred tomorrow he would either slash his own throat or the throat of the first member of staff that enters his cell. ACDT opened."

127. On 10th November 2012 the record states:

> "Mr Louis has been located in the CSU on Rule 40 due to his non-compliance with staff, blocking his observation panel on numerous occasions and fashioning a weapon. Mr Louis has no intention of returning to his unit from here and 'will cause problems'.
>
> A CNOMIS entry states:

> He got very angry very quickly stating this was just the beginning, if he is not moved within two days then he has blades, it is my blood, your blood. He has the brothers on his side and there would be a riot."

On 14th November 2012 the record states:

> "At approx. 16:30 hrs on 14.11.12 Mr Louis set fire to his cell in the CSU … Mr Louis has blades secreted on his person and has made threats to slash staff and himself."

128. An asylum interview was scheduled to take place on 14th December 2012 but this did not proceed because the Claimant stated that he wanted to obtain legal advice and the solicitors indicated that they were fully booked until 24th January 2013.

129. On 3rd January prison medical health records show that the Claimant walked into the clinic stating that he was feeling stressed, finding it difficult to sleep and he was very frustrated about his situation i.e. awaiting deportation.

130. On 4th January 2013 the Claimant was assessed by a social work assistant. The Claimant is reported to have stated that he witnessed many distressing things in prison and in detention and now he was nearing deportation the "*situation is getting on top of him*". Officers reported that the Claimant had been "*a well-behaved inmate in the past*". The Claimant stated that he had taken up smoking due to stress and that he smoked cannabis occasionally to deal with his circumstances. The conclusion was that there was no evidence of severe mental illness.

131. Between 4th January 2013 and 5th March 2013 a further three failed asylum interviews were attempted with the Claimant. The detention reviews dated 16th January 2013, 15th February 2013 and 10th May 2013 suggest that these failures were due to the fact that the Claimant was on an ACDT and could not be interviewed and/or due to his desire to have a solicitor (the latter reason applying to interviews on 5th and 11th February 2013 and 6th March 2013).

132. On 15th January 2013 he was seen by a psychiatrist Dr Rawat who noted:

> "his immigration matter was stressing him out, has asked for another immigration solicitor and has some hope this would help him. Also has family in the UK who are supportive. However set fire in his cell today which was witnessed by officers. Said it was impulsive and he did not know what his intent was when setting the fire. Said talking to the officers helps distract self from the stress."

The diagnosis was of no severe mental illness, no current suicidal intent but,

> "impulsive and risk of suicide due to stress/distress of immigration issues".

133. On 22nd January 2013 the Claimant was reviewed by a psychiatrist, Dr Bartlett, who noted that the Claimant was finding his situation very distressing. On the 27th February 2013 he was seen in the prison surgery as he had smeared faeces on the walls of his cell and was presenting in a mentally distressed state. His cell was in a highly chaotic and dirty state with debris over the floor and burned papers. The medical records reveal that the Claimant presented as very flat in mood and stated that voices in his head urged him to burn items in his cell and smear faeces on the wall. He reported the voice was external and "*has been during him to harm himself* (sic)". He denied being stressed about his immigration status saying he did not care about this. The record continues:

> "Impression, psychotic episode, query low mood and suicidal ideation. Highly chaotic and dirty cell, has burnt items on cell..."

He was observed by the day care manager to have been withdrawn and to have lost a lot of weight.

134. On 1st March 2013 Dr Maggio, a consultant psychiatrist, examined the Claimant and stated:

> "apparently (the Claimant) has suffered a brief psychotic episode and is now more stable. However this could also be an insidious onset of functional psychosis. I also note the circumstances of his current immigration problem. He may have suffered a similar episode while in a detention centre.

The plan was to put the Claimant on a waiting list for health care centre admission.

135. In early March 2013 the Claimant's mental health appears to have stabilised. He was reviewed by Dr Maggio on 5th March who noted that he had complained that his prison food was poisoned and at the mental state examination he presented with limited rapport and low mood. An entry of the 6th March by Dr Maggio refers to a nurse stating that the Claimant was manipulative but also complaining of hearing voices and putting a towel over his head as he was trying to block out the voices. On 7th March it was noted that he been complaining of hearing voices and had been blocking his ears with a towel and appeared to be guarded and withdrawn. On 10th March he was observed with a towel wrapped around his head and isolated in his cell. The behaviour with a towel continued for three weeks.

136. On 23 April 2013 Dr Maggio recorded:

> "mental state examination is well groomed and engaged over the interview. Mood is subjectively low and objectively flat…. No morbid ideation but a general poverty of thought. Depressive rumination over the past…. Troubled sleep.
> Diagnosis: moderate depression. Apsychotic. Asuicidal.

Plan: citalopram"

137. On 19th April 2013 a further request was submitted for a nationality interview to be carried out with the Claimant.

138. The detention review on 10th May 2013 referred to the incidents on 9th November 2012 and 13th November 2012 in relation to known or claimed medical conditions (including mental health and/or self-harm issues) but made no reference to any of the subsequent entries or Dr Maggio's diagnosis of moderate depression.

139. On 16th May 2013, the Claimant signed a disclaimer stating that he wished to withdraw his asylum claim. So the period during which he maintained a lie that he was Somalian lasted ten months. For the last six months of that period he was suffering fluctuating and, in all probability deteriorating, mental health leading to the eventual diagnosis of moderate depression.

140. On 23rd May 2013 the Claimant attended a nationality interview during which he reaffirmed that he was Congolese.

141. A detention review of 6th June 2013 noted the disclaimer form withdrawing the asylum claim. It also noted the Claimant's brother and family and two sisters were in the UK. The authorising officer commented:

> "We need to serve the decision as a priority, within the next two weeks. Can you alert the SCWs as to the urgency of the case. Can we investigate the nationality of his brother and two sisters."

142. On 21st June 2013 a request was submitted for an ETD interview to be carried out with the Claimant. On 22nd June 2013 the CCD caseworker recommended that a deportation order should be made with a right of appeal in respect of his Article 8 rights claim which he considered to be arguable.

143. On 19th July 2013, two years and two months after detention started, a deportation order was made pursuant to section 32(5) of the UK Borders Act 2007. Of the 26 month period before the order was signed the Claimant claimed to be from Somalia for 10 months.

144. In addition to addressing the claimed exemptions under s.33, the decision notice also addressed and refused the ILR application of June 2007, six years after it was made. It was noted that the Claimant had spent somewhere between 10 years and five months and 11 years in the UK, but had spent the first formative 10 years of his life in DRC. The Claimant did not appeal against the order.

145. In the detention review dated 31st July 2013 the authorising officer included the following observations:

> "Case owner – In June's review the DD asked you to make enquiries re the brother and 2 sisters nationality. There is no mention however that this has been taken forward. Please make sure that this is done during the reporting period as this could hold the key to establishing nationality and an ETD …"

146. On 16th August 2013, the Claimant completed a Bio-Data Information Sheet during an ETD interview in which he stated that his mother was called Lisa Louis and his father was called Dady Louis. He said he also had a sister called Lisa and a brother called David, both of whom were described as "Congolese/British". It is stated within the records:

> "However during the interview I managed to convince him that he needed to get on with his life instead of sitting in prison and he agreed to take part in the Congolese interview scheme stating he now wants to return."

By this stage the Claimant had been in detention for two years and three months. Again the degree of co-operation is noteworthy.

147. The detention review of 20th August 2013 (the 30th review) the authorising officer Ms Todd, stated

> "I am extremely disappointed to see that no action has been taken to explore Mr Louis' siblings' nationality as directed in the June and July detention reviews. Please ensure these enquiries are completed by the due date of the next detention review"

148. In fact the inexcusable failures to explore the circumstances of the Claimant's siblings went back much further; to the start of his immigration detention. Mr Todd also stated:

> "... We need to demonstrate clear effort has been made to explore all potential avenues to establish and support claims to his nationality".

This was an accurate assessment of what had been the case from May 2011.

149. In a detention review dated 26th September 2013 the authorising officer expressed some concerns at the length of the Claimant's detention in the following terms:

> "I agree that currently detention should be maintained for a further 28 days. However, I am concerned, as the Sino judgment and Mr H Singh principles comes to mind, the crux is, we only detain an FNO where removals is highly likely (sic). Mr Louis is currently IS detained for some 31 months for 4 counts of robbery and subsequently received 18 months sentence, while also taking into consideration the magnitude of his criminal activity, as his liberty will need to be meticulously balanced with risk of harm to the public, likelihood of reoffending and propensity of absconding.

> I am also aware the case owner will continue to monitor the ETD process and to ascertain the nationality and circumstances of Mr Louis's claimed siblings. Furthermore, the onus is on Mr L to comply with the ETD process, however we cannot use Mr L's lack of compliance as a trump card, therefore it is absolutely imperative we do all we possible can (sic) within our remit in order to demonstrate real progression with this individual case. On a positive note, it appears the only current barrier is ETD's, hence I would like the c/o to monitor the ETD process with eagle eyes, while providing an account on the next DR review."

This entry, which recognised that it was difficult to justify the length of detention to that point, was made 20 months before the Claimant was released from detention.

150. There was a detention review on 24th October 2013 within which the authorising officer stated:

> "Despite our efforts I am concerned that we have not yet got much further forward re documenting Mr Louis, particularly given his non-compliance and attempt to frustrate the identity/removal process. Therefore, it is time that this case needs to be put to the Strategic Director for consideration of release under robust contact management. Running alongside that we must urgently progress the outstanding actions to see if we can get any further towards the documentation and ultimately removal within a reasonable period …

This was the first suggestion of release from detention.

151. On 25th October 2013 the Claimant refused to speak to the immigration officer. The suggestion of release was not one which found favour in the subsequent detention review of 22nd November 2013 (which was summarised in the December review), within which the reviewing officer stated:

> "I have considered this case carefully. This man has been utterly non compliant with our processes and appears to be masking his identity in order to frustrate the deportation process. He has recently suggested an intention to return to the Congo, but when interviewed declined to speak to the immigration officer. It is right to indicate that he presents a high risk of harm and that fact, together with his undoubted abscond risk weighs in favour of further detention.
>
> The previous suggestion by reviewers, that we should consider the option of a contact management referral to SD are somewhat premature as we plan to carry out enquiries as noted above and it would be reasonable to follow through with those, particularly in respect of the siblings to bring forward his formal identification and thus removal …"

152. Given the totality of information that the Claimant had provided to the Defendant (particularly during the first 15 months) and, even though he had

for 10 months claimed to be Somalian, the description of him being "utterly non-compliant" with processes over the then nearly 30 months of detention simply was not accurate. It failed to acknowledge the failure to adequately progress the Claimant's case with due diligence.

153. On 26th November 2013 a request was submitted to Pentonville prison for the visitor logs and telephone records in order to further investigate the identities of the Claimant's claimed family members. This proved unsuccessful. No further thought was given to the earlier information provided by the Claimant or what had previously been considered the mandatory step of seeking to access the records from Newham Social Services.

154. On 6th December 2013 the ETD pack was submitted to the DRC embassy.

155. On 9th December 2013 the High Court handed down judgment in **P (DRC) v SSHD** [2013] EWHC 3879 (Admin) which contained the following conclusions relevant to the intended removal to DRC:

> 55. I cannot bind the Defendant in relation to other cases involving the deportation of convicted criminals to the DRC, but I should indicate my view, again expressed with regret, that, on the basis of the evidence I have seen, such persons have a strong claim for asylum and should not be deported to the DRC unless and until there is clear basis for believing that the risk indicated above no longer arises generally or does not arise in a particular case. In this regard the Upper Tribunal may wish to consider giving further country guidance in relation to the DRC in the near future to deal with the position of criminal deportees.

156. The detention review dated 17th December 2013 noted that the SSHD had permission to appeal the judgment in P(DRC). There plainly also remained doubts at that time as to whether the Claimant was Congolese. This is evident from the following extract of the authorising officer's remarks:

> "I note the information about P & R v SSHD, a decision we intend to appeal. Actually it is uncertain whether it is relevant in this case, given the doubts around who he really is. Even if it were applicable, we are appealing and the facts of this present case, particularly the very serious criminality that this man has done place substantial weight on the side of detention (sic). It is also relevant that he is leading us a merry dance as to his true identity and nationality forcing us to spend precious resources into investigating his background: he is not just non-compliant, he is actively frustrating the identification and thus the removal process.
>
> There is no doubt that serious public harm would ensue if he were to re-offend and equally likely that he would go to ground and adopt another false identity if he were to be released pending removal."

If the Defendant had, as it should have done, spent any "precious resources" investigating the information which it had possessed for two and a half

years, together with the application for leave to remain and supporting documentation, then the claimant's nationality could have been established (and the identity of his brother) long before this point was reached. Indeed it should all have been investigated, analysed and decisions taken before the Claimant started to lie about Somalian nationality. He maintained that lie for 10 months with the deception ending on 16th May 2013; some seven months before this review. He had then reaffirmed what he had said before that lie: that he was from DRC. His claimed DRC nationality aligned with most if not all of the other information which had been, a fortiori could and should have been, obtained about his nationality and identity. It is difficult to see, if there had been an adequate review of the file, how the authorising officer could have reached the view that the Claimant was continuing to actively frustrate identification. It is also difficult to see how the officer would have been able to justify the comment that the claimant was *"equally likely to go to ground and adopt another false identity if he were to be released*". Certainly, if the records of Newham Social Services had been available, it would have been clear that the Claimant had consistently called himself Sam Louis, which he considered to be his name, notwithstanding his formal documentation, since he had been a child and this was well recognised.

157. The medical records reveal that by December 2013 the Claimant's mental health had deteriorated again. An entry of 16th December notes that he had been admitted to the healthcare centre having been referred for admission by the in-reach team when he reported feeling depressed and auditory/command hallucinations asking him to harm himself. An entry of 17th December by Dr Govindarajula stated that he been settling into healthcare with no active symptoms of psychosis and at the interview:

> "(he) complained that voices make him depressed. He informed us that he would like to go back home in Congo and hence he contacted immigration. He stated that he spoke with his family a few months ago after which he decided to return back to Congo…. Complained he was depressed, wanted to be moved to the segregation unit as he thinks being in segregation helps him. He claimed that he hears voices inside his head asking him to set a fire, barricade and harm himself. Last time attempted hanging was in summer this year. He wants to return back to the wings"

And a further entry states:

> "stating currently depressed due to ongoing immigration issues, would like to go back to Congo but travel doc."

158. These entries directly contradict the assessment in the detention review that it was the Claimant's intention to thwart the identification and deportation process. The reality was that he was desperate to gain his liberty; hardly surprising after such a long period of immigration detention.

159. By 19th December 2013 the Claimant was again seen with a towel round his head. Further entry noted "*relapse stage (Xallx)-increase in*

psychosis symptoms". On 23rd December he attended at Dr Govindarajula's ward round with his head covered with a towel reporting that he was hearing voices inside his head. The impression was "*stress due to immigration issues*".

160. On 8th January 2014 Dr Maggio diagnosed an adjustment disorder with psychotic symptoms.

161. On 17th January 2014 the same authorising officer who had completed the December review stated:

> "He appears to be actively clouding his past in order to prevent removal. It is not at all clear which nationality he is, although he might very well be from the Congo, rather than the DRC. Our investigations will proceed into his identity and this man result in him (sic) facing a longer period in detention than if he were to provide us with information to assist with his documentation and removal…. He may well remain detained for a lengthy period before removal but given his harm risk I consider a further period will be reasonable in all the circumstances…"

162. Yet again this entry reveals a lack of insight into the information which the Claimant had provided.

163. On 30th January 2014 the SSHD abandoned her appeal in the **P (DRC)** case. An entry on the GCID case record sheet on 7 February 2014 recorded:

> "received an email from [redacted] that he has clarified the situation with Mr Louis explained clearly that he is 100% Congolese national. He showed me on the Congo map, that he comes from Kinshasa from the Democratic Republic of the Congo. Mr Louis will also be making contact with the embassy."

This record is consistent with what the Claimant had stated in the medical records i.e. his openness that he was from the Congo and inconsistent with the overview within the detention reviews.

164. There was a detention review on 11th February 2014. The references continued to the Claimant "*actively clouding his past in order to prevent removal"* and it being not at all clear which nationality he was. It was noted that the Claimant had stated whilst in the healthcare centre at Pentonville prison that he was willing to be deported back to the Congo and was 100% a Congolese national from the DRC. There is no reference to the Claimant's deteriorating mental health (the only references being to what happened in November 2012). The reviewing officer recorded that:

> "He has been convicted of a failure to surrender. This would suggest he would be unlikely to comply with reporting restrictions, especially at such a late stage in his case. He is the subject of a DO. The only barrier

> to removal is an agreed ETD. He has failed to comply with the process, obstructing the Home Office on a regular basis. However he has specifically identified where he was born, so once he has been interviewed an ETD should become quickly available."

The Claimant had previously indicated where he was born on a repeated basis (save for the period when he claimed to have been Somalian).

165. On 13 February 2014 an ETD interview was conducted at Pentonville prison with a DRC official present. The internal note states:

> "Outcome of the interview - further enquiries need to be made into this subject. The official asked for contacts of his family to make these enquiries".

So the Claimant complied with the DRC interview process.

166. On 14th February 2014 the Claimant stated that he would like to return to Congo as soon as possible and would also like to be considered for release from detention. He also provided details of his brother which had previously been provided as far back as the nationality interview of 27th October 2011 and the application of 7th December 2011; so provided information that the Defendant had already had possessed for nearly two and a half years, but never acted on.

167. There was a detention review on 13 March 2014 in which the same officer who had conducted reviews in December 2013 and January 2014 stated:

> "I note the movement in respect of removals to the DRC and too (sic) that Mr Louis appears to be complying with the DRC documentation exercise. That compliance does not, in my view alter the fact that he is a very high abscond risk who may well abscond in order to evade removal if given the opportunity, nor that he remains a risk of harm. The presumption to release is clearly outweighed"

It is my view that the relevant officer had formed the settled view as early as December 2013 that she would not authorise the release of the Claimant and maintained that view regardless of cooperation or the lack of a timescale for removal.

168. By the time of the April 2014 detention review, the SSHD's position in relation to the **P(DRC)** judgment was as follows:

> "Since the judgment in the case of P&R v SSHD the UK Government has sourced further information regarding the safety of returning foreign national offenders to the DRC which it considers shows that the finding in that judgment does not accurately reflect the current situation in the DRC. This includes confirmation from the Direction Générale de

> Migration that they have no interest in returned foreign national offenders (or failed asylum seekers) unless there are outstanding criminal matters in the DRC.
>
> The Home Office has now published a Country Policy Bulletin, which updates the policy on returns to the DRC in light of the judgments in the cases of P&R, based on the further information obtained. While the UK Government has agreed with the claimant in P to withdraw its appeal to the Court of Appeal in the case of P, we are confident that the new information confirms our view that foreign national offenders (or failed asylum seekers) do not, on the basis of their conviction in the UK, face any risk of their Article 3 rights being breached if returned."

169. On 29th April 2014 a meeting was arranged with a DRC official to take place on 9th May 2014 to discuss the Claimant's case. It appears from the following entry in the June detention review that the meeting of 9th May 2014 was productive and resulted in DRC confirming that the Claimant is one of their nationals:

> "On 30 May 2014 I was advised by the HEO in CST a positive verification of his identity was made on 15 May 2014 to confirm Mr Louis was one of their nationals; and the agreement has been sent to Kinshasa, DRC for approval.
>
> However, they cannot provide timescale it will take for DRC to issue a travel document (sic)."

170. I accept as accurate the submission that the positive verification occurred with essentially the same information as was available in May 2011. Mr Ó Ceallaigh suggested to Mr Kates that during the intervening three years nothing had come to light which had materially further assisted in the Claimant's identification as Congolese national. Mr Kates found it difficult to demur.

171. The third anniversary of the Claimant's detention passed and there was a detention review on 5th June 2014. The fact that the Claimant had complied with the DRC documentation exercise was said not to alter the fact that he was a high abscond risk or that he was a risk of harm. It was stated that:

> "he is highly likely to re-offend for financial gain … it is understood that there is no incentive to remain in touch with the Home Office and (he is) highly likely to abscond…"

The comment that the Claimant is highly likely to re-offend for financial gain is relevant to the manner and circumstances in which he was eventually released (in the evening, with no accommodation and with no money; not even his own).

172. On the 24th June 2014 the notes record that a response had been received from CROS:

> "…that unfortunately at present there is not (sic) update on this case. We are still waiting on the ETD from Kinshasa and there is no timescale for its receipt."

173. On 1st July within the detention review it was stated:

> "I note the reasons for continued detention given above. In addition I have considered the lengthy detention thus far and nevertheless conclude, on the facts, that detention remains appropriate. I would like this raised with CROS, as it may be we need to seek assistance from the FCO in respect of getting an answer on the ETD-CROS enquiries before next review please."

174. On 24th July 2014 the case owner records that CROS had been contacted for an update on "Mr Sam's ETD" and had been told that they were still waiting for a decision from Kinshasa and that it was:

> "Hard to predict a timescale".

175. On 31st July 2014 within the detention review it was stated:

> "I was concerned to notice that (sic) length of time this man has been in detention, and the apparent lack of progress of getting an ETD from Kinshasa. I spoke to Nick Hearn, Deputy Director of Country Returns who advised me that a visit of five officials from DRC is planned for the week commencing 17 August to be confirmed). It is hoped that this will be a precursor to obtaining ETDs…"

176. At the next detention review on 29th August 2014 the authorising officer did not address the matters set out within the previous review, including the proposed meeting with officials of the DRC, stating only:

> "The delays in this case are of his making and we are taking steps to progress the case to removal as quickly as possible. Based on the presumption of liberty the risk highlighted outweighs a decision to release at this stage."

This was written over three months after the DRC accepted the Claimant as a national. The statement that all the delay in the case was of the Claimant's own making is, as the detailed analysis set out above shows, demonstrably wrong. Of the 39 months spent in detention he had actively obstructed the Defendant's processes by claiming to be from Somalia for 10 months. It is noteworthy that there is no indication that the case worker had addressed the lack of any timescale for progress.

177. On 1 September 2014 the Migrant Law Partnership made detailed/fresh representations on behalf of the Claimant. Revocation of the deportation order was sought. It was stated that the objective material indicated a risk posed upon return in accordance with the case of P (DRC) and that a decision must be made on the human rights claim before any removal directions were enforced. It also was stated that if there was a refusal it was appropriate to grant the Claimant an in country right of appeal and that:

> "We understand our client has available accommodation upon release, which the probation office is able to confirm suitability (sic) and an alternative to his continued detention."

178. I accept Mr Ó Ceallaigh's submission that the fresh representations constituted a further barrier to removal as any refusal would have resulted in an in county right of appeal. This should have been considered together with the lack of a timescale for an ETD and led to the immediate release of the Claimant from detention. Mr Ó Ceallaigh also pointed out that, consistent with a continuing unacceptable failure to undertake adequate reviews of the deprivation of a person's liberty, no reference was made in any subsequent monthly detention review to the representations between their receipt and the Claimant's release on 21st May 2015, a period of over eight and a half months (and over a year after he had been accepted by the DRC as national).

179. On 23rd September 2014 the case owner contacted CROS to find out the progress of the ETD and was informed that Kinshasa needed further details which an officer from CROS would obtain and forward to the DRC embassy *"in the next couple of days".* The review took place on the 25th September 2014 and noted the lack of a timescale (with no reference to the representations).

180. The next review occurred on 24th October 2014. The officer reviewing the Claimant's case stated:

> "I have considered this 45th detention review carefully and I am satisfied that the presumption to release is overruled by Mr Louis' previous immigration and criminal history…… There has been concerted effort with our business partners in trying to secure an ETD."

There is no reference to whether information had been forwarded to the DRC embassy as should have occurred a month earlier. The authorising officer stated, incorrectly:

> "Mr L has not appealed against deportation and the only barrier to removal is securing an ETD".

181. On 17th November 2014 CROS advised that:

> "Unfortunately we haven't had a response from Kinshasa and there is not timescale (sic) on when this might be. This along with a number of other ETDs we are waiting for from Kinshasa is chased on a regular basis"

This was over six months after the DRC accepted that the Claimant was a national, yet little or no progress had been made in obtaining an ETD.

182. The next detention review was on the 20th November 2014. There was no material change to the content save that the authorising officer stated:

> "Please ensure Mr Louis case is reviewed. In the light of recent instructions relating to DRC nationals as it is not clear that this has happened."

183. On 18th December 2014 the High Court handed down judgment in the case of **BCT v SSHD** [2014] EWHC 4265 (Admin) which confirmed that, contrary to the position taken in the **P (DRC)** case, there remained a reasonable prospect of removing foreign criminals to that country throughout the period since that judgment:

> 55. In my judgment, the same analysis applies here. The judgment in P(DRC) meant that the Secretary of State had to reconsider her position and reassess the evidence as to the consequences of a return to the DRC. Within a relatively short period of time new material emerged, notably the discussion between the Foreign Office and the Directeur Central de la Chancellerie at the DGM, which suggested that the position may not be as concerning as the Ambassador had described. Thereafter, there was a realistic prospect of effecting removals to the DRC and, in fact, in October 2014 such removals commenced.
>
> 56. In those circumstances, there was a reasonable prospect of removing the Claimant to the DRC throughout the relevant period and accordingly the detention was lawful …

184. The next review was on 18th December 2014. The authorising officer stated, remarkably and plainly erroneously given the history which I have set out in detail above:

> "It has taken investigation on our part to even get to the position whereby we have been able to make an ETD application. The individual himself has done nothing to assist and could easily have brought his removal and thus his release forward; in essence he has held the keys to his gaol all along but has chosen not to use them. Detention is authorised."

Given the information that the Claimant had provided at the outset of his detention, the failure of the case owners to follow up upon obvious and straightforward avenues of enquiry provided during the first six months of detention, the completion of the deportation questionnaire in January 2012, the confirmation (again) in May 2013 that he was a Congolese national (after the period of claiming to be a Somali national), the nationality interview in February 2014 at which he reiterated that he was a Congolese national, and that the DRC accepted after an interview with him he was a national in May 2014 (seven months earlier), the most benevolent approach

possible is to conclude that the comment that the Claimant *"had done nothing to assist"* at any stage, and "*held the keys to his gaol all along*" were made after a failure to undertake anything but a cursory reading of the file. This is to be added to the fact that there was no reference to the Claimant's further representations made over three months earlier. On any view it is clear that there had not been anything approaching an adequate review of the legality of detention. There was a woeful failure to critically consider the full picture and apply the Defendant's own policy.

185. The reviewing and authorising officers for the detention review of 16 January 2015 provided a somewhat more realistic overview of the history of the case":

> "Case owner action: Please can you refer this case as a matter of urgency to your WFM so it can be escalated. I find it unacceptable that since 2013 we have not really achieved any outcome with this ETD process. It is imperative that we push for this."

And (per Mr Jackson)

> "The barrier to removal is the ETD, and some months after submitting an application we are no further forwards. This should be escalated within CROS and if no movement is made in the next fortnight please come back to me. If we are unable to obtain a clearer timescale for the ETD we will need to consider managing the case on a non-detained basis. Before that, we need one further push on obtaining an ETD. I agree to maintain detention but would like an update on the case by 30 January".

Although more realistic than other reviews the authors fail to make any reference to the outstanding representations. Despite there being no further clarification as to when an ETD was to be expected the claimant was detained for a further four months. As on other occasions within the long detention period, urgent requests for action were not followed up.

186. The detention review of 13th February 2015 was authorised by Mr Kates. He noted the comments of the previous month and the request that was made (belatedly) of CROS on 9th February 2015. It appears that he did not get his update as requested.

187. The review of 13th March 2015 was authorised by the same officer who authorised the review in December 2014. No further information had been provided by CROS. Despite the comments made by Mr Jackson in January the only comment made by the officer was that detention was agreed:

> "high harm and significant abscond risk. The presumption to release is outweighed and in the circumstances detention continues to be reasonable."

There was no attempt to overview/address the inability to obtain an ETD: this did not equate to reasonable diligence.

188. On 7th April 2015 CROS advised that there was no timescale for the ETD because ETDs were not being issued at that time. They anticipated hearing "on around 100 DRC cases sometime soon'. Within the review it is stated:

> "We have chased an ETD for almost a year and a half now and still there are no signs of the DRC authorities issuing and so, after 51 months in detention, it is time for release. Please put in place appropriate actions to mitigate the risks of absconding, reoffending and harm. I have assessed this case based on the presumption of liberty, however, the circumstances are such that I authorise maintained detention for a further seven days whilst a release referral can be prepared for the Strategic Director."

189. So detention was authorised until 14th April 2015. Somewhat surprisingly Mr Kates proposed detention through to 8th May 2015 despite this seven-day extension. On 29 April 2015 this was authorised although it was noted that if the release address was not forthcoming by Friday (1st May 2015) there would need to be referral back to Mr Wood as he could not have expected detention to go on for more than a few days. Despite this the Claimant was eventually released after authorisation by the Strategic Director on 21st May 2015 some three weeks later. In the context of this case delays of weeks can be easily overlooked; however this should not be the case. Any period of detention of days, let alone weeks needs to be anxiously scrutinised and justified. Administrative inefficiency cannot be an excuse for continued detention.

190. On 21st May 2015 the Claimant was released without accommodation (the "you must live at.." section of the release form was blank) but subject to reporting restrictions. The reasons for this are set out in an email from David Wood, the Defendant's Director of Crime and Intelligence which stated:

> "This subject would have spent 9 months in jail serving his sentence and then over four years in immigration detention awaiting removal. Securing documents from the DRC has become very difficult. I accept that removal within a reasonable period of time now looks unlikely and indeed has not happened. Release is inevitable as we risk being judged as unlawfully detaining the subject. I thus agree his release … We need to continue to escalate the ETD issue with the FCO and not rest until we have it to secure removal."

The Claimant was able to shed some light upon why this degree of urgency seems to have developed within the detention reviews leading up to his release:

> "…in the third year of my detention someone who worked at the prison told me about a group that was specifically for immigration detainees. It was there that I heard about BiD[16]. They explained temporary admission

[16] Bail for Immigration Detainees.

> and bail to me and I instructed them to help get me out of detention. They made an application for bail for me and a hearing was listed.
>
> A few days before the bail hearing the Home Office released me from detention with no accommodation. After having been detained for so long, it was really frustrating and upsetting that I was released with no accommodation, when they could have given me accommodation if they wanted to. I was released from prison with no money at 7.00pm in the evening. I had no money to get anywhere even though I had money on my prison account from the work I had done. Luckily my sister Lisa (her full name is Louisette but we call her Lisa) let me stay at hers for a little while in Hackney."

191. I deprecated a similar form of evening release of a person believed to be risk from further offending/absconding, without funds or accommodation in **Lamari-v-Home Office** [2013] EWHC 3130 (QB)

> " So if there was indeed so much ongoing and careful scrutiny of the arrangements for release of a man still considered a flight risk and subject to bail how did the regrettable state of affairs that occurred that night possibly come to unfold without anyone realizing what would happen? Viewed objectively and given the history of the case and the conscious decision not to explain it I am sadly forced to the finding that something went very badly wrong in the decision making process. Given all the circumstances it difficult to accept that it was just yet another "administrative oversight". I can go no further without speculation. However, what I am now satisfied happened is more than enough to cause me very real concern. Indeed viewed with no mitigation the conduct amounted to little short of contempt for his well being. Worse still the position he was placed in was likely to tempt him to abscond or seek money or food with potential consequences for members of the public. In the absence of any other information as to how events came to pass I consider it as little short of shameful conduct. The courts hear criticism of the approach of other countries to the welfare of individuals pending immigration or asylum decisions with the assumption that such conduct could never occur here. However, this case proves that all may not always be as it should be. I sincerely hope that following this judgment the circumstances of the Claimant's release are carefully reviewed."

Two years after my judgment a broadly similar event displaying a lack of compassion or concern occurred in this case. I can also only repeat my view that, to say the least, it is illogical and inconsistent to have previously formed a view that given a person's previous conviction for robbery, a lack of access to means of support would be likely to lead a detainee to financial crime if released on bail and then to release him in the evening, without accommodation or any means (not even his own prison funds) effectively onto the streets. On the Defendant's own analysis which had justified years of detention this was putting the public at significant and avoidable risk. As

luck would have it the Claimant was initially assisted by his sister. He eventually obtained section 4 accommodation[17].

The period between the periods of detention

192. The Claimant stated:

> "When I was released the first time it was such a good feeling. I was able to see my family and friends… My mental health got better. Being able to go out and eat with my family and socialise felt really good after being detained for so long."

193. On 25th June 2015 an ETD was issued by DRC with validity to 25th December 2015. It was received by the Defendant on 8th July 2015.

194. The Claimant complied with his reporting restrictions.

195. On 1st October 2015 (so after four and a half months) the Claimant's re-detention was authorised to effect his removal on the basis that there were no outstanding appeals and he had a current ETD and there were no barriers to removal. It was stated:

> "His ETD has been issued. Mr Louis's deceptive nature is evidenced by his use of several alias names and claim of varying nationalities in the past. In light of his deliberate use of deception it is concluded he could not be relied upon to comply with any conditions of release; he would have no incentive to remain in touch with the Home Office and if released, even on strict conditions he will be highly likely to abscond to evade removal… It has been assessed that the risk of absconding as high (sic)…… Based on all available information, the presumption in favour of release is outweighed by the risks of absconding, reoffending and harm to the public. Therefore I propose that Mr Louis should be detained in order to enforce removal."

196. The decision appears to have been taken in ignorance of the fresh representations. Mr Ó Ceallaigh submitted that as a result of the representations continuing detention could not be justified on Hardial Singh principles. It should have been clear that the Claimant would be entitled to challenge the decision to deport him and given the period which he had already spent in detention, his release and subsequent compliance with reporting restrictions Mr Ó Ceallaigh described further detention as "completely unjustifiable".

197. It is also difficult to see how, given that he had reported for 4 ½ months, the view could be taken that he would be highly likely to abscond.

The second period of detention

[17] Section 4(2) of the Immigration and Asylum Act 1999 allows for the provision of support to refused asylum-seekers.

198. The Claimant was re-detained on 5th October 2015 when he attended at a centre as required by his reporting requirements. He was placed on ACDT[18] in view of previous self-harm.

199. On 12th October 2015 the Claimant (himself) submitted a request for bail and on 13th October 2015 a request for temporary admission claiming that he was:

> "…suffering from mental health and depression. My family is concerned about my release and my Doctor."

200. The Claimant's solicitors attempted to obtain information as to the reasons for detaining the Claimant and were advised that the caseworker was *"away for a couple of weeks and that no more details could be given than was on the detention paperwork*". This was an unacceptable and unreasonable response given that the Claimant had been deprived of his liberty. Someone else should have reviewed the file and given the relevant information to his solicitors so a challenge to detention and/or a bail application could be made.

201. The request for temporary admission was refused on 19th October 2015 on the basis that he posed a high risk of absconding. It was stated that due to his deliberate use of deception it was considered that he could not be relied upon to comply with any conditions of release and that there was a significant risk that he would use false identities to evade the authorities. The false identities theme was a hangover from the view that several aliases had been used in the past. It required analysis of the Newham Social Services records to properly understand the history of the use of the name Sam Louis; but due to the failure to properly investigate, and a lack of reasonable diligence, this information was not available.

202. On the 19th October 2015 the Claimant's solicitors renewed the application for temporary admission. On 22nd October the renewed application was refused.

203. On 30th October 2015 an Immigration Judge refused the Claimant bail for the following reasons:

> I am satisfied that there is no satisfactory alternative to detention because:
>
> *1.* The applicant has a history of entering the United Kingdom unlawfully on a number of occasions. He has shown himself to be adept at evading the Immigration authorities in the process. He has in the past, claimed to be a Belgian National.
> *2.* <u>The applicant was only located by chance. Otherwise he would still be at large</u>.
> *3.* <u>Given the above, I find that there are substantial grounds for believing that he will abscond and not comply with bail conditions</u>.

[18] Assessment Care in Detention and Teamwork.

4. Detention remains proportionate (taking into account the length of time spent in detention) given:
(a) The aforementioned
(b) There are no outstanding appeals
(c)An Emergency Travel Document application has been issued and his removal date is 20/11/15; and
(d)<u>There is no apparent bar to removal.</u> (underlining added)

204. Given that this hearing was solely to consider bail it is, to say the least, very worrying, that the Judge was apparently informed, wholly incorrectly, that the Claimant was only located by chance and otherwise would still have been at large. The correct history was that he had complied with his reporting restrictions and had been detained when he had turned up to report as required. I received no explanation as to how this information was given to the Judge (or if it was given) despite available records.

205. Further, it appears that the Judge was unaware of the outstanding fresh representations from September 2014 which had never been addressed. Those representations were likely to lead to a right of appeal and so constituted a barrier to removal.

206. Although I have no evidence on the issue beyond the decision itself, in my Judgment there are, broadly speaking, only three options as to what could have happened:

(a) The Tribunal was deliberately misled;
(b) The Tribunal was not misled at all i.e. the Judge made mistakes (which should have been immediately corrected by the Defendant);
(c) The Tribunal was misled through error and the belief of the presenting officer for the Defendant was that the Claimant had only been located by chance and that there was no apparent bar to removal.

207. Assuming that it was either (b) or (c) the Judge failed to adjudicate on the issue of bail due to the failure of the Defendant to properly conduct the hearing and put all relevant information before the Judge. I have no doubt that had the Judge been aware of these two factors he/she would have carefully considered whether continuing detention could be justified and on balance it is my judgment that bail would have been granted.

208. On 5th November 2015 the Claimant's solicitors, BID submitted a human rights application and application to revoke the deportation order. It is evident that by that date the Claimant was aware that the intended removal date was 20th November 2015 (although no directions had been issued). The letter included an assertion that the Claimant was currently on anti-depressants and was receiving care from a mental health nurse in The Verne IRC. It was stated that his health records from HMP Pentonville had been requested.

209. As with the previous representations Mr Ó Ceallaigh submitted that as a result of them being made continuing detention could not be justified on **<u>Hardial Singh</u>** principles.

210. On the 15 November 2015 the Claimant attempted to place a razor blade into his mouth and was prevented from doing so by an officer. He was reported as having:

> "...made statements of intent to harm himself if located in the CSU and statements of intent to cut his throat (suicide) if placed in a transport van."

The Claimant's evidence was that:

> "they found me with blades and I had to be held down to stop me from putting them in my mouth… I was feeling really suicidal and depressed to be in that situation. I did not want to go through it again. They were talking about removing me to DRC and I was so distressed. I felt that immigration were playing a game to break me down so that I would go back to DRC."

211. On 16th November 2015 removal directions were set for 20th November 2015. On 18th Mr Richards a case progression manager stated:

> "We have just had some further reps from the above FNO's reps. They have enclosed some medical reps that will need to be considered. We will also need to obtain a COIR, which will not come through quickly. Unfortunately it looks like we will have to review the decision, and possibly give an "in-country" right of appeal. Therefore, we will have to cancel the removal directions set for Friday, as we will not have time to draft an appropriate response."

212. On 19th November 2015 the removal directions were cancelled. A detention review dated 2nd December 2015 included the following comment in relation to the recommendation to maintain detention:

> " RDs were cancelled due to late representation based on medical grounds (sic). The presumption of liberty has been assessed in this case and consideration has been given to section 55 of the Borders, Citizenship and Immigration Act 2009. However, Mr Louis has been served with a deportation order. He has no outstanding applications or representations; it is considered that he would have little incentive to keep in touch with the Home Office. It is considered that in this instance the risk of absconding outweighs this presumption therefore it is proposed that detention should be maintained.*"* (underlining added)

In my judgment the contradictory comments evidence (again) a failure on the part of the caseworker to properly balance/consider the relevant factors.

213. The authorising officer commented:

> "Mr Louis has lodged last minute representations in order to delay removal. RDs were set and we have an agreed ETD, we need to ensure

> that these representations are dealt with ASAP, please speak to Colnbrook urgently and obtain any information required however it appears he has been taking substances and this is of his own volition. We need to have the representations dealt with urgently as the ETD is only valid for a short period. Based on the risks continued detention authorised."

214. The detention review dated 23rd December 2015 repeated the same contradictory comments contained in the review three weeks earlier. This evidences the use of formulaic phrases and repetition of content without adequate thought being addressed to the accuracy of content.

215. The authorising officer stated:

> "… The FNO's ETD is going to expire on 25 December 2015 but it is to be hoped that, having been through the ETD process with the DRC authorities, it will be easier to obtain a new ETD or to have the previous one revalidated. The caseowner will need to make enquiries in this respect once the further representations have been considered. At this stage I consider that progress is being made towards the FNO's deportation. I have considered that (sic) presumption of liberty but I consider that this is outweighed by the risks associated with the FNO's release as discussed above."

216. Progress towards deportation is not the test which should have been applied. As for the reference to the discussion set out above, this was contradictory to comments in relation to representations.

217. On 18th January 2016 the Claimant was granted bail by an Immigration Judge with a condition of tagging. As he was then provided with section 4 accommodation in Scotland electronic tagging did not apply.

Events subsequent to release from detention.

218. The Defendant eventually refused the Claimant's human rights claims of 1st September 2014 and 5th November 2015 on 13th May 2019. The First-tier Tribunal heard an appeal on 13 November 2019. The appeal was successful at first instance. The Defendant has appealed further.

Analysis

219. I start with some general observations.

General observations

220. There are no general limits on what is a reasonable period of detention. Each case depends upon its own facts.

221. I have undertaken a lengthy analysis of the periods of detention as the Court must give due consideration to each of the 1,573 days upon which liberty was lost. It is necessary to guard against a process of skimming over the passing of time and allowing an unacceptable lack of any progress to be overlooked. To a person in detention, particularly in prison, every day of freedom lost matters and the Defendant needs to be able to justify it. In this case I think that principle became lost to sight.

222. The attention and care in the assessment and progression of the case; the reasonable diligence, which is expected of the Defendant has to be seen in light of the fact that a draconian power is being exercised administratively. The overriding sense that I have gained from this case is of a lack of any urgency within administrative processes leading to a situation where although months passed without any material progress this was considered acceptable by the Defendant's employees charged with assessing the need for, and legality of, continuing detention. I accept that maladministration does not axiomatically equate to a lack of reasonable diligence sufficient to amount to illegality, but in the present case the failures, in some cases in isolation and certainly when taken cumulatively, went beyond mere maladministration.

223. I found the details of the review process very concerning. The records reveal not only important mistakes and failure to cross reference or acknowledge the existence of outstanding applications/representations, but also repeated failures to adequately read the records, unjustifiable comments, use of stock phrases and inappropriate prejudgment of what the view taken would be even if further evidence was available[19]. I shall not repeat what I have set out in detail, but examples of mistakes are the assertions that:

a) The Claimant did not have any close family in the UK to ensure that he would comply with reporting restrictions;

b) The Claimant was yet to respond to the questionnaire request when he had already done so (see e.g. 20th March, 19th April and 14th May 2012);

c) The Claimant had not appealed against deportation and the only barrier to removal was securing an ETD (this comment after fresh representations had been lodged).

An example of contradictory comments within the same review is the 2nd December 2015[20].

[19] E.g. "There are claims of family ties within the UK, if this were true, I still would not be satisfied these individuals will provide sufficient control over him given his history, circumstances and expectations".

[20] "RDs were cancelled due to late representations based on medical grounds…. He has no outstanding applications or representations."

224. Examples of comments which, at the time they were made, were in my view unjustifiable given any reasonable evaluation of the full history, were that the Claimant:

a) Showed "total disregard of UK laws" and "a total disregard for law and order";
b) Was "completely uncooperative with any reasonable request of the UK border agency";
c) Was "utterly non-compliant with our processes";

and that

d) The Claimant "provided no evidence of subsisting relationships in the UK"; or
e) That "the delays in this case are of his making";
f) That the Claimant was "actively clouding his past in order to prevent removal";
g) That "there is no doubt that he would not comply with reporting restrictions";
h) That he "would pose a materially greater than average risk of absconding and reoffending";
i) That he would "have little incentive to comply with any conditions of release";

and

j) That "there is no doubt that serious public harm would ensue if he were to re-offend and equally likely that he would go to ground and adopt another false identity if he were to be released pending removal";

k) "It has taken investigation on our part to even get to the position whereby we have been able to make an ETD application. The individual himself has done nothing to assist and could easily have brought his removal and thus his release forward; in essence he has held the keys to his gaol all along but has chosen not to use them."

225. An example of a stock phrase repeatedly used is:

> "we will continue to make enquiries regarding his claimed nationality"

This not being accurate during much of the first period of detention.

226. Examples of failures to have adequate regard to the content of the file when undertaking a review are to be found with the reviews of 23rd November 2011, 28th December 2011, 24th January 2012 and 19th April 2012.

227. Repeatedly during the records covering his long detention, and the presentation of the case before me, reference was made to the Claimant's deception and lack of co-operation. It was, and is, right to pay due regard in particular to the fact that during part of the first period detention, after initial cooperation, the Claimant changed his story and lied, claiming to be Somalian for a period of 10 months. However, this self-limiting period did and does not provide what has been described by the appellate courts as a "trump card" to the Defendant to excuse prior and subsequent failures to adequately assesses and progress the Claimant's case. By the stage that he chose to lie and not cooperate, the Claimant had already been in detention for over 14 months with the Defendant achieving no significant progress despite the information he provided. In my judgment had the case been pursed with reasonable diligence he would not have reached the stage of embarking on such ill thought through deception. He was also showing signs of the subsequently diagnosed mental health problems. In my judgement it would be wholly wrong not to view this period when the Claimant was not only not cooperating but actively trying to deceive the Defendant, in its proper context. Further and tellingly, it also came to an end, yet thereafter the Defendant still could not progress matters through to deportation.

228. Regular detention reviews must be properly undertaken with consideration of all relevant factors starting from the presumption in favour of release and recognising that detention must be used sparingly and for the shortest period necessary. Refusal of voluntary return does not axiomatically equate to a risk of absconding a fortiori a high one. In the Claimant's case reviews progressed in ignorance of all the relevant factors to enable a fair and proper assessment of the risk of absconding, including, most notably the outstanding application for leave to remain, history with social services and his family connections. Also the risk of absconding was repeatedly overstated on what was known, with over reliance on one incident of a failure to report, and used as a trump card within detention reviews which at times contained formulaic justifications in relation to absconding applied without adequate consideration.

229. At no time during the first period of detention was there a timescale for obtaining an emergency travel document. Where return is not possible, for reasons that are beyond the control of the person detained, the fact that he is not willing to return voluntarily cannot be held against him, since his refusal has no causal effect.

230. I turn to the detail of the first period of detention.

<u>First period of detention</u>

Hardial Singh principles

231. Within my findings of fact I have referred to the failure to progress the Claimant's removal with reasonable diligence. In the present case three of the **Hardial Singh** principles are relevant to the analysis of the legality of detention:

(ii) The deportee may only be detained for a period that is reasonable in all the circumstances;
(iii) If, before the expiry of the reasonable period, it becomes apparent that the Secretary of State will not be able to effect deportation within that reasonable period, he should not seek to exercise the power of detention;
(iv) The Secretary of State should act with reasonable diligence and expedition to effect removal.

The absence of diligence on the part of the Defendant is not only relevant to each of these principles, being a necessary consideration when assessing whether continuing detention was within a reasonable time limit, it can be sufficient of itself to give rise to a false imprisonment. It is an obvious issue to address first.

232. In my judgment the Defendant failed to progress matters with reasonable diligence and/or expedition (the combination of which I shall refer to as reasonable diligence) during the Claimant's first period of detention. On careful scrutiny, much of the relevant period was characterised by what Mr Ó Ceallaigh described as "total inactivity" and, after an initial period which would have been required for investigation and decision making, the Defendant did not come close to satisfying the high duty upon a body administratively detaining without charge to progress matters. The Claimant had extensive records which were available to the Defendant, had just basic investigative steps been taken in light of the information that he had provided. The Defendant took more than two years just to reach a decision to deport the Claimant.

233. At the outset of immigration detention on 18th May 2011 the Claimant provided information that his name was Sam Louis, he was born in Kinshasa on 5th July 1989 and that he had been in the care of Newham Social Services and that his solicitors had been in touch with the Home Office. Very importantly, these matters were correct. They combined to provide a route to a wealth of information, and to allow cross referencing with the outstanding application, the 2002 records and the Belgian records. Had the Defendant's case officers been pursuing matters with reasonable diligence these leads would have been followed up and cross-referenced. The records would also have put the perceived use of aliases and risk of absconding into an accurate context to allow proper evaluation.

234. Inexplicably, no attempt was made to contact Newham Social Services. Had the step been taken then shortly after the first detention interview in May 2011 the Defendant would have been aware of the Claimant's nine years of publicly provided accommodation in an area of London close to his brother and sister, that he had an outstanding application, made four years previously, for indefinite leave to remain and as a result had an incentive not to abscond. It would also have produced the birth registration document and revealed that whilst the records showed that his birth/family name was Mayela Sambea that he had been known/recognised as Sam Louis from when he was a child, and this was acknowledged and indulged, by social workers. This would have put the perceived use of "5 aliases" in a completely different light and should have weighed against the likelihood of the Claimant absconding. He had been under the supervision of a local authority since he was 13 years old and settled in a single area close to family members for years. He hoped to be granted leave to remain and had solicitors. He had obvious reasons not to abscond. In short, it would have provided a picture which was very different to that of many foreign national criminals.

235. The failure to take basic steps to follow up on information within their possession also meant that case officers did not cross reference to the Defendant's own documentation and that of other countries. Mr Kates conceded that despite the fact that the Belgian authorities had positively identified the Claimant in 2002 no attempt was ever made to make contact with them. He could provide no explanation as to why the records of the Belgian authorities were never sought during the first four years of detention.

236. Mr Ó Ceallaigh conceded that with the exercise of reasonable diligence the Defendant would reasonably have taken some time to access and process what was available information and make decisions. The question, given all the circumstances, is what was a reasonable period for this to have taken place. Mr Ó Ceallaigh submitted that detention after 23rd January 2012 was unlawful.

237. Some caseworkers appreciated the need for speedy progression. In August 2011 it was stated to be a priority to ensure that a decision can be made on the case within one month. However the majority of other caseworkers appeared to see no urgency at all.

238. On 27th October 2011, it was the view of a case officer that:

> "The subject is very vague, he is unable to give any detail whatsoever. He has no knowledge of his status in the UK and although this might be seen as a deliberate attempt to avoid detection I am convinced that the subject has just been relying on social workers to guide him whilst in the UK. It is obvious that we are not any further forward following this interview, I have established some details which may assist our enquiries
>
> school records –"Rockaby School, Stratford East London

> Brother - "Dadde 07*********
> Social Worker - Patrick , Newham Social Services"

Any adequate perusal of the file should have alerted case workers to the following:

a) The Claimant had stated that he was born in Kinshasa, DRC. He was not stating he was Belgian; rather he did not know what his nationality was given his history (and, as set out above, this may well be due to his reliance on Social Services).
b) He had been in the care of Newham Social Services (and a name had been provided) so there must be records.
c) He had attended school; so there must be records.
d) His bother/cousin's details.

I pause to observe that, as already indicated, it was subsequently stated within the detention reviews that the Claimant had been completely uncooperative throughout his period of detention and provided no assistance. This record alone shows that such an assessment was inaccurate. It is unarguable that from this point the Defendant could have easily undertaken further investigation just by making phone calls.

239. Further if adequate and straightforward enquiries had been made the Defendant would have had access to:

a) The Claimant's outstanding application;
b) The birth certification documentation;
c) Details from the Belgian authorities.

240. If put together, this information would have provided the same detail as that which later satisfied the DRC officials that the Claimant was a national.

241. On 31st October 2011 it was recorded that this information obtained at the 27th October interview *must* be further investigated and "*might just be the opening we had envisaged"*. The Claimant had at this stage spent more than five months detention. The opening had been there from the outset; all that had now happened was that it had widened.

242. On 23rd November 2011 the Claimant's solicitor responded to a request made by the Defendant the same day stating:

> "we have spoken to our client today and confirm that he is not a Belgian national. We note he is a national of Congo and has been in the UK since he was 10 years old."

243. On the 23rd November 2011, there was no reference to the matters which the last review stated "must" be investigated. This evidences a

failure of the caseworker and authorising manager to undertake an adequate review of the file.

244. By late November the Claimant had been detained for over six months. Contrary to what is later stated in reviews he had provided information which enabled access to a wealth of information concerning his history and he had confirmed, correctly, that he had been born in Kinshasa and was a national of Congo. There was no material deception or attempt to hide his nationality and he was being co-operative. He also had an outstanding application for ILR which had not been addressed, had been in the country since 2003, had family connections within the UK (his brother had a passport) and a history of complying with bail conditions with only one failure (which the Claimant put down to mistake and after which he was re-bailed). The Defendant not only had all the necessary information to make a decision upon deportation (and to have sought emergency travel documentation), but had a Claimant who was stating through his solicitors what his nationality was; this being consistent with all the information that should, by this stage have been in the Defendant's possession.

245. On 7th December 2011 the Claimant's solicitor wrote to the Defendant asking for release. It was pointed out that the Claimant's criminal sentence had been completed seven months earlier and no removal directions had been set so removal was not imminent. Reference was made to the presumption in favour of temporary admission or temporary release and that the Claimant's liberty should only be restricted if it was essential to do so. A temporary release address was given.

246. Despite the request for release no adequate review was undertaken. The GCID case record sheet has an entry on 8 December 2011 that reads:

> "Following my interview in October, I have requested information from the caseworker on how the case is progressing, or if further enquiries have been made with certain contacts which were established ?"

247. Mr Fortt placed reliance upon the Claimant's failure to return the questionnaire. In my view this was also not a "trump card" and needed to be viewed in the context of the information. On 27th January 2012 it was returned. It confirmed that the Claimant's nationality was the DRC. The accompanying letter asserted that the Claimant qualified under exceptions 1 and 2 of s.33 of the UK Borders Act 2007 in that removal would breach his Article 8 rights. So the Claimant had now stated for months that he was a national of DRC and had given details of his history in the UK. As I have already set out the picture was a far cry from the facts in several of the cases cited to me of foreign nationals refusing to co-operate with the Defendant. It also further evidences the inaccuracy of the statements in the later reviews that the Claimant was completely

uncooperative with any reasonable request of the UK Border Agency. In my view, given all the circumstances and the length of time already spent in detention, the Defendant should have taken no more than a month to act on the completed questionnaire.

248. On 20 February 2012 a detention review revealed no material progress had been made on matters. Its authors merely repeated many comments previously made in earlier reviews. In my judgment there was a lamentable failure to properly progress matters. Months had passed without any critical scrutiny of the deprivation of liberty.

249. By the end of February 2012 the Claimant had been in detention for nine months; matching the length of the custodial element of the sentence for robbery. His licence period had expired. I agreed with the observation of DHCJ Clare Moulder (as she then was) in **Mohammed-v-SSHD** [2014] EWHC 972 that the whilst the length of detention is not to be directly compared with the length of the custodial sentence, the custodial sentence is relevant in an assessment of the risk to the public if the Claimant is to be released, and thus is a factor to be brought into the overall consideration of what is a reasonable period.

250. Despite all the details provided, correspondence from the Claimant's solicitor and the completion of the questionnaire, no real progression appears to have been on the horizon. As I shall set out in due course, had all the information which should have been available been considered (including the outstanding application for ILR) it is my view that any adequate or proper review abiding by the Defendant's own guidance should have resulted in the decision to release from detention.

251. I have carefully considered all the facts in this unusual case. In my judgment, from 29th February 2012 onwards detention was unlawful by virtue of breaches of each of **Hardial Singh principles** (iv), (ii) and (iii) as:

(a) There had been, and continued to be, a failure to act with reasonable diligence going very well beyond maladministration.

(b) In all the circumstances, including that the Claimant had been detained for nine months, the detailed information which he had provided, nature of the obstacles which stood in the path of the Secretary of State effecting a deportation; the most obvious being that no decision to deport had been taken and there was an outstanding application for ILR, the lack of diligence, the limited risk, when properly assessed, that he might abscond and/or commit further criminal offences (although these considerations are paramount they should not have been overstated) a reasonable period for detention had expired.

(c) On any adequate review of the file it should have been appreciated that the Claimant had co-operated and provided information yet he

> could not be removed before a reasonable period had expired (a deportation decision had not been made and was not imminent). In reaching this conclusion I have borne in mind that there can be a realistic prospect of removal without it being possible to specify or predict the date by which, or period within which, removal can reasonably be expected to occur.

252. Over four months later, in July 2012, the Claimant falsely claimed to be Somalian. As I have indicated if there had been no breach of the **Hardial Singh** principles or the Defendant's' own policy, the Claimant would probably not have lied. He continued with this attempted deception for 10 months.

253. On 23rd May 2013 the Claimant attended a nationality interview during which he reaffirmed that he was Congolese. He had given up on his attempt to mislead. However, this did not kick start any material progress. On 26th September 2013 an entry with rare insight recognised that it was difficult to justify the length of detention to that point. However this entry was made 20 months before the Claimant was released from detention.

254. As for subsequent notable milestones, on 1st September 2014 fresh representations were lodged and I accept Mr Ó Ceallaigh's submission that the fresh representations constituted a yet further barrier to removal (as opposed to detention) as any refusal would have been likely to have resulted in an in county right of appeal. This should have been considered together with the lack of a timescale for an ETD and led to the release of the Claimant from detention at this stage i.e. September 2014. As Mr Ó Ceallaigh also pointed out, consistent with a continuing unacceptable failure to undertake adequate reviews of the deprivation of a person's liberty, no reference was made in any subsequent monthly detention review to the representations between their receipt and the Claimant's release on 21st May 2015, a period of over eight and a half months (and over a year after he had been accepted by the DRC as a national).

255. Even when the Claimant's nationality was settled, matters did not progress with reasonable diligence. On 17th November 2014 CROS advised that:

> "Unfortunately we haven't had a response from Kinshasa and there is not timescale (sic) on when this might be. This along with a number of other ETDs we are waiting for from Kinshasa is chased on a regular basis."

This was over six months after the DRC accepted that the Claimant was a national, yet little or no progress had been made in obtaining an ETD.

256. The next review was on 18 December 2014. The authorising officer made the most remarkably and plainly erroneous comment given the history which I have set out in detail above:

> "It has taken investigation on our part to even get to the position whereby we have been able to make an ETD application. The individual himself has done nothing to assist and could easily have brought his removal and thus his release forward; in essence he has held the keys to his gaol all along but has chosen not to use them. Detention is authorised."

Given the information that the Claimant had provided at the outset of his detention, the failure of the case officers to follow up upon obvious and straightforward avenues of enquiry provided during the first six months of detention, the completion of the detention questionnaire in January 2012, the confirmation (again) in May 2013 that he was a Congolese national (after the period of claiming to be a Somali national), the nationality interview in February 2014 at which he reiterated that he was a Congolese national, and the fact that the DRC accepted after an interview with him that he was a national in May 2014 (seven months earlier), the most benevolent approach possible is to conclude that the comment that the Claimant *"had done nothing to assist"* at any stage, and "*held the keys to his gaol all along*" was made after a failure to undertake anything but a cursory reading of the file. The other possibility is that the author knew the comment not to be true. It would be wrong without additional evidence, and is unnecessary, to grapple with the issue any further. On any view it is clear that there had not been anywhere approaching an adequate review. This is to be added to the fact that there was no reference to the Claimant's further representations made over three months earlier. There was a woeful failure to critically consider the full picture and apply the Defendant's own policy.

257. The reviewing and authorising officer for the detention review of 16th January 2015 provided a somewhat more realistic overview of the history of the case:

> "Case owner action: Please can you refer this case as a matter of urgency to your WFM so it can be escalated. I find it unacceptable that since 2013 we have not really achieved any outcome with this ETD process. It is imperative that we push for this."

And (per Mr Jackson)

> "The barrier to removal is the ETD, and some months after submitting an application we are no further forwards. This should be escalated within CROS and if no movement is made in the next fortnight please come back to me. If we are unable to obtain a clearer timescale for the ETD we will need to consider managing the case on a non-detained basis. Before that, we need one further push

> on obtaining an ETD. I agree to maintain detention but would like an update on the case by 30 January".

Although more realistic than other reviews the authors fail to make any reference to the outstanding representations. Despite there being no further clarification as to when an ETD was to be expected the Claimant was detained for a further four months. As on other occasions within the long detention period, urgent requests for action were not followed up.

258. In the end it required an impending bail hearing to bring this unfortunate period to a close.

Public law

259. Given my findings in relation to the **Hardial Singh** principles I need only deal with the public law argument briefly. The Defendant's power to detain is subject to the limit arising from any unlawfulness caused by a material breach of a public law rule bearing on the decision to detain, such as may arise from a clear and unjustifiable breach of (or failure to follow) the Defendant's own relevant policy. The law requires adherence to the clearly expressed policy of a public authority absent compelling reasons for departure from it.

260. The Secretary of State's policy at the material time was primarily contained within the policy "*Chapter 55 Enforcement Instructions and Guidance".* The policy confirmed that:

> a. That detention be used "*sparingly, and for the shortest period necessary*";
> b. That there is a presumption in favour of release;
> c. That those suffering from medical conditions that could not be satisfactorily managed in detention would not be detained save in exceptional circumstances;
> d. That reasonable alternatives to detention must be considered.

261. The aim of the policy was to ensure a consistent approach.

262. In my judgment the decision taken on or before 29th February 2012, despite the Claimant's representations, to continue with detention after that date failed to properly apply the presumption in favour of release or to properly consider reasonable alternatives to release. The Defendant acted in breach of her own policy. The views expressed within earlier reviews did not avoid the requirement to properly re-assess all relevant factors for and against continued detention.

263. The Claimant's solicitor had written to the Defendant asking for release. It was pointed out that the Claimant's criminal sentence had been completed seven months earlier and no removal directions had been set so removal was not imminent. Reference was made to the presumption in

favour of temporary admission or temporary release and that the Claimant's liberty should only be restricted if it was essential to do so and a temporary release address was given. In January 2012 the questionnaire was returned. At this stage a proper review of the file would have revealed that the Claimant had co-operated and provided information yet he could not be removed before a reasonable period had expired given that a deportation decision had not been made. Put simply there was no end in sight to detention which had already lasted for a substantial period of time. For the reasons which I have set out, including the information available, a fortiori that which should have been available, the limited risk (when properly evaluated) of both absconding and of committing further offences it is my view, had an adequate review abiding by the Defendant's own guidance been undertaken, it should have resulted in the decision to release from detention. The Defendant could no longer lawfully detain the Claimant in line with her own policy.

264. As a secondary argument Mr Ó Ceallaigh submitted that the Claimant's detention was unarguably unlawful from 25th September 2014, by reason of a failure to take into account the fact that the Claimant had outstanding representations to revoke the deportation order which had been made on 1st September 2014. Those representations constituted a barrier to removal (although as Mr Fortt submitted not axiomatically to detention) and, as Mr Kates properly accepted, the Claimant could not lawfully be removed without their consideration They were never considered while he was detained. I accept this submission; the failure to give any consideration to what were obviously highly relevant representations was a clear error in public law terms impacting on the decision to detain. Mr Fortt referred to the subsequent decision in **BCT-v-SSHD**, however in my judgment the Claimant should not have been in detention when this decision was handed down.

265. Given the length of this judgment, and because it would require a further review of the chronology, I will not deal with Mr Ó Ceallaigh's additional argument that there was a breach in policy in that the Claimant's medical condition was one that could not be satisfactorily managed in detention such that he should not have been detained save in exceptional circumstances.

Second period of detention

266. On 25th June 2015 an ETD was issued by DRC with validity to 25th December 2015. It was received by the Defendant on 8th July 2015. The Claimant was re-detained on 5th October 2015.

Hardial Singh principles

267. In my judgment this period of detention was unlawful from the outset applying the second **Hardial Singh** principle.

268. The failure to pursue obvious and necessary avenues of investigation with reasonable diligence which persisted throughout the first period of detention had not been remedied. This meant that information which should have been known about the Claimant's history in the UK, family and local ties were not known. The statement explaining the justification for detention that his:

> "deceptive nature is evidenced by his use of several alias names and claim of varying nationalities in the past. In light of his deliberate use of deception it is concluded he could not be relied upon to comply with any conditions of release; he would have no incentive to remain in touch with the Home Office and if released, even on strict conditions he will be highly likely to abscond to evade removal….. It has been assessed that the risk of absconding as high… (sic)",

This was not accurate. The false identities theme was a hangover from the view that several aliases had been used in the past. It required analysis of the Newham Social Services records to properly understand the history of the use of the name Sam Louis. Due to the continuing failure to properly investigate matters, amounting to a lack of reasonable diligence this information was not available. Given the length of the first period of detention, that he had reported for 4 ½ months, and had outstanding representations that required determination (and would give the Claimant some hope), the view could be not be reasonably taken that he would be highly likely to abscond and/or be likely to commit further offences. In all the circumstances further detention was not reasonable; a breach of the second **Hardial Singh** principle.

269. The decision to detain appears to have been taken in ignorance of the fresh representations which gave the Claimant hope of avoiding deportation. Mr Ó Ceallaigh submitted that those representations were likely to lead to a right of appeal and so constituted a barrier to removal. If it is apparent that the Secretary of State will not be able to effect deportation within a reasonable period, the power of detention should not be exercised; so there was a breach of the third **Hardial Singh** principle. Mr Fortt accepted the principle that the representations constituted a barrier to removal (not detention) but referred to the judgment in **BCT-v-SSHD** and submitted that as a result there was "no prospect at all" of those representations being acceded to or giving rise to an appeal, so they were, in effect irrelevant. In my judgment whilst there is some force in Mr Fortt's submission as to what could have been a decision made on the merits of the outstanding representations they were not, and could not reasonably have been seen as irrelevant. I am not satisfied that matters would have been seen as clearly as he submits. It is important to note that the representations were not certified when they were eventually addressed in 2019. In any event they needed to be addressed, and given the history of delay even when a decision was considered urgent (e.g. August 2011) this was likely to take months. In the interim they gave the Claimant hope of avoiding detention which fed into the limited risk of absconding (which he had not done for over four months) and the

reasonableness of detention. On the Defendant's own policy detention must be used sparingly and for the shortest period necessary. In my judgment the existence of the representations was part of the circumstances to be taken into account when considering the second principle.

270. It is of very considerable concern that on 30th October 2015 an Immigration Judge refused the Claimant bail for erroneous reasons. The Judge failed to adjudicate on the basis of the true picture due to the failure of the Defendant to properly conduct the hearing and put all relevant information before the Judge. As I have already indicated it is my view that had the Judge been fully aware of the facts he/she would have carefully considered whether continuing detention could be justified and on balance bail would have been granted. Given these findings continued detention after this date cannot have been reasonable in all the circumstances in any event.

271. As a fall back argument Mr Ó Ceallaigh submitted that at the very latest from 5th November 2015 when the Claimant submitted further representations through Bail for Immigration Detainees his detention could not be justified by reference to the **Hardial Singh** principles. It was or should have been clear at that stage that he would be entitled to challenge the decision to deport him, and in the context of his reporting and the extraordinary period for which he had already been detained further detention was completely unjustifiable. I accept that submission.

Public law

272. In my judgment from the outset the decision to detain for a second period was also a breach of the Defendant's own policy which required detention to be used sparingly and for the shortest period necessary, application of a presumption in favour of release and that reasonable alternatives to detention must be considered. The Claimant had reported for 4 ½ months, and had outstanding representations that required determination (which would give an obvious incentive not to abscond) and in respect of which there was no timescale.

273. I also accept the submissions that:

(a) the failure to give any consideration to the outstanding representations of September 2014 was a public law error and I am not satisfied, there being no evidence on the issue, that had they been considered the Defendant would have detained in October 2015 in any event. No time-frame for removal existed until a decision was made, and this needed to be considered together with the fact that the Claimant had reported for 4 ½ months (i.e. had not absconded) and the length of the first detention, and

(b) There was in any event a breach of the Defendant's policy after receipt of the November 2015 representations and detention after this date was "completely unjustifiable" given the relevant principles as set out.

Conclusions on the legality of detention.

274. The answers to the first six specific questions posed at the beginning of this liability hearing can be shortly summarised.

275. Both the Claimant's first and second periods of detention were unlawful (the first in part only) by reference to common law limitations and also in breach of a public law by rule bearing on the decision to detain. Further in respect of the public law errors the Defendant has not proved that the Claimant could and would have been detained in any event.

276. The seventh question was: did the Defendant cause the Claimant to suffer personal injury? To answer this question it is necessary to consider the impact of detention on the Claimant's mental health. This requires an analysis of the expert medical evidence.

The Claimant's mental health

277. As set out above the Claimant first came to the attention of the Prison Health Service in February 2012 and began to make threats to kill himself. There had been no issues whilst he had been serving the sentence for his original offence. From then onwards he presented, at various times, with a variety of complaints including feeling stressed, depressed and unable to sleep; being off his food; losing weight; thinking of harming himself; of suicide, and there were incidents of him setting fire to his cell, smearing faeces on the wall and barricading himself in. He also complained of hearing voices. He was seen by a psychiatrist on a number of occasions and given the diagnosis of an adjustment reaction disorder and moderate depression.

278. I turn to the expert evidence in relation to the Claimant's mental health.

279. I had a report in the bundle from Dr Taylor who was instructed by the Claimant's solicitors and examined him on 13th September 2017. It was his view was that the Claimant's symptoms were consistent with a diagnosis of post-traumatic stress disorder. He opined that the Claimant's loss of control over his situation and deprivation of liberty without clear limits of time were sufficient to trigger the response (also that there were specific traumatic events arising out of interaction with the prison officers and his times in segregation). Dr Taylor did not give evidence and Mr Ó Ceallaigh did not rely upon the opinion set out in the report.

280. The Claimant was referred by his general practitioner to a crisis mental health team on 4th February 2018 after attending Accident and Emergency. The trigger appears to have been an acute psychotic episode and he reported that he had schizophrenia and was hearing voices. Someone had broken into the flat he had in a shared house and this appeared to trigger the incident. Eventually the mental health team were unable to contact him and he was discharged back into the care of his GP. The Claimant reported that prescription medication and reviews by the mental health crisis team led to an improvement.

281. There was a further referral to mental health services in Rotherham/Doncaster on 6th August 2019. This time he was feeling low and depressed and had suicidal thoughts.

Dr Qurashi

282. Dr Qurashi was instructed on behalf of, and examined, the Claimant. The interview took place on 12th September 2019 so over two years after Dr Taylor's examination and assessment. He had the Claimant's witness statement.

283. Dr Qurashi thought the Claimant had been more ill when he saw Dr Taylor. Indeed the Claimant informed him that he thought his mental health had improved albeit he continued to experience depressive and anxiety symptoms. Dr Qurashi thought objectively the mental state examination showed a clear improvement from September 2017. It was his opinion that the Claimant's mental health had fluctuations in terms of severity and the type of symptoms associated with times of stress, which caused his mental health to deteriorate, and he became much more symptomatic with psychotic symptoms in the form of auditory hallucinations. Overall his mental health was fragile and his recovery brittle.

284. Dr Qurashi noted that from February 2012 the Claimant was subject to an ACCT process which is designed to inform care planning for persons identified as being at risk of suicide and/or self-harm. He began to use cannabis as a maladaptive strategy to cope with "intolerable experiences".

> "It is very likely that Mr Louis' mental health continued to deteriorate with a suicide attempt on 15 January 2013 where he set fire to his cell with the biological symptoms of depression. From February 2013 there were reports of Mr Louis experiencing auditory hallucinations. He is described as appearing flat, withdrawn and was noted to have lost a significant amount of weight. A decision was made to admit Mr Louis to the healthcare wing and the prison establishment. It is in the context of a serious mental illness that violent ideation emerges and this is not uncommonly seen in mentally unwell individuals"… "Psychotic and depressive symptoms continue to be documented throughout March 2013 with reported property damage, disturbed behaviour and a prison

psychiatrist correctly assessed Mr Louis as being psychotic and that the psychotic episode may be the onset of a more severe mental illness."

285. It was Dr Qurashi's view of the records the Claimant was::

> "experiencing a severe mental illness that is best categorised as a severe depressive episode with psychotic symptoms.
> This is a life-threatening mental illness, as in Mr Louis's case, due to the increased risk of suicide arising from command auditory hallucinations to commit suicide, depressive cognitions of hopelessness regarding the future, reduced self-esteem and chronic depressed mood with suicidal ideation. Self-neglect and weight loss are frequently seen, as in Mr Louis's case. It is my view that, at this stage, Mr Louis was a vulnerable individual, in need of urgent and effective care and treatment, arising from the severity and effect of the severe depressive episode with psychotic symptoms. His presentation may have impacted on him being assessed as a vulnerable mentally disordered individual".

286. As to causation he stated:

> "it is, in my view, relevant that it was the perceived nature of the detention from May 2011, in that it was seen by Mr Louis as arbitrary, unfair, prolonged, which contributed in very large part to the onset of his chronic and severe mental illnesses…. Therefore, I conclude it was not simply the fact he was detained but the type of detention he experienced whilst held under immigration powers, aggravated by separation from protective factors to maintain his mental health, including contact with family members…"
>
> "although psychological trauma can be triggered by a single, life-threatening event, in Mr Louis' case it appears to have been the chronic psychological attrition of, in his view, the prolonged arbitrary detention, with no understanding or control of release and genuine fear of harm/and or destitution at the thought of being deported to the Democratic Republic of the Congo…. In conclusion Mr Louis' psychiatric disorders have arisen, substantially, due to his detention and experiences in custody from May 2011. The impact on his mental health has been marked, long-term, ongoing and detrimental"

Dr McLaren

287. Having been instructed on behalf of the Defendant Dr McLaren saw the Claimant on 23rd of August 2019 (report date 30 September 2019). He recorded the Claimant as saying of the suicide attempt in 2013:

> "I just gave up on life. I had no hope, I was not getting any relief… They might hold me for 10 or 20 years."

288. Dr McLaren noted that in January 2013 the Claimant was triaged and found to be suffering with an adjustment disorder related to his deportation problem. By the end of March there were entries in the records setting out that there was no evidence of the Claimant being mentally or physically unwell and on 12th April he did not attend for a mental health clinic appointment with Dr Maggio. On 24th April he did see Dr Maggio and reportedly felt moderately better (he had changed his immigration solicitor and felt more confident). Whilst in November 2015 it appears he tried to put a razor in his mouth and stated that he would cut himself and his own throat, by December 2015 psychiatrists found no evidence of serious mental disorder and queried whether there were dysfunctional personality traits.

289. Dr McLaren said that the first reference to hearing voices that he could identify was from the 27th February 2013. He stated that it appeared to be the final diagnosis of Dr Maggio that there was an inconsistent presentation and the most likely diagnosis was of an adjustment disorder (although he noted that on 5 March 2013 Dr Maggio's impression was that the Claimant was having a psychotic episode). Dr McLaren stated:

> "During detention the claimant was variously diagnosed as having a moderate depressive episode; psychotic episode; manipulative behaviour (which would suggest maladaptive personality traits) and adjustment disorder. From the information available he was never prescribed an antipsychotic and the diagnosis after assessment appears to have been an adjustment disorder".

290. After his examination Dr McLaren described the Claimant as a vague historian (although not trying to mislead or exaggerate the severity of his symptoms) showing no signs of mental disorder. He stated that from the information available, the Claimant's current condition could be best diagnosed as residual mild symptoms of an adjustment disorder.

291. As for the causation of the adjustment disorder Mr McLaren stated:

> "on the balance of probabilities, the major stressor appears to have been the claimant's uncertainty over his immigration status and fear of deportation, which continued through to March 2016. In addition, his imprisonment, particularly when he was placed away from London and access to his family materially contributed to the causation of the adjustment disorder. His social circumstances have remained unstable…"

And

> "it is difficult to dissect the effects of stress associated with the detention from the distress associated with the threatened deportation. On the balance of probabilities however detention did

> materially contribute to the development of the adjustment disorder…"

292. Dr Qurashi and Dr McLaren prepared a joint statement. Dr Qurashi stated that on examination he found theC to be suffering from a mixed anxiety and depressive disorder. In respect of past diagnoses he was of the view that the Claimant had suffered a severe depressive episode with psychotic symptoms during his detention.

293. Dr McLaren maintained the opinion that on the balance of probabilities the Claimant (solely) suffered an adjustment disorder in the first quarter of 2013. Dr Qurashi set out that in all likelihood his mental illness was more severe i.e. he had a more severe depressive episode with psychotic symptoms.

294. Dr McLaren also stated that it was his view that the history was of emerging maladaptive personality traits prior to the period in detention. Dr Qurashi disagreed. As the for the impact of detention:

> "In the opinion of Dr Qurashi, the major stressor and main causal factor to the onset of his mental illness was the Claimant's reaction to the arbitrary material detention without any clear hope of release. Dr McLaren agreed that the material detention was a significant stressor for the Claimant and, on the balance of probabilities, interacted with his maladaptive personality traits to cause the adjustment disorder."

295. Both experts gave oral evidence. The remaining differences of opinion between the two psychiatrists can be summarised shortly. Dr McLaren believed that the Claimant had maladaptive personality traits that predisposed him to development of an adjustment disorder. It is his view that when in detention the Claimant developed such a disorder which had within its symptoms depressive elements and also psychotic episodes. He did not believe that in the taxonomy of diagnoses the condition developed to a depressive order which is seen as a more serious diagnosis.

296. Dr McLaren thought it important to note that the Claimant had had no significant treatment for depression and that it was unlikely that if there was a free standing depressive condition that it would resolve spontaneously. He considered a fluctuating adjustment disorder to be a more realistic diagnosis particularly as adjustment disorders were usually self-limiting whereas a depressive reaction would last longer. He believed that the depressive episodes were transient and self-limiting; which is more consistent with an adjustment reaction disorder with underlying maladaptive personality traits. It was a condition with a variable and fluctuating state.

297. Dr Qurashi was of the view that the Claimant's condition was sufficiently serious as to warrant a diagnosis of a depressive disorder i.e. a more serious diagnosis than adjustment reaction disorder. He believed

that it was certainly the case that the diagnostic criteria for adjustment reaction had been met, but the condition was more properly diagnosed as a depressive disorder. He believed that treatment did have an effect and indeed the reaction to antidepressants tended to underpin the diagnosis.

298. Both experts clearly had respect for the other's view and recognised it as a legitimate alternative view to their own. The differences in opinion were not great.

299. When assessing their evidence it is, in my view, significant that Dr McLaren has never worked in a prison and/or with those detained in a custodial settings.

300. I accept that the Claimant had developed maladaptive personality traits prior to his detention. A number of incidents had culminated in the offences for which he was given a custodial sentence. He had been separated from his parents at a relatively young age, was probably exposed to very difficult things in his youth, had arrived in a new country where he did not speak the language and was shortly thereafter effectively rejected by a close family member (his brother). Thereafter he was under social services care/support, without parental assistance and attending at a school where he did not speak the language. He suffered enuresis. He had no consistent role models. Finally, there is reference to him associating with 'a bad crowd". However, it is very important to note the point made by Dr Qurashi that the Claimant seems to have coped very well with his period in custody for his offences. There was no reference to any mental health issues and he even appears to have benefited from the classes and behaved well. Given the pressures and challenges of prison life if the Claimant had a very strong, or even a strong, predisposition to use maladaptive strategies such behaviour over a prolonged period would be highly unlikely. This period contrasts very sharply with the detention, at times seemingly without limit, which followed from May 2011. In my view Mr McLaren placed too much emphasis on maladaptive personality traits.

301. I also do not accept Dr McLaren's view that the Claimant's immigration status was the major stressor that led to the development of his mental illness. If so it would have been likely to have manifested itself well before February 2012. In my view immigration status was a stressor but the major stressor, and effective causative factor of his illness, was the fact of detention (seemingly without an end in sight). Dr McLaren agreed with Mr Ó Ceallaigh that the fact that no decision to deport was taken for two years would have been a major stressor for the Claimant who was in detention and separated from his relatives. As set out at paragraph 4.10.43 of Dr McLaren's report there came a stage when the Claimant stated he was not even bothered about his immigration status. He had "given up" caring. I also note that it does not appear that manipulative behaviour was thought at the time to be a strong element of his presentation. Indeed there was only one reference to such behaviour within the records. In my judgment the main operative cause in the

deterioration in the Claimant's health was that he was in prison/detention without the hope of imminent release.

302. I also accept that the Claimant's condition after release was consistent both with maladaptive traits having being overemphasised and also with the fluctuations in his mental health whilst in detention, in that it deteriorated when faced with increased stress.

303. As Dr Qurashi pointed out there is no formal condition of prolonged adjustment disorder, as an adjustment disorder is usually self-limiting within weeks and months. If what is believed to be an adjustment disorder has not resolved within months then reclassification must be considered.

304. Given the recognition of moderate depression and potential psychotic episodes in the contemporaneous records, the fact that there was some reaction to medication and the prolonged nature of the mental health issues in my judgement the majority of practitioners would view Dr Qurashi's diagnosis is more accurate i.e. in the taxonomy of diagnoses the Claimant's condition had gone beyond mere adjustment disorder to a more serious diagnosis of a depressive condition.

305. It is also my finding that the cause of the Claimant's depressive disorder was his detention. Had he been released on bail his mental health would not have deteriorated and he would not have developed the condition.

Conclusion

306. For the reasons set out the I find that the Claimant was unlawfully detained and that the detention caused personal injury.

307. This judgment has solely considered liability issues. I now leave it to the parties to seek to agree an order covering the directions necessary for the determination of the quantum of damages.

308. I conclude by expressing my thanks to both counsel for their most helpful submissions, both written and oral.