

Immigration detention and grace periods.

A note on R (AC (Algeria)) v SSHD [2020] EWCA Civ 36.

With its judgment in *R (AC (Algeria)) v SSHD* [2020] EWCA Civ 36, 28 January 2020, the Court of Appeal (King LJ, Irwin LJ, Baker LJ) has provided important guidance on the correct approach to the consideration of the legality of administrative immigration detention by the Home Office under the well-established *Hardial Singh* principles.

The Appellant AC had appealed against the decision of the Administrative Court ([2019] EWHC 188 (Admin) 6 February 2019) which had previously dismissed the Appellant's challenge to his immigration detention.

The Court of Appeal allowed the appeal. In essence it held that:

- i. It would not be lawful to continue to detain until two or more of the *Hardial Singh* principles were breached, or to fix a "period of grace" with such further breaches in mind. Once any of the 2nd, 3rd or 4th principles are breached, then the question arises whether any further detention is lawful. Such further detention can be lawful, only for a reasonable period to put in place appropriate conditions of release.

(para 38 judgment).
- ii. The duration of a "grace period" is fact specific. Any risk posed cannot justify preventative detention: that would be out-with the statutory power to detain. The Court considered that given the history of the case, a grace period of around 2 further weeks from the date of judgment given below (6 February 2019) was ample. Detention beyond that time was unlawful.

(paras 39-43).
- iii. In future cases, an increased energy and focus should be required of the Home Office in relation such final periods of detention: when the question of a grace period arises or might arise the Respondent (Home Office) should be expected to advance some evidence and to make considered submissions as to what period would be appropriate and why.

(paras 2, 44).

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