



***BAA, BAB, BAC, BAD and BAE***

***-v-***

- (1) Commissioner of the British Indian Ocean Territory***  
***(2) Secretary of State for Foreign and Commonwealth Affairs***  
***(3) Secretary of State for Defence***

**PRESS SUMMARY:**

*This press summary does not form part of the Court's judgment. It is provided by the Court for the assistance of the press and the public.*

- 1 The five claimants are nationals of Sri Lanka of Tamil ethnic origin. They were part of a larger group who set sail from Sri Lanka in a fishing boat in September 2021. The boat got into distress in the Indian Ocean and was escorted by a Royal Navy ship to the island of Diego Garcia, in the British Indian Ocean Territory (BIOT), where they disembarked on 3 October 2021. BIOT has no permanent population but is home to a US naval base.
- 2 The claimants sought protection from the BIOT authorities. The Commissioner for BIOT (the Commissioner) is the official who exercises the Crown's executive and legislative powers in respect of BIOT. He set up a process for determining the protection claims. Two of the claimants' protection claims have been refused. One of these has challenged the refusal in the Supreme Court of BIOT. The Commissioner has very recently decided not to return two of the other claimants to Sri Lanka and is accordingly seeking to identify a safe third country to which they can be sent.
- 3 The claimants were living in tents provided by the BIOT administration, which also provided them with food, sanitary and washing facilities and some medical help. However, the claimants say that the circumstances amounted to detention and the conditions were so bad that their mental health deteriorated dangerously. Earlier this month, each of them self-harmed by ingesting a sharp object. Each was evacuated to a hospital in Rwanda for medical treatment under an arrangement negotiated with the Rwandan Government by the UK Government. Under the terms of the arrangement, the BIOT Commissioner must remove the claimants from Rwanda once their treatment is complete.
- 4 The claimants filed a claim in the High Court of England and Wales against the Commissioner and the Foreign and Defence Secretaries. The claim alleges that the three defendants are jointly responsible for falsely imprisoning them and have breached their duty of care to keep the claimants safe. They sought undertakings from the Commissioner that they will not be returned to BIOT from Rwanda. He refused to give those undertakings.

- 5 On the evening of Thursday 23 March 2023, fearing that they would be returned to BIOT imminently, the claimants made an “out of hours” application to the King’s Bench Division duty judge for an injunction preventing the Commissioner from returning them to BIOT. After hearings late that evening and on 24 March 2023, the application was set down to be heard by the Divisional Court (Lady Justice Whipple and Mr Justice Chamberlain) on 30 March 2023.
- 6 By the time of that hearing, the relief sought was an order that the respondent be prohibited from:
- (a) removing the claimants from Rwanda;
- or alternatively:
- (b) removing the claimants to BIOT without giving at least five working days’ notice to the claimants along with reasons for removal and supporting documents (prognosis, treatment plan and details of care and treatment arrangements in BIOT).
- 7 In a judgment handed down at 2pm on 31 March 2023, the Court held as follows:
- (a) Although the Commissioner was acting as an officer of the Crown in respect of BIOT, it was arguable that the High Court of England and Wales had jurisdiction to hear a claim against him as the person who committed or authorised the wrongs complained of. It was also not clear that the Commissioner would succeed on an application for a stay on the ground that the proceedings should have been brought in the Supreme Court of BIOT. Accordingly, there was no jurisdictional reason for refusing the injunction sought.
  - (b) The relief sought against the Commissioner affected the exercise of public law powers. This did not mean that the Court lacked jurisdiction to grant it, but the public law context was an important factor for the court to take into account in considering whether the test for granting relief was satisfied.
  - (c) None of the claimants had any right to enter or remain in Rwanda. In each case, the claimant was permitted to enter and remain pursuant to an arrangement under which the UK Government had undertaken that they would be removed once treatment was complete. Accordingly, if an injunction were granted, its effect would be to put the UK Government in breach of its undertaking. The claimants might then be detained in Rwanda in unknown conditions. Breach of the undertaking might also mean that the Rwandan Government refused to accept further medical evacuations from BIOT. These were highly material factors when considering whether to grant injunctive relief. The Commissioner had no power to transfer the claimants to the UK. The person who did (the Home Secretary) had not been made a respondent to the application or a defendant to the claim. In those circumstances it would be wrong to assume that transfer to the UK was a viable option when deciding whether to grant relief. To do so could have the collateral effect of placing pressure on the Home Secretary to exercise her public law powers in a particular way.

- (d) The standard balance of convenience test applied. Applying that test:
- (i) There is no doubt that the claimants have medical needs. Each has suicidal ideation and each has self-harmed. Their well-being is a very important factor to weigh in the balance. However, the claimants are currently safe in Rwanda. The doctors treating them there can be trusted to determine when they are well enough to be discharged. The court can properly assume that, at that point, they will be well enough from a medical perspective to return to BIOT. The numbers of medical staff in BIOT have been increased substantially in recent weeks and days. If relief were granted, the claimants might also be detained in Rwanda in unknown conditions. Thus, even considering the matter purely from the perspective of the claimants, it would be undesirable to grant an injunction preventing the Commissioner from removing the claimants from Rwanda.
  - (ii) To grant the injunction would put the Commissioner in an impossible situation because he would have conflicting obligations to the Rwandan Government and under the Court order.
  - (iii) The consequences of relief which puts the UK in breach of its undertaking to Rwanda also need to be taken into account. One foreseeable consequence could be that the Rwandan Government might refuse to accept further medical evacuees from BIOT (including the claimants if they should ever return there). There could also be wider damage to the diplomatic relationship with Rwanda. This tips the balance decisively against the grant of an order preventing the Commissioner from returning the claimants to BIOT.
  - (iv) The alternative form of order would also put the claimants in a potentially vulnerable position, rendering them liable to detention in the 5-day window envisaged. It would also put the UK in breach of its undertaking during that period, with the same potential consequences. Such an order would serve little purpose because if an application were made within the 5-day period, the court would be faced with the same arguments as to the damage to the claimants' interest and the public interest to which further relief would give rise.

8 For these reasons the Court refused to grant the injunction in either of the forms in which it was sought.

Ends