CO/134/2008

Neutral Citation Number: [2008] EWHC 1990 (Admin)
IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
THE ADMINISTRATIVE COURT

Royal Courts of Justice
Strand
London WC2A 2LL

Monday, 23 June 2008

B e f o r e:

SIR GEORGE NEWMAN
(Sitting as a High Court Judge)

Between:

THE QUEEN ON THE APPLICATION OF MUSTAFA JAMSHIDI
Claimant

v

SECRETARY OF STATE FOR THE HOME DEPARTMENT
Defendant

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(Official Shorthand Writers to the Court)

Mr Paul Richmond (instructed by Luqmani Thompson) appeared on behalf of the **Claimant**
Mr Neil Sheldon (instructed by Treasury Solicitor) appeared on behalf of the **Defendant**

J U D G M E N T
(As Approved by the Court)

SIR GEORGE NEWMAN:

1. This is an application for judicial review pursuant to permission granted by Ouseley J on 16 April 2008.

2. There are two issues before the court today, both of which relate to whether the current administrative detention of the claimant is lawful. The judicial review application, by agreement, is also pursuant to amendments which have been foreshadowed, and an application to this court, which I have indicated should be granted, will also embrace two further points: one of which will depend upon the outcome of an appeal of a judgment of Munby J, which concerns the impact of the failure to carry out statutory reviews, namely whether the failure of the Secretary of State to do so is decisive of the legality of detention; and secondly, an issue which needs further consideration by the Secretary of State and consideration by both parties, namely what can be described as an unpublished policy, which has been in operation for some time, governing the detention of persons it is proposed to deport, who have a background of crime and violence (whether physical violence or sexual violence), and an approach in policy which was adopted in relation to such detainees. That issue needs to be formulated and is the one in respect of which, after disclosure, the claimant will have and has permission to amend, and the matter therefore today about which I am to now give a judgment on is in effect an interim judgment on the limited aspects which I have stated.

3. Both counsel conveniently addressed the first question which is before the court, namely whether there is a realistic prospect of this claimant being removed to Iran first. It is also, as I shall endeavour to explain, an issue which embraces significant considerations relevant to the second issue, namely whether his detention is unlawful because of the unreasonable period of time which has elapsed since November 2005 when he was first made subject to administrative detention.

4. The claimant is a citizen of Iran. He was born on 21 September 1969. He arrived in the United Kingdom in November 1997 on false documents and he claimed asylum. The asylum claim was refused in March 2001. There was an appeal; that was dismissed, but on 12 July 2002, he was granted exceptional leave to remain.

5. The asylum history has little bearing on the matters which I have to decide today, other than that I observe that he, having arrived on false documents, is not, it now seems, someone from Iran who is in possession of his genuine documents of identity. The absence of his birth certificate or an identity document card is central to the problem which has arisen. I should make it plain that the fact that he entered on false documents is not something that I hold against him for the purposes of the hearing today, but it is worthy of note because it is a factor, as we all know, in so many instances of those who come to claim asylum that they do come on false documents, but in the event that, for one reason or another, the time comes for their removal, the need to have genuine documents establishing their identity and the place where they come from can be of critical significance to the enforcement of the immigration laws.

6. The claimant was convicted of robbery on 1 November 2004 and was sentenced to 30 months' imprisonment. On 29 November 2005, the claimant completed his custodial sentence. Shortly before that date, there is evidence that he attempted to abscond from

prison, and that conduct has been relied upon in the course of the matters which fall for investigation today. He has been in administrative detention since 30 November 2005. That is a period of some two years and eight months.

7. The history of his detention, passing over as I will the absence of reviews and dealing only with the documents as they are before the court, can briefly be traced as follows by reference to the records we have. On 4 February 2006, there was a monthly progress report provided to him, and it recorded that, on 21 December 2005, the claimant refused to complete the travel document application form to effect his removal despite stating that he wished to leave the United Kingdom. He was told that arrangements were being made for an immigration officer to interview him in connection with documentation, and he was told, as is normal form, that it is "in your interests to co-operate with this process as it may potentially reduce the length of time you spend in detention prior to your removal from the United Kingdom". The document also records that he had by this time signed a disclaimer to waive his appeal rights. It was said in this letter that he had to that date failed to co-operate in the application process, but he was also told his case would be reviewed.

8. The next relevant document in this regard is a monthly review dated 12 July 2006. He was told he had previously failed to complete a travel document application, and on 9 February 2006 "you refused to sign the application". This can be fleshed out in a little more detail because it was on 30 January 2006 that the claimant informed the Detention Centre that he was prepared to complete the Emergency Travel Document application form. On the 9th he was interviewed and the application form was completed, but it was not signed. The court knows not why it was not signed. Mr Sheldon, for the Secretary of State, says this is perhaps the first of a number of significant indications that this claimant has throughout deliberately gone some way to co-operate, but nevertheless at the critical time in order to stall matters has failed to co-operate. The notice from which I was quoting of 12 July also went on to state:

> "It is in your own best interests to supply original or certified copies of documents proving your identity and nationality, for example a birth certificate. This may help to speed up the travel documentation process and may reduce the length of time you may have to remain in detention, pending removal."

9. Then I might observe, significantly, having regard to the detail of this case, the letter went on to observe:

> "It may be helpful if you could contact your brother or any relatives in Iran in order to obtain these documents."

10. He was then reminded that if he wished to speed the case, he should speak to an immigration officer at the Removal Centre, and he was told that he was to remain in detention. At this time, I think filling in a little bit more, what was under consideration was whether or not he should be released on some basis, and it had been concluded he could not, for, among other things, he had not been able to show that there was suitable accommodation, but he was also told because he had a previous record of absconding

and, as one might expect, his failure to co-operate with the process was also listed as a matter against him, and what was said to be his failure to produce evidence of his identity.

11. Then again on 4 October 2006, he was sent a monthly report. All I should add is that, again, the facts show that it was on 1 April 2006 that he was sent a reminder to complete and submit the release questionnaire which he had been sent on 13 March, and then on 14 April he did so, partially completed, accompanied by a letter from the claimant's brother. This was all in connection with his possible release to his brother's flat. Again, it is taken as an indication of the way in which this claimant co-operates, that somehow or other he does not quite finish the task required at any particular time.

12. Back to 4 October. He was told that the Iranian Embassy had refused to issue an Emergency Travel Document because he was unable to provide the supporting evidence. He was told that the onus "is on you to provide documentary evidence of your identity", and the reason why was repeated, namely that it would reduce his time in detention. He was again told it was in his own best interests to supply it, and he was again told that it would be helpful if he could contact his brother and any relatives in Iran to obtain the document. His detention was upheld, for reasons which reflect what I have already recorded, and it is unnecessary, having regard to the record in the documents, to recite further from that.

13. On 3 November was another monthly review, upholding his detention, and in that he was told that he would remain in detention, and among the reasons for doing so was his refusal to co-operate and the fact that copies of these essential documents, for example a birth certificate, were required. At this time, or shortly afterwards, consideration was given to commencing criminal proceedings against the claimant. The question is not taken further for reasons which may be related to the prospects of success. But, in any event, there was an Emergency Travel Document interview which took place on 11 December. Prior to that, on 1 December, he had been provided with a monthly progress report which was in very similar terms to those I have already recited from, and I need not say any more other than that the position remained the same.

14. Then we had what Mr Sheldon relies upon as another instance of superficial co-operation, but in effect stalling. The ETD interview was scheduled for 11 December, as I said, however the interview could not proceed because the claimant refused to participate, suggesting, as the record shows, that he did not speak Farsi but could speak Spanish. So on 15 January 2007, another interview was attempted with a Spanish interpreter present. On this occasion, the claimant denied being able to speak Spanish, but nevertheless those concerned had the foresight to have a Farsi interpreter available, and so the first stage of the interview was completed.

15. The ETD interview was completed on 16 March 2007, but, as we know, and it was not known by everybody at the material time, the completion of the ETD material without the support of the evidence going to the claimant's identity was a step which had to be taken, but it was a step which nevertheless could not lead to his removal. At or about this time, the detention review, in particular the detention review dated 20 April, records under the heading "Likelihood of removal within a reasonable timescale":

> "Documentary evidence of his nationality is to be pursued as this is the only barrier to the travel document being issued. It is thought that these documents (birth certificate or similar) or certified copies can be obtained from the Iranian authorities.
>
> Once this issue is resolved removal directions can be set."

16. Detention was advised because of his disregard of the laws of the United Kingdom and his likelihood that he had failed to comply with conditions of release. At or about this time, namely in April 2007, the defendant provided the claimant with details of a Farsi website. Apparently the defendant understood that by using the website there was a prospect that he could obtain his identity documents through the website. This was the Secretary of State's understanding of the matter, but as events have proved, according to a letter from a voluntary organisation who carried out the attempts, namely London Detainee Support Group, they reported to the Immigration Service on 23 June 2007 that it was not possible because they could not get through to access the content of the website without official authorisation. So that line of help in the situation proved fruitless. But in fairness to the claimant and to Mr Richmond's argument, he has rightly focused upon this part of the conduct of the claimant as a significant factor for the court to weigh when considering how deliberate the claimant has been in stalling his return by thwarting access to the relevant documentation. He urges the court to conclude that had he wished to stall in the way alleged by the Secretary of State, he would not have permitted this to have occurred because it might have resulted in the relevant documentation becoming available.

17. Back to the chronology. Move forward now to October 2007, when the claimant indicated a willingness to be returned, stating that he wished to take advantage of the facilitated return scheme. So far as the detention reviews are concerned, the material one which comes into play is dated 21 October 2007, which reports under the heading, "Progress since last review":

> "I contacted Colnbrook IRC on 28 August 2007 and requested that someone speak to the subject regarding the letters that I had sent to him previously. They informed me that subject was not co-operating as he was not willing to do things that I had explained on the letter dated 17 July 2007.
>
> On 8 September 2007 Rob Kirk ... interviewed subject regarding the different alternatives that could assist him in obtaining documentary proof, however the subject was not willing to comply. On 19 September 2007 I spoke to Heather Lewis about this case and asked her whether or not it was worth serving the IS 35 and pursuing prosecution. However she informed me that due to it being difficult to remove Iranians, their[sic] would be no point. She advised that I arrange for an [immigration officer] to speak to the subject again ... to see if he changes his mind and could threaten the IS 35."

Well, maybe the progress which was thereafter made had some impact, because on 14

October the next report records that he was interested in the facilitated return scheme, but the fact remained that in November 2007 he had still not provided documentation to the Iranian authorities, and there was nothing by way of an explanation at that date as to why the documentation had not been forthcoming through the agency of either relatives in Iran or his brother in London. Last, the preparedness to participate in the FRS scheme was really of little import.

18. So it is that in December 2007 the record shows what occurred so far as the claimant was concerned. The detention review, dated 17 December, states:

> "On 14 November 2007 [the claimant] informed staff ... that he had arranged for his family to obtain his birth certificate for submission to the Iranian Embassy. This has not yet been received. Advice from RGDU suggests that birth certificates can be easily obtained from the Iranian authorities in Tehran."

On 14 November, that is what the record shows he said.

19. A letter dated 1 November 2007 from his solicitors, Luqmani Thompson and Partners, stated:

> "We believe there may be some dispute as to whether he has taken all reasonable steps regarding the Home Office's suggestion to obtain a birth certificate via his family, but even if the Home Office will not accept he has given his full co-operation to date, whilst this is relevant to what length of time for his detention may be reasonable, it does not justify indefinite detention."

These are one of a number of salvos which were being made by the solicitors, which of course ultimately led to these proceedings being launched in January 2008.

20. The statement on 14 December from the claimant that he had arranged for his family to obtain the birth certificate was recorded in a letter dated 14 November from the Border and Immigration Agency to the solicitors. It states:

> "He also said that he has been in touch with relatives in Iran who are arranging to have his birth certificate sent to him. Once this has been received, we can submit a request for a travel document to the Iranian authorities. This proof of identity together with a willingness to return to Iran means that there is every reason to believe that a travel document can be issued within a reasonable timescale."

21. That letter brought forth a response on 20 November, in which, presumably on instructions, the solicitors stated:

> "Mr Jamshidi has been in touch with his mother in Iran, and requested not that she send him his birth certificate, but that she makes an effort to see if it is possible to get him a new birth certificate, as he does not currently have one. We believe this is an important distinction, and it is far from

> clear to us either that his mother will be able to produce such a birth certificate, or if she is what the time scale for doing so is likely to be. Secondly whilst it is true he has asked his mother to do so, we are not aware of whether she is in fact doing so or not. Again this is an important distinction. Given the belief of Mr Jamshidi's family that his life will be in danger if he is to be returned to Iran, it is quite possible that his mother will in fact not assist with the removal regardless of her son's instructions to do so. At this point, we simply do not know."

22. So it is that we come in this chronology of events to 20 November 2007. After months and months of an awareness on behalf of the claimant, going back to July 2006 if not earlier, that what was required was that he should, through his family if that was necessary, obtain documentation which was essential to his removal, on the claimant's own case there is no evidence that he did anything about it until on or about 14 November. According to his evidence, so far as it is recorded in the reports, he had no reason to believe that his family -- mother, brother or anybody else -- would refuse to co-operate. Indeed, the very opposite was stated by him because he told the relevant people that they would because he expected to get it. Where the belief that he would be in danger if he was returned to Iran came from, with such sufficient force to impact upon the conduct of the mother and the brother, or any other member of the family who could assist, is not clear. It is not clear because although the brother is in the UK, there is no evidence from him. There is no evidence from the mother, and all we have is a statement from Mr Coleman, the solicitor, and this correspondence to suggest that, for some reason or another, which is not elaborated upon, the family fear that he is in danger and will not co-operate in respect of a request which they must have received from the claimant himself. They have refused to facilitate his wish to return to Iran.

23. The chronology continues with a letter dated 23 November from the solicitors. This one, handed in in the course of the hearing, confirms that the claimant had been in touch with his relatives, requested assistance-

> "... but it is our understanding they are not prepared to offer this assistance. [They] remain of the belief that his life is in danger were he to return to Iran, and so are not prepared to help with his repatriation."

24. Then there is another paragraph which reflects the paragraph in the earlier letter, which in the light of the quotation I have just recited does not seem to make a great deal of sense, but that is neither here nor there. Therefore, one must pause and see what the evidence is, since we are now concentrating on the critical question which arises: why is it that he has not been removed, and why is it that he is still in detention.

25. I have already observed that there is a witness statement from the solicitor, Benjamin Coleman, and in paragraph 8 of his statement he says:

> "In November 2007 the claimant requested that his brother visit the Iranian Embassy in London in order to try and arrange a new birth certificate and that he contact his mother in Iran with regard to the same. On 22 November 2007 I spoke to the claimant's brother, who confirmed

> that neither he nor the claimant's mother were prepared to assist with this. On 23 November 2007 we notified the Home Office of this, and once again advised that we believed detention to be unlawful and that we would now look at initiating proceedings in this."

26. On one reading of paragraph 8, it would seem that the only person who made any contact with the mother in Iran is the brother, and it would seem that the brother was certainly of the view that he was not going to co-operate. It would seem at least possible -- though because of the absence of evidence one cannot really take the matter to a real conclusion -- that in this whole cycle of events, the evidence of the brother, who is in the United Kingdom, would obviously be of very significant import in resolving what it is that is causing this impasse. It would also go some way to clarifying the extent to which there is any disagreement between the claimant and his brother. It would also go, as would indeed a witness statement from the claimant, to show what efforts the claimant has made in respect of this important matter which it is in his interests to occur -- for example whether he has urged his brother's help. The absence of evidence, in my judgment, is critical to the resolution of the issue before the court.

27. After the issue of the judicial review in February 2008, immigration officers went to the Detention Centre and attempted to speak to the claimant to ascertain whether he still wished to co-operate in obtaining a birth certificate, but he refused to speak to the immigration officers or to leave his cell. By this date it would seem, and this comes from the statement of Mr Shephard of the UK Border Agency, the claimant could have been moving to the position which he ultimately adopted on 22 May 2008 when he stated that he would not co-operate with the ETD documentation process until after his judicial review had been completed.

28. That is a survey of the relevant material which is before the court in connection with the issue as to whether there is any prospect that within a reasonable period of time he could be removed. There is no dispute between Mr Sheldon and Mr Richmond as to the relevant principles of law which are to be adopted in relation to an issue such as this. In any event, on this part of the case it is substantially simply a question of fact on all the evidence before the court as to whether there is a reasonable prospect that he could be removed.

29. As I conclude the position to be, there is every reason to believe that he would be removed within a very short space of time if a birth certificate or an identity card or other required proof of identity was available. I ask the question therefore: what prospect is there that such a document or documents could be made available? It seems to me that they could be made available if a sufficiently firm request was addressed to those who could assist in obtaining the documents. To have made simply one request, which on the evidence the claimant did make, but to do no more, and to provide no comment to the court as to the dilemma which the conduct of his family has apparently presented him, seems to me to indicate or leave open whether or not adequate explanation or adequate pressure has been brought to bear by the claimant on those who can assist him to produce the documentation. In this regard, one also must observe that whilst those who have a part to play in people being returned to countries such as Iran

may have sincere subjective fears for what might happen to a member of their family, and whilst in a particular case such fears might have a strong bearing in the court having to resolve an issue such as this (namely, what are the prospects?), the court is bound to observe that, to have no evidence at all from the family members, to have no elucidation of the reasons for their fear, and to have no particularisation of the circumstances as to why they believe there could be a risk -- and indeed not simply in danger but that his life may be in danger -- leaves the court in a wholly speculative position.

30. A reasonable basis of fact and a subjective judgment of fact might provide credibility to the assertion of a belief, but the court has not been provided with any basis for which this belief has been formed, nor it would seem has there been any effort on the part of those acting for the claimant. His wishes are being contradicted, and his legal advisers who apparently, knowing the interests of their client, as they have been expressed by the claimant, namely that he should return to Iran, are being thwarted have not engaged in any meaningful exchange with the family in order to clarify or assist their understanding of the position. They have effectively been the medium for communication to the court of a wholly unparticularised position, which the court is now invited to adopt, on the basis it benefits the claimant. It might, if there were more evidence, but I am not prepared to accept the contentions as sufficient to determine whether or not there is a reasonable prospect of this claimant being returned to Iran.

31. Therefore, so far as the first issue is concerned, I find in favour of the submission of the Secretary of State that there is, on the evidence before the court, a reasonable prospect that if that form of co-operation which is required by the claimant himself of those over whom he has some control is forthcoming, he will be deported.

32. I therefore turn to the second issue. On any basis, the court, when concerned with the liberty of the subject, looks somewhat askance at a position where someone is still in detention administratively on 23 June 2008 when he commenced that detention on 30 November 2005. Having regard to the conclusion I have reached on the first issue, it will be plain that the court is satisfied that he remains in detention because he has not demonstrated that he has done enough to obtain the documents.

33. Against that must be weighed the helpful submissions, and indeed careful and detailed submissions, of Mr Richmond in which he submits that, on a proper analysis, this is not a case of a man who is the victim of his own misfortune; he is someone who, at various stages, has demonstrated a willingness to co-operate, but there have been lapses or events outside his control which have left him powerless.

34. Although I have considered the analysis advanced by Mr Richmond, it is set out with considerable care in his skeleton argument, I am unable to accept that it is appropriate here to identify certain periods of time when he was co-operating and certain periods of time when he was not. It just does not work -- probably in most cases, but certainly not in this one -- because, in my judgment, the analysis shows that in material respects he was, even after the date set by Mr Richmond (March or April 2006) as effectively the end of his non-co-operation, there are occasions which I have already identified of his non-co-operation. There are also the occasions when he has co-operated, but truncated

the impact of his co-operation by engaging in what look to be pure delaying tactics. Again, I have to comment: I have had no explanation from the claimant as to why he refused to sign the form; as to why he said he could speak Spanish, not Farsi, and then changed his tack completely; as to why he delayed in completing documents, and all these matters. In order to come to a clear and proper view in connection with his own conduct, I am satisfied that this court should have been provided with more evidence in support of what became the careful submissions of Mr Richmond. He has, with skill, attempted to build a case, but the absence of hard evidence, in my judgment, means that it must be unsuccessful.

35. What then should I conclude about the other aspects of the case, which are relied upon as to the unlawfulness of the very period of time to date? Well, 31 months is plainly something which puts the court very much on the alert. But there is no set sign-off time. There is no particular period of time which will in itself, simply because of the period of time, be determinative of the issue of legality of the detention. One must have regard to all the circumstances of each case.

36. Next, it is said the risk of absconding is not made out by the Secretary of State, or at least if anything is made out in connection with that topic, it is not made out with sufficient cogency to be of weight. I confess that the risk of absconding in the context of this case is, I find, difficult to determine. On one view, one could take the history, namely his absconding from prison, the efforts to which he went in order to obtain bail, the stalling, the lack of meaningful co-operation as all pointing to him being a man who really is so determined that he should not go back to Iran that if he is released, he will abscond. But into that scale and consideration of, as it were, the risk which the claimant presents, there is the almost anomalous aspect of his co-operation so far as the Farsi website is concerned, which I find difficult, as I have already indicated, to put into context. But I have not been helped by any detailed evidence to deal with that, and I know so little about it, either from the Secretary of State or from the claimant himself, that it cannot take the whole part of this case to a favourable conclusion so far as the claimant is concerned.

37. Then it is said: well, if he really is at risk of being killed or maltreated in Iran, or at least if that is what his family believe, is that not a strong indicator that he could abscond? Again, I cannot reach a clear conclusion in relation to that because, for obvious reasons, I am rather sceptical as to whether anybody really believes he is at risk if he is returned to Iran, or at least if they do, whether they have any good grounds for doing so. All I can conclude, insofar as risk of absconding is concerned, is that this is a case in which it would be imprudent to conclude that there was no basis for a risk being present, but if all things were otherwise equal, it is a case in which I would have seriously been considering, if that was all that was left -- whether the risk of absconding could not be satisfactorily dealt with by the imposition of conditions.

38. It follows that my conclusion in this case is that I am not satisfied that the current detention of the claimant is unlawful because I am not satisfied that the claimant has demonstrated, or that the evidence discloses that he has co-operated in the only way in which his co-operation is required, which could lead to removal, and I am therefore, at this stage, of the view, in the absence of evidence to the contrary, that he has

deliberately stalled for whatever reason he has felt might suit him from taking the steps which are more likely to bring about the availability of the relevant documentation.

39. For those reasons, on the issues which I have had to consider today, I would not grant judicial review and conclude that his detention is currently unlawful. This case, however, must continue as a judicial review case, with the other matters provided for by way of amendment and otherwise taken into account. The judgment I believe is expected from the Court of Appeal some time in July, if it is out before the long vacation, in connection with Munby J's conclusions on the lawfulness of detention, and it must come back to this court.

40. In the meantime, of course, in the light of this interim judgment which I have expressed, it is open to the claimant to rectify the position which I have emphasised. He is advised by a very experienced firm of solicitors in this area of work. He has the advantage of Mr Richmond but, all I know, if the matters are proceeded with in a way which I have endeavoured to indicate they should have been, the true position may become more apparent. I say no more.

41. MR RICHMOND: I am grateful, my Lord. May I just take instructions? (Pause)

42. My Lord, thank you. My Lord, I am invited to raise two corrections to the judgment, if I may?

43. SIR GEORGE NEWMAN: Of course.

44. MR RICHMOND: My Lord, there is some concern that at the beginning of the judgment you may have referred to this as being an application for permission to apply for judicial review, rather than an application for judicial review.

45. SIR GEORGE NEWMAN: Did I describe it as an application for permission? If I did, I was plainly wrong.

46. MR RICHMOND: Very grateful, my Lord. The second one, I understand you may have referred to a grant of exceptional leave to remain as having been made on 12 July 2006, in fact it was 12 July 2002.

47. SIR GEORGE NEWMAN: That makes a lot more sense. I took it from your skeleton, I am afraid.

48. MR RICHMOND: Do forgive me, my Lord.

49. SIR GEORGE NEWMAN: Which did say 2006, and as I recited it, I thought this sounded very odd since he was in detention at this time.

50. MR RICHMOND: I can only apologise.

51. SIR GEORGE NEWMAN: That is why I took it at that date, but that explains it, 2002.

52. MR RICHMOND: My Lord, you have indicated this is an interim judgment. I wonder, is it appropriate to apply for permission to appeal at this stage or wait for the final judgment?

53. SIR GEORGE NEWMAN: No, it is not.

54. MR RICHMOND: Thank you.

55. SIR GEORGE NEWMAN: You cannot go up on one issue, you have to wait until it is resolved.

56. I hope you have taken to heart my observations, Mr Richmond. Rather than thinking about an appeal, try and get your house in order. It might be a much better way to get a result.

57. MR RICHMOND: My Lord, thank you for the indication. My Lord, the claimant is publicly funded --

58. SIR GEORGE NEWMAN: You can have your assessment to this point.

59. MR RICHMOND: I am grateful.

60. SIR GEORGE NEWMAN: Yes, Mr Sheldon?

61. MR SHELDON: My Lord, I have an application for the Secretary of State's costs of today's hearing, not to be enforced without further order. My Lord, the basis of that application is that, up until 4 June when my learned friend made his application to add additional grounds, the matter that came before you was the whole claim. The claim was brought on the basis that, detention having been maintained for as long as it has, the claimant should be released. Now, plainly there have been some further grounds added since then that will have to be determined separately and the costs of that hearing will be what they may be, but as matters stand, the original claim has been determined before you today, albeit on an interim basis, and the claimant has been unsuccessful. My Lord, I do, as I say, make that application subject to the caveat that the order should not be enforced without further order of the court, which has the advantage of being able to take account of whatever events may transpire later down the line.

62. SIR GEORGE NEWMAN: Can you say anything about such an order?

63. MR RICHMOND: My Lord, only that this is of course an interim judgment. In my submission, it is a matter that can be dealt with at the end of the proceedings.

64. SIR GEORGE NEWMAN: It all depends who deals with the other proceedings. I know not whether it is going to come back to me. It could well come back to me. Some might take the view that is a better course, rather than wasting time starting all over again, as it were. But I think that there is no impediment to the costs of today on this issue being determined today, with costs left over in relation to the balance. It sounds to me wholly academic in any event, but nevertheless it seems to me they are entitled to that order.

65. MR RICHMOND: Very well.