



Neutral Citation Number: [2011] EWHC 2481 (Admin)

Case No: CO/6474/2011

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 30/09/2011

Before :

THE HON. MR JUSTICE NICOL

Between :

Raed Salah Mahajna
- and -
Secretary of State for the Home Department

Claimant

Defendant

Raza Husain QC and Duran Seddon (instructed by **Irvine Thanvi Natas**) for the **Claimant**
Neil Sheldon (instructed by **Treasury Solicitor**) for the **Defendant**

Hearing dates: 14th and 15th September 2011

Approved Judgment

Mr Justice Nicol :

1. The Claimant is an Israeli citizen. He was elected three times to be mayor of his town of Umm al-Fahm. He is a strong supporter of the Palestinian cause and the rights of Arab Israeli citizens. He is an outspoken critic of some of the policies of the government of Israel.
2. On 25th June 2011 he was given leave to enter the UK as a visitor for 6 months. It is not suggested that he obtained this leave unlawfully or that it was invalid. However, unknown to the Claimant at the time (and, it would seem, unknown to the Immigration Officer who granted him this leave) the Secretary of State had on 23rd June 2011 taken the decision that he should be excluded from the UK on the grounds that his presence was not conducive to the public good. When it was realised that he was in the UK, a further decision was taken that he should be deported, again on the grounds that his presence in the UK was not conducive to the public good. The Claimant vigorously objects to the Secretary of State's conclusion that his presence is inimical to the public good. He has exercised his right of appeal to the First-tier Tribunal (Immigration and Asylum Chamber) and it will be for the Tribunal to resolve that dispute. The present proceedings do not involve that issue. What they do involve is the Claimant's detention following the decision to deport him. He was arrested at about 11.00pm on 28th June 2011. He remained in detention until he was released on bail subject to stringent conditions on 18th July 2011. This followed a hearing before Stadlen J. on 15th July 2011. Stadlen J. also ordered that permission to apply for judicial review and the substantive application (if permission was granted) should be considered at a rolled up expedited hearing. It was this hearing which took place before me on 14th and 15th September 2011. Because of the restrictive conditions of his bail, the Claimant asked me to provide a judgment as expeditiously as possible.

Factual background

3. The letter of 23rd June 2011 was written on behalf of the Home Secretary and said that she personally had directed that the Claimant should be excluded from the UK because he had publicly expressed views that fostered hatred which might lead to inter-community violence in the UK. She noted that he was the leader of the Northern branch of the Islamic Movement in Israel, a group which the Home Secretary said was linked to Hamas. Quotations were given from what were said to be public statements by the Claimant which could be interpreted as anti-semitic and/or supportive of violence. The Claimant takes issue with the accuracy of the material attributed to him and rejects the allegation of anti-semitism or support for unlawful violence.
4. The letter was addressed to the Claimant and efforts were made to serve him in Israel, but these had not succeeded before he flew from Tel Aviv to Heathrow. As an Israeli national he did not require a visa to come to the UK. His visit was due to be a short one. He had a return ticket for 5th July 2011.
5. The Claimant had arranged to attend a number of meetings during his stay and addressed a meeting at the House of Lords on Monday 27th June 2011. On Tuesday 28th June the decision was taken to arrest the Claimant and deport him to Israel. A group of 5 Immigration Officers went to the Claimant's hotel, the Crowne Plaza, at

Hanger Lane, Western Avenue London W5. One of the officers was Mr Nicholas Church. His witness statement says that at 11.03pm he and the other officers went up to the Claimant and he said “I am now arresting you as a person liable to detention under section 2(4) of Schedule 3 of the 1971 Immigration Act”. This was in English and one of the men with the Claimant said that the Claimant did not speak English. One of them then spoke to the Claimant in a language which Mr Church said he could not understand. The Claimant was handcuffed and taken to Paddington Green Police Station.

6. The Claimant has provided a witness statement and, with qualifications which I shall come to, Mr Sheldon on the Defendant’s behalf, was prepared to accept it as accurate. The Claimant says that when approached by 5 people at his hotel on 28th June, he was accompanied by his interpreter and his body-guard. He was shown an identity card which he could not read because it was in English. His interpreter tried to speak to them and (as the interpreter later told the Claimant) tell them that the Claimant could not speak or understand English. The interpreter said he wanted to interpret for the Claimant but the officers would not engage or speak with the interpreter at all. The officers prevented the Claimant’s associates from going with him into his room or communicating with him at all. The Claimant did recognise the word “passport” and he handed his over. He could understand nothing further.
7. During the journey Mr Church used a translation application on his iPhone to communicate in Arabic the following, “Mr Salah, you have been arrested for immigration offences and we will arrange an Arabic interpreter when we get to the police station.” The Claimant agrees that he was shown the screen of a mobile phone with something on these lines.
8. At the police station a custody record sheet was opened at 23.47 by a Sergeant Fellowes. Mr Church says that he explained the facts of the arrest to the Sergeant who authorised the Claimant’s continuing detention. The Custody record says under the standard entry “Offences” the following “Immigration. Other (2(4) of Schedule 3 to the 1971 Act cross applying to Schedule 2 to the 1971 Act) in respect of those who would be liable to detention upon receipt of a notice of intention to deport (whereafter they are detained under para 292) [this is an error for para 2(2)] of Schedule 3”. Under the standard heading “Reasons to arrest” the following was entered “To allow the prompt and effective investigation of the offence or of the conduct of the detained person. To prevent any prosecution for the offence from being hindered by the disappearance of the detained person.” The place of arrest is recorded as the Crowne Plaza Hotel and under “circumstances” it is said, “UKBA staff have attended location to arrest and detain d/p for immigration offence.” The custody sheet records that detention was authorised and the reason given was “Other (Immigration offences)” and the “grounds for detention” were given as “for UKBA to detain for immigration offence”.
9. Mr Church’s evidence continues that after being booked into custody, via language line on the telephone he explained to the Claimant that he was being detained under the Immigration Act as a person on whom a notice of intention to make a deportation order had been served. He dated and timed the letter as 29th June 2011 at 00.10. Mr

Church served this, the appeal papers and a Form IS91R on the Claimant. The Notice of Intention to make a Deportation Order explained, in similar terms to the letter of 23rd June 2011 why the Secretary of State personally considered the Claimant's presence in the UK not to be conducive to the public good. It explained that the Claimant had a right of appeal and this could be exercised from within the UK.

10. The Form IS91R is headed "Notice to Detainee: reasons for Detention and Bail Rights". Two reasons are given as to why it had been decided that the Claimant should remain in detention: "Your removal from the United Kingdom is imminent"; and "you need to be detained while arrangements are made for your care". Mr Husain QC, on behalf of the Claimant, observes that a further alternative "Your release is not conducive to the public good" was *not* ticked. The form then lists a number of possible factors on the basis of which the decision to detain had been reached. The only one ticked in this case was "You are excluded from the UK at the personal direction of the Secretary of State." A further box which was ticked on the front of the sheet cross refers to a footnote on the second page which (in very small font size) says that the detention of the person concerned was authorised by the Secretary of State. The final section of the form has two alternatives. The one which was *not* ticked says "The contents of this notice have been explained to you in English by me". The alternative (which was ticked) said, "The contents of this notice have been explained to you in ...language." No language has been filled in. The signature is not legible and Mr Sheldon was not able to help me identify whose it was.
11. Despite the last box on the form IS91R being ticked, Mr Church does not say that any more was translated to the Claimant than I have indicated.
12. In his statement the Claimant says that on arrival at the police station Mr Church spoke to him using a translator on the telephone. He says he was told in terms very similar to what he had been shown on the screen of the phone in the car that "I was being detained for immigration offences (or for having broken immigration laws). He also said that I would be deported from the UK." The Claimant says that this was the first that he was told that he would be deported. He said through the telephone translator that he would speak to his lawyers to resist this. He was told that he had a right of appeal. The Claimant says he told Mr Church that he would indeed appeal against the decision. The Claimant agrees that he was given a number of documents but they were in English and he could not understand them.
13. At about 10.00am on the same morning (29th June) the Claimant was visited by his solicitors. He provided them with the papers which he had been given. The solicitors were also reliant on the language line interpreters. The conversation was brief but they managed to convey to the Claimant that he was being deported for public interest reasons on the basis of what he was alleged to have said.
14. The visit was cut short because the Claimant was to be moved from the police station. He was taken to Colnbrook Immigration Removal Centre. It was on arrival there that he was given a copy of the exclusion decision of 23rd June 2011. The same day he was interviewed twice by the centre manager. The Claimant's solicitor was not present and initially complaint was made about these interviews, but those matters were not pursued by Mr Husain at the hearing of this application.

15. On 29th June 2011 the Claimant's detention was reviewed by UKBA. It is recorded that he was detained pending deportation to Israel as his presence in the UK was not conducive to the public good. A further review took place on the following day when it was decided that detention should be maintained: UKBA had his documents and removal was said to be imminent.
16. On 30th June 2011 the Claimant's solicitors saw him again. It was only at this stage that he says he was given a proper explanation for why he had been detained. That day the Claimant's solicitors wrote to UKBA and said he intended to appeal. Appeal papers were lodged on 1st July 2011. They were not received by the UKBA until 3rd July. A further detention review on 1st July 2011 decided there had been no change of circumstances, detention remained appropriate and removal remained imminent.
17. On 4th July 2011 a Chief immigration Officer refused to grant the Claimant bail. The detention review on 6th July noted that a bail hearing was listed for 8th July. It was decided to maintain detention as the issues on the appeal were narrow.
18. This application for permission to apply for judicial review was lodged on 7th July. At the tribunal hearing on 8th July, Designated Immigration Judge Barton refused bail. As I have already noted, Stadlen J. granted bail subject to conditions on 15th July and the Claimant was released on those terms on 18th July.
19. I was told that the Claimant's appeal against the decision to deport him was due to be heard by the First-tier Tribunal on 26th September 2011.
20. The Senior Executive officer of UKBA who was responsible for reviewing the Claimant's case was Mr Rosenorn-Lanng and it was his witness statement on which the Secretary of State relied in the present proceedings. This concluded,

“I can confirm that the decision to detain Mr Salah on 28 June 2011 was taken for the purpose of effecting his deportation to Israel, and for no other purpose. At the time that he was detained we anticipated that Mr Salah was likely to co-operate with the deportation process and could be removed very quickly. When [it] was confirmed that he intended to exercise his right to appeal in-country against his deportation decision consideration was given as to whether his detention should be maintained pending the outcome of that appeal. In reaching the decision to maintain detention account was taken of Mr Salah's potential to foster hatred and foment inter-community violence. The risk he poses to the public is, in my view, sufficient to justify his continued detention for the short period necessary to address his outstanding deportation appeal.”

The legal framework

21. As someone who was not a British Citizen, the Claimant required leave to enter the UK - Immigration Act 1971 s.3(1). He was given leave to enter on 25th June and, although this was contrary to the Secretary of State's decision that he should be excluded, it was not suggested by Mr Sheldon that this invalidated his leave. The Claimant was not and is not an illegal entrant. Mr Sheldon does not suggest that the Claimant has committed any immigration offence. Mr Sheldon accepts that the suggestions to the contrary by Mr Church *en route* to Paddington Green and in the Custody Record were erroneous.

22. However, the Claimant was liable to be deported if the Secretary of State considered his deportation to be conducive to the public good – see Immigration Act 1971 s.3(5)(a). Where the Secretary of State reaches such a view, the practice is for her, not to make the deportation order itself straight away, but rather to give notice that she has decided to make such an order. Such a decision attracts a right of appeal to the First-tier Tribunal – see Nationality, Immigration and Asylum Act 2002 s.82(2)(j) which may be brought while the person concerned is still in the UK – see 2002 Act s.92(2). At one stage it was suggested on behalf of the Secretary of State that the Claimant might return to Israel and pursue his appeal from there. It was said this could be done at the Tribunal’s discretion. However, in the course of the hearing Mr Sheldon accepted that the Tribunal would not have had power to do this. An appeal brought by a person while he is in the UK is treated as abandoned if he leaves the UK – see 2002 Act s.104(4). Once the Tribunal is informed that this has taken place, it must take no action in relation to the appeal – see Asylum and Immigration Tribunal (Procedure) rules 2005 r.18(2).
23. Where notice of an intention to make a deportation order has been given to a person he may be detained under the authority of the Secretary of State pending the making of the deportation order – see Immigration Act 1971 Schedule 3 paragraph 2(2). Schedule 3 of that Act is concerned with detention or control pending deportation but it incorporates by reference certain parts of Schedule 2 which includes powers to deal with illegal entrants. These include paragraph 17 of Schedule 2 which allows a police constable or immigration officer to arrest without warrant a person who is liable to be detained under paragraph 16 of Schedule 2. This cross reference is achieved by paragraph 2(4) of Schedule 3 which says,
- “In relation to detention under sub-paragraph (2)...above, paragraphs 17.... of Schedule 2 to this Act shall apply as they apply in relation to paragraph 16 of that Schedule [and for that purpose the reference in paragraph 17(1) to a person liable to deportation includes reference to a person who would be liable to detention upon receipt of a notice which is ready to be given to him].”
24. The words in square brackets were added by Asylum and Immigration Act 2006 s.53 with effect from 31st August 2006. They mean that there was a statutory power to arrest the Claimant even though at the moment of arrest he had not been served with the notice of intention to deport him, as long as such a notice was ready to be given to him. Mr Husain accepts that it was ready.
25. As immigration cases go, the statutory position is therefore reasonably straightforward. However, the argument has centred on three important qualifications to the statutory power which have been developed by the courts. The precise nature of these will need elaboration, but for present purposes they can be identified as follows:
- i) Although the statutory expression is that a person may be detained “pending the making of the deportation order” and although this defines the existence of the power to detain (see *R (Khadir) v Secretary of State for the Home Department* [2006] AC 207), the power may only be lawfully exercised if certain further conditions are satisfied. These were famously articulated first by Woolf J. in *R v Governor of Durham Prison ex parte Hardial Singh* [1984] 1 WLR 704 but they were analysed by Dyson LJ in *R (I) v Secretary of State for the Home Department* [2003] INLR 196 at [46] as follows:

“(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 reasonable diligence and expedition to effect removal.”

In tribute to their source, these are usually referred to as the *Hardial Singh* principles. I shall do the same. They were endorsed by the majority of the Supreme Court in *R (Lumba) v Secretary of State for the Home Department* [2011] 2 WLR 671.

- ii) A decision to detain which is tainted by a breach of public law will make the detention unlawful if the breach bore on and was relevant to the decision to detain. If the Secretary of State acts contrary to her policy as to when the power to detain would be exercised that might be such a breach of public law – see *Lumba* (above).
- iii) When a person is arrested he or she is entitled to be told in terms that they are likely to be able to understand a brief explanation of the legal and factual basis for the arrest – see *Christie v Leachinsky* [1947] AC 573. Similarly, Article 5(2) of the European Convention on Human Rights says, “Everyone who is arrested shall be informed promptly in a language which he understands, of the reasons for his arrest and any charge against him.”

The Claimant’s case

26. The Claimant alleges that each of these three common law principles was infringed in his case with the result that his detention was unlawful. In summary he says:

- i) He was not detained for the purpose of giving effect to the machinery of deportation. It was known that he had a return ticket. He had a passport. He was a prominent activist with a series of public events which he intended to attend. There was no question of him absconding. As Mr Rosenorn-Lanng said in the conclusion to his witness statement which I have set out above, he was expected to be co-operative with his removal to Israel. From a very early stage, the Claimant made clear that he intended to appeal. Thereafter the Secretary of State must have appreciated that the appeal process would take some time to complete. His deportation could no longer be said to be imminent. The real reason for his detention was to frustrate his speaking programme. But that is not a proper purpose within the first of Dyson LJ’s summary of the *Hardial Singh* principles.
- ii) The decision to detain the Claimant was not consistent with the Secretary of State’s policy as set out in her manual, *Enforcement Instructions and*

Guidance. At least from the time that the Claimant said he intended to appeal, his removal could not be said to be imminent. The policy did refer to detention being continued nonetheless in such circumstances if there was a risk of harm to the public. However, properly understood, that was intended to cover cases where Foreign National Prisoners were to be deported. Their cases were dealt with separately by a unit within the Home Office called the Criminal Casework Directorate. The Claimant did not come within this category. The policy had a lacuna for cases such as his where there was said to be a risk of harm to the public but not from someone who had committed or who posed a risk of committing criminal offences.

- iii) The Claimant was not given adequate reasons for his arrest until the IS91R form was explained to him by his solicitors on 30th June. Such reasons as were given to him before then were inadequate, admittedly erroneous and/or not given to him sufficiently timeously.

Was the Claimant’s detention unlawful because the Secretary of State’s purpose in detaining him was not authorised by the statute?

27. As I have said, the first of the *Hardial Singh* principles (as listed by Dyson LJ in the *I* case was that “the Secretary of State must intend to deport the person and can only use the power to detain for that purpose.” The proposition was regarded as uncontroversial and was common ground between the parties in *Lumba*. However, in that case Lord Phillips PSC considered that it did not accurately reflect the law. His was a dissenting view. The other 8 members of the Supreme Court who heard the appeal endorsed the existence of this restriction on the Secretary of State’s power to detain – see Lord Dyson at [23], Lord Hope at [172], Lord Walker at [195], Baroness Hale at [198], Lord Collins at [219], Lord Kerr at [238] and Lord Brown and Lord Rodger at [362]. Mr Sheldon did not dispute that the first *Hardial Singh* principle represented the law.

28. In *Hardial Singh* Woolf J. had said this at p.706,

“Although the power which is given to the Secretary of State in paragraph 2 [of Schedule 3 to the 1971 Act] is not subject to any express limitation of time, I am quite satisfied that it is subject to limitations. First of all, it can only authorise detention if the individual is being detained in one case pending the making of a deportation order and, in the other case, pending his removal. It cannot be used for any other purpose. Second, as the power is given in order to enable the machinery of deportation to be carried out, I regard the power of deportation as being impliedly limited to a period which is necessary for that purpose. The period which is reasonable will depend on the circumstances of the particular case.”

29. Lord Phillips said at [263] that “pending the making of a deportation order” was not a purpose. He interpreted Lord Woolf as saying that the Secretary of State could only detain a person *while* she was pursuing the objective of deporting him. In other words, the detention did not have to facilitate the deportation as long as the Secretary of State did intend to deport the person concerned.

30. Lord Phillips also took issue with the second *Hardial Singh* principle. He considered that the restriction on the length of detention was to be measured only by reference to the period which was reasonable to effect deportation - see [264] and [283]. He observed that in the *I* case the Court of Appeal had accepted that the risk of re-offending could legitimately be taken into account in deciding what was a reasonable time for the detention to continue. A similar point was made by Toulson LJ in *R (A) v Secretary of State for the Home Department* [2007] EWCA Civ 804 at [55] when he said,

“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 its 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.”

31. At [282] Lord Phillips said,

“If the risk of re-offending can be the determinant factor in deciding how long it is reasonable to detain a [foreign national prisoner] why should it not be the determinant, or even the sole reason for detaining him in the first place? Why should it be a pre-condition to the power to detain that its use is to facilitate deportation, even if this is not the real reason for detention, as in the case of *Chahal*? It is that logical inconsistency that underlies the challenge that is made on behalf of Mr Lumba in the present case to the legitimacy of having regard to the risk of his re-offending.”

32. The majority in *Lumba* did indeed endorse the view in *I* and *A* that a risk of re-offending could be taken into account in deciding what was a reasonable time for the detention to continue. In an important passage on which Mr Sheldon strongly relied, Lord Dyson said,

“[106] Mr Husain accepts that, where there is a risk that the detained person will abscond, the risk of re-offending is relevant to the assessment of the duration of detention that is reasonably necessary to effect deportation. But he submits that, where there is no real risk of absconding, the risk of re-offending cannot of itself justify detention. Where there is no such risk, detention is not necessary to facilitate deportation, because it will be possible to facilitate deportation without the need for detention. The underlying purpose of the power to detain is not to prevent the commission of criminal offences, but to facilitate the implementation of a deportation order.

[107] I have some difficulty in understanding why the risk of re-offending is a relevant factor in a case where there is a risk of absconding, but not otherwise. It seems to me that it is possible to construe the power to detain either (more

narrowly) as a power which may only be exercised to further the object of facilitating a deportation, or (more broadly) as a power which may also be exercised to further the object which it is sought to achieve by a deportation, namely, in the present case, that of removing an offender whose presence is not conducive to the public good. The distinction between these two objects was clearly drawn by the Court of Appeal in *R (A) v Secretary of State for the Home Department* [Lord Dyson then quotes the passage which I have set out above]. Paragraph 78 of Keene LJ's judgment is to similar effect.

[108] I acknowledge that the principle that statutory powers should be interpreted in a way which is least restrictive of liberty if that is possible would tend to support the narrower interpretation. But I think that the Court of Appeal was right in A's case to adopt the interpretation which gives effect to the purpose underlying the power to deport and which the power to detain is intended to facilitate. Perhaps a simpler way of reaching the same conclusion is to say, as Simon Brown LJ said in I's case at [29] that the period which is reasonable will depend on the circumstances of the particular case and the likelihood or otherwise of the detainee re-offending is 'an obviously relevant circumstance.'

[109] But the risk of re-offending is a relevant factor even if the appellants are right in saying that it is relevant only when there is also a risk of absconding. As Lord Rodger of Earlsferry JSC pointed out in argument, if a person re-offends there is a risk that he will abscond so as to evade arrest or if he is arrested that he will be prosecuted and receive a custodial sentence. Either way, his reoffending will impede his deportation.

[110] The risk of re-offending is, therefore a relevant factor."

33. Mr Husain submits that Lord Dyson in this passage was addressing exclusively the second *Hardial Singh* principle (the length of time that detention can lawfully continue) and not the first (the proper purpose for which detention can be used). There are, though, a number of answers to that submission. The first is that Mr Husain's own argument in the *Lumba* case was precisely to this effect (see [106] of Lord Dyson's judgment quoted above). Yet it is plain that Lord Dyson rejected it. It would, indeed, have been remarkable for Lord Dyson to look in blinkers exclusively at whether the second *Hardial Singh* principle was satisfied when, on Mr Husain's argument, the first principle was manifestly not satisfied. Secondly, Lord Dyson rejected Lord Phillips' argument that the first *Hardial Singh* principle was erroneous and upheld his own formulation of those principles in the *I* case. He said at [23]

"As regards the first principle, I consider that Woolf J was saying unambiguously that the detention must be for the purpose of facilitating deportation. The passage quoted by Lord Phillips PSC includes at paragraph 262, the following: 'as the power is given *in order to enable the machinery of deportation to be carried out*, I regard the power of detention as being impliedly limited to a period which is reasonably necessary *for that purpose*.' (emphasis added). The first principle is plainly derived from what Woolf J. said."

But it is notable that the passage from Woolf J.'s judgment which Lord Dyson was there citing was his explanation for the *second* principle (i.e. the length of time for which detention could continue). This strongly suggests that there is not the sharp

distinction between the two principles as Mr Husain contends. Thirdly, Lord Hope expressly considered the relationship between the two principles at [174] in which he said, “The limitation as to time and the limitation as to purpose are really two sides of the same coin. They cannot be separated from each other.”

34. Mr Sheldon submits that when the Claimant was detained it is plain that the Secretary of State intended to deport him and detained him so that that objective could be speedily achieved. When it became clear that the Claimant would appeal the decision to deport, it remained the Secretary of State’s intention to deport (subject, of course, to any contrary decision of the Tribunal or court). The decision to continue the detention was informed in part by the assessment that the Claimant’s release would be prejudicial to the public interest. That was a permissible factor to take into account in deciding whether the Claimant’s detention was consistent with the second *Hardial Singh* principle. But, that part of the Secretary of State’s reasoning cannot be attacked as contrary to the first *Hardial Singh* principle for the reasons that I have given. As Lord Dyson said, detention in these circumstances was consistent with the statutory purpose construed more broadly, i.e. “as a power which may also be exercised to further the object which it is sought to achieve by a deportation, namely, in the present case, that of removing an offender whose presence is not conducive to the public good.”
35. I agree with Mr Sheldon’s submissions in this regard and reject the Claimant’s first ground of challenge.

Was the Claimant’s detention unlawful because it was inconsistent with the Secretary of State’s policy?

36. Mr Sheldon accepted that *Lumba and R (Kambadzi) v Secretary of State for the Home Department* [2011] 1 WLR 1299 SC established that detention can be unlawful if it is contrary to a published policy which was sufficiently closely related to the authority to detain so that it provided a further qualification on the power to detain. However, he submitted that there was no such conflict in the present case.
37. The Secretary of State’s current policy is contained in Chapter 55 of *Enforcement Instructions and Guidance*. One of the factors influencing a decision to detain, according to paragraph 55.3.1 is the likelihood of the person being removed and the timescale. Mr Sheldon submitted that, at least initially, the Immigration Officer was entitled to work on the basis that deportation could be effected speedily. As Mr Rosenorn-Lanng said, it was known that the Claimant had a return ticket to Israel and his stay was anyway expected to be a short one.
38. The Claimant indicated an intention to appeal on 29th June. A notice of appeal was lodged on 1st July and received by the Secretary of State on 3rd July. Some within the UKBA did not consider that the appeal would take very long. However, even when a different assessment was appreciated and it could not be said that removal was imminent, that was not the end of the matter. The Secretary of State’s policy referred to other factors influencing the decision to detain. Thus Paragraph 55.3.1 also said,

“All relevant factors must be taken into account when considering the need for initial or continued detention, including...Is there a risk of offending or harm to

the public (this requires consideration of the likelihood of harm **and** the seriousness of the harm if the person does offend)?”

Paragraph 55.14 has the heading “Detention for the purpose of removal” and says,

“In cases where a person is being detained because their removal is imminent the lodging of a suspensive appeal or other legal proceedings that need to be resolved before removal can proceed will need to be taken into account in deciding whether continued detention is appropriate. Release from detention will not be automatic in such circumstances: there may be other grounds justifying a person’s continued detention e.g. a risk of absconding, risk of harm to the public or the person’s removal may still legitimately be considered imminent if the appeal or other proceedings are likely to be resolved reasonably quickly. An intimation that such an appeal or proceedings may or will be brought would not, of itself, call into question the appropriateness of continued detention...”

39. Mr Husain argued that these passages were intended to refer to foreign national prisoners, that is those non-British Citizens who had been before the criminal courts and whom the Secretary of State intended to deport or remove. Those cases were dealt with by the Criminal Casework Directorate (CCD) of the UKBA. But the Claimant did not come within that category.

40. It is right that parts of Chapter 55 of the EIG do deal specifically with CCD cases. Thus paragraph 55.1.3 has the title “Use of Detention” and a sub-heading “CCD cases”. This says,

“...due to the clear imperative to protect the public from harm, the risk of re-offending or absconding should be weighed against the presumption in favour of temporary admission in cases where the deportation criteria are met. In CCD cases concerning foreign national prisoners, it will normally be appropriate to detain as long as there is still a realistic prospect of removal within a reasonable timescale...In looking at the types of factors which might make further detention unlawful, caseowners should have regard to 55.1.4, 55.3.1, 55.9 and 55.10. **Substantial weight** should be given to the risk of further offending or harm to the public indicated by the subject’s criminality. Both the likelihood of the person re-offending and the seriousness of the harm if the person does re-offend, must be considered [emphasis in the original].”

41. The risk of harm or re-offending is likely to be particularly germane in the case of foreign national prisoners and, as can be seen, one of the paragraphs to which reference is made, is 55.3.1. However, I do not accept that it can be inferred from this that 55.3.1 was intended to apply exclusively to foreign national prisoners or matters for which CCD had responsibility. The opening sentence of 55.1.3, which I have quoted above, is general in its terms. The other paragraphs to which 55.1.3 refers are also general in their application and not confined to foreign national prisoners. Thus paragraph 55.1.4 deals with implied limitations on the statutory powers to detain. Paragraph 55.9 addresses “special cases” including women, spouses of British Citizens, young persons, those claiming to be under 18 and families. Paragraph 55.10 is concerned with persons unsuitable for detention. All of these may be relevant when caseworkers are dealing with foreign national prisoners, but none of them are concerned exclusively with such cases.

42. I conclude that there is not the lacuna in the Secretary of State's policy for which Mr Husain contended. The Claimant's detention was not inconsistent with the policy. This second ground of challenge also fails.

Was the Claimant's detention unlawful because he was not given adequate reasons for his detention?

43. I need to say a little about the case law on this subject. The classic statement of the requirement of the common law is in *Christie v Leachinsky* [1947] AC 573 where Viscount Simon said at p.587,

“(1) If a policeman arrests without a warrant upon reasonable suspicion of felony, or of other crime of a sort which does not require a warrant, he must in ordinary circumstances inform the person arrested of the true ground of arrest. He is not entitled to keep the reason to himself or to give a reason which is not the true reason. In other words a citizen is entitled to know on what charge or on suspicion of what crime he is seized. (2) If the citizen is not so informed but is nevertheless seized, the policeman, apart from certain exceptions, is liable for false imprisonment. (3) The requirement that the person arrested should be informed of the reason why he is seized naturally does not exist if the circumstances are such that he must know the general nature of the alleged offence for which he was detained. (4) The requirement that he should be so informed does not mean that technical or precise language should be used. The matter is of substance and turns on the elementary proposition that in this country a person is, prima facie, entitled to his freedom and is only required to submit to restraints on his freedom if he knows in substance the reason why it is claimed that this restraint should be imposed. (5) The person arrested cannot complain that he has not been supplied with the above information as and when he should be, if he himself produces the situation which makes it practically impossible to inform him, eg by immediate counter attack or by running away. There may well be other exceptions to the general rule in addition to those I have indicated, and the above propositions are not intended to constitute a formal or complete code, but to indicate the general principles of our law on a very important matter.”

44. I have already quoted Article 5(2) of the European Convention on Human Rights. It was considered by the European Court of Human Rights in *Fox, Campbell and Hartley v UK* (1990) 13 EHRR 157. At [40] the Court said this,

“Paragraph (2) of Article 5 contains the elementary safeguard that any person arrested should know why he is being deprived of his liberty. This protection is an integral part of the scheme of protection afforded by Article 5: by virtue of paragraph (2) any person arrested must be told in simple, non-technical language that he can understand, the essential legal and factual grounds for his arrest, so as to be able, if he sees fit, to apply to a court to challenge its lawfulness in accordance with paragraph (4). Whilst this information must be conveyed ‘promptly’ (in French ‘dans le plus court delai’), it need not be relayed in its entirety by the arresting officer at the very moment of the arrest. Whether the content and promptness of the information conveyed were sufficient is to be assessed in each case according to its special features.”

45. *Taylor v Chief Constable of Thames Valley* [2004] 1 WLR 315 concerned a claim for wrongful arrest by a 10 year old boy. The issue was whether the police officer who had arrested him had complied with s.28(3) of the Police and Criminal Evidence Act 1984. This provides that, “no arrest is lawful unless the person arrested is informed of the ground for the arrest at the time of, or as soon as reasonably practicable after, the arrest.” But the Court of Appeal held that in substance this reflected the common law position - see [20], although it noted that s.28(4) of the 1984 goes on to impose the same obligation even if the reason for the arrest is obvious.

46. Lord Justice Clarke gave the leading judgment. He said that the modern approach to s.28(3) (and, it would seem, by extension, to the common law which s.28(3) echoed) was that set out in [40] of *Fox Campbell and Hartley*. Accordingly, as he said at [26],

“The question is thus whether, having regard to all the circumstances of the particular case, the person arrested was told in simple, non-technical language that he could understand, the essential legal and factual grounds for his arrest.”

At [27] he emphasised,

“It is important to note that the arrested person must be told both the essential legal and the essential factual grounds for the arrest. The words spoken must therefore include some statement of the factual as well as some statement of the legal basis of the arrest.”

47. Clarke LJ also said that whether the information given was sufficient was to be assessed objectively, having regard to the information available to the arresting officer. For this proposition he relied on *Abbassy v Commissioner of Police for the Metropolis* [1990] 1 WLR 385 at p.392. *Abbassy* in turn had referred to *Wheatley v Lodge* [1971] 1 WLR 29 where an arrest was found to have been lawful because the officer’s explanation was sufficient even though it could not have been understood by the suspect who was deaf. It is notable, though, that the officer did not know and had no reason to know that the person he was arresting was deaf.

48. The reason or reasons for this requirement at common law, statute and the Convention are various. Historically, it was so that the person being arrested could give an immediate explanation or contrary information to make the arresting official think again. As Sedley LJ said in *Taylor* that rationale has rather faded away with the modern preference for an interview which is recorded and which is more orderly and structured than is possible at the moment of arrest. The Strasbourg Court has linked Article 5(2) with Article 5(4) – the right to challenge the legality of the detention. That explanation, though, has two consequences. One is that it may require the detained person to be given rather more information than can be expected at the very moment of the arrest. The other is that the purpose may be fulfilled even if at least some of the information is given rather later. Thus in *Fox Campbell and Hartley* itself, the Court found that on arrest the Complainants were simply told that they were being arrested on suspicion of being terrorists. That did not satisfy Article 5(2) on its own. However, following their arrests they were interrogated at the police station about their suspected membership of proscribed organisations. Information conveyed at this stage was sufficient under Article 5(2). At common law a third reason for the requirement to give reasons for the arrest was so that the person concerned would have some idea as to whether the arrest was lawful. Many of the cases have arisen

because the Claimant had fought back and the issue arose as to whether this was lawful self-defence against an unlawful trespass or the unlawful obstruction of a constable in the execution of his duty. While this explanation is burnished by tradition, it needs to be remembered that the information which has to be provided to an arrested person is not necessarily as detailed as would be expected in a defence to a claim for false imprisonment.

49. The final explanation was pithily expressed by Sedley LJ in *Taylor* at [58], “The real underpinning of the Convention right is the simple one of respect for the dignity of the individual: if the state is taking away your liberty, you are entitled to know why.”
50. *R (Saadi) v Secretary of State for the Home Department* [2002] 1 WLR 3131 concerned the legality of the fast track procedure at the Oakington Centre. Lord Slynn said at [48] that the failure to give the right reason for detention and the giving of no or wrong reasons did not in the end affect the legality of the detention. However, in *Lumba* at [84] Lord Dyson observed that the Claimants in *Saadi* had not argued that their detention was unlawful because of insufficient reasons and Lord Slynn’s remarks were not part of the *ratio* of the decision. In *Kambadzi* at [45] Lord Hope made the same point. Mr Sheldon accepted that the arrest and detention of the Claimant would only have been lawful if he was given reasons that were adequate in all the circumstances.
51. The 1998 White Paper, *Fairer, Faster and Firmer* said at paragraph 12.7 “Written reasons for detention should be given in all cases at the time of detention.” The statement is repeated in the current *Enforcement Instructions and Guidance* at paragraph 55.6. Paragraph 55.6.3 of the EIG says of the form IS91R

“The form is in three parts and must be served on every detained person, including each child, at the time of their initial detention...the IO must sign both at the bottom of the form and overleaf to confirm the notice has been explained to the detained (using an interpreter where necessary) and that he has been informed of his bail rights. It should be noted that the reasons for detention given could be subject to judicial review. It is therefore important to ensure they are always **justified and correctly stated**... It is important that the detainee understands the contents of the IS91R. If he does not understand English, officers should ensure that the form’s contents are interpreted. Failure to do so could lead to successful challenge under the Human Rights Act (Article 5(2) of the ECHR refers).”
[emphasis in the original]

52. Mr Husain argued as follows:
 - i) At the moment of his arrest the Claimant was not given an adequate explanation. Officer Church simply said, “I am now arresting you as a person liable to detention under section 2(4) of Schedule 3 of the 1971 Immigration Act”. Even in English that said nothing about the factual (as opposed to the legal) basis of the arrest. More fundamentally, it was in English and the Claimant does not speak English. Those who were with the Claimant in the hotel told the Immigration Officers this and they offered to translate, but that offer was not taken up. Mr Husain argued that I should recognise that the historic origin of the common law rule

(the right to resist an arrest which was unlawful) meant that in England there was a more urgent need to give reasons than might be the case under the Convention. *Lewis v Chief Constable of South Wales Constabulary* [1991] 1 All ER 206 was a case where the Claimants recovered damages for false imprisonment because they had been given no reasons for their arrest when it took place, even though they were given reasons at the police station between 10 and 23 minutes later.

- ii) In the car to the police station, the Claimant was told the wrong reason for his arrest. He was told he was being arrested for immigration offences. But, as Mr Sheldon accepted, that was incorrect. The Claimant had committed no offence and the officers had no reason to believe that he had. This was not a function of the limited translation facility available to Officer Church. His witness statement explained in English what he had entered into the application on his iPhone. It was the English expression which was wrong.
- iii) On arrival at the police station the Custody Record Sheet referred to the Claimant being suspected of immigration offences in numerous places. That again was incorrect.
- iv) At 00.10 the Claimant was handed copies of the IS91R and through a language line interpreter Mr Church explained that the Claimant was being detained under the Immigration Act as a person on whom an intention to make a deportation order had been served. Mr Husain says this was not sufficient: (a) the IS91R gave as the reasons the Claimant was being detained that “Your removal from the United Kingdom is imminent”; and “you need to be detained while arrangements are made for your care”. The second reason was fallacious (as the Secretary of State accepted) and the giving of a bad reason tainted the explanation. (b) In any case the IS91R was not translated to him. In Arabic he was told that he was being detained as a person in respect of whom a notice of intention to deport had been served but, as the form itself stated, that alone was not the reason for his detention since “detention is only used where there is no reasonable alternative”. He was not told in a language he could understand that he was to be detained because “your removal from the UK is imminent.” (c) On the Claimant’s evidence through the language line interpreter he was again told that he was being detained for immigration offences as well in relation to his deportation. Thus, again, the giving of bad reasons tainted the explanation and meant that this could not satisfy the common law requirement.
- v) The Claimant was visited by his solicitors later in the morning of 29th June but they did not have long enough to translate all of the material parts of the form IS91R.
- vi) It was not until the Claimant saw his own lawyers on 30th June for long enough to allow them to translate the Form 1S91R that the Claimant knew he was being detained because his removal was regarded as imminent. Even then, the Form IS91R was flawed because of the erroneous additional reason that he

was being detained because of the need to make alternative arrangements for the Claimant's care.

- vii) Mr Husain relied on *R (Faulkner) v Secretary of State for the Home Department* [2005] EWHC 2567. The Claimant had there been convicted of possession of a prohibited weapon and sentenced to 30 months imprisonment. Towards the end of the custodial part of his sentence he was given a notice of the Secretary of State's intention to deport him and that he was to be detained in the meantime. He was not given an IS91R. Bean J. found for the Claimant and said,

“[21] Mr Waite [counsel for the Secretary of State] did not dispute that *Taylor* is applicable to the present case, but he submits that its requirements were satisfied by the fact that the claimant either was told or knew that (1) he was an illegal entrant, (2) he had committed firearms offences and had been sentenced to 30 months imprisonment for those offences, (3) the custodial part of his prison sentence had ended, (4) the Secretary of State intended to deport him; therefore, Mr Waite submits, it must have been obvious that (5) the reason why he was being detained was because he presented a risk of absconding to avoid deportation or a risk to the public, or both.

[22] I accept that the claimant knew items (1) – (4) of this list but it does not follow, in my judgment, that he must have known item (5). One might as well say Leachinsky, on his first arrest on 31st August, knew perfectly well that he was suspected of having stolen a bale of cloth and did not need to be told what the basis of his arrest was.”

53. Mr Sheldon submitted:

- i) What is reasonable depends on all the circumstances. The opportunity to give an explanation at the hotel was very limited. Immigration Officer Church's explanation was succinct but adequate in all the circumstances. I cannot assume that the Officer was aware that the Claimant would be unable to speak English. He was an activist with an international reputation who was on a speaking tour of the United Kingdom. In any case, those who were with the Claimant said something to him in a language (presumably Arabic) that Mr Church could not understand or speak. It is possible that, even without the acquiescence of Mr Church, they translated what he had said to the Claimant about the reason for his arrest.
- ii) What was said in the car to the police station was wrong. The Claimant was not arrested for immigration offences. However, if that led to any misunderstanding it did not last long.
- iii) What appears on the Custody Record sheet is not material because neither the Claimant's nor Officer Church's evidence suggests that this was translated into Arabic. It could therefore have led to no misunderstanding on the part of the Claimant.

- iv) It is not the case for the Secretary of State that the IS91R notice was gone through in Arabic via the language line interpreter. However, the Claimant was told through this medium the essence of the position, namely that he was being detained pending deportation and that he had a right of appeal. The Claimant did not ask for further information or indicate that he needed more. The Claimant's evidence that he was also told at this stage that he was being dealt with for immigration offences should not be accepted. Officer Church was in possession of the notice of intention to deport which he gave to the Claimant. It is unlikely that Officer Church would have said anything about immigration offences as well. The Claimant's evidence on this issue was not precise or purporting to recall exactly what was said to him.
 - v) On 29th June 2011 at about 10.00am he was seen by his own solicitors. The meeting was cut short but they did manage to explain to him that he was to be deported because of things that he had said. By giving information about the evidential basis for the underlying deportation decision that went beyond what was necessary to explain the decision to detain.
 - vi) Thus the Claimant was informed with reasonable promptness of the reason for his arrest. In *Taylor* the Court of Appeal said that the position under the Police and Criminal Evidence Act 1984 (and the common law) was in accordance with the requirements of Article 5(2). *Lewis* had been decided before *Taylor*. Under the Convention the obligation to inform a suspect "promptly" of the reasons for his arrest can be discharged if those reasons are given to him at the police station – see *Fox, Campbell and Hartley*.
 - vii) The position in the present case was not as stark as in *Faulkner* where the Claimant had been told nothing about the reasons for his detention over the material period.
54. In my judgment what took place at the hotel was inadequate for the Claimant's arrest to be lawful. I accept that what is required in any particular situation is fact sensitive and dependent on all the relevant circumstances. That may influence the amount of information which can be conveyed at the point of arrest. But even so, at that point the person concerned must be told something as to why the arrest is taking place (see *Lewis*). What he is told must relate to the factual as well as the legal position (see *Taylor*). Setting aside for the moment the language difficulty, even in English the Immigration Officer did no more than recite the statutory provision under which he was acting. I accept that at that stage it would have been unrealistic and unreasonable to expect him to go through all the applicable parts of the IS91R, but at this stage Officer Church did not even say that the Claimant was being arrested because he was about to be deported. True it is that an immigration lawyer with a good memory would infer from the mention of Schedule 3 of the Immigration Act 1971 that this was the case, but that is nothing to the point. The Claimant was not in that select class and Officer Church had no reason to believe that he was. Rights under the common law and the Convention are intended to be real rights and confer real benefits. The Claimant was entitled to know, at least in the broadest terms, why he was being arrested. Even in English that information was not conveyed to him. That alone meant the arrest was unlawful.

55. On the Claimant's evidence, which Mr Sheldon did not seek to challenge, those with him had no opportunity to translate what Officer Church had said. His witness statement said that he had no idea that Mr Church was an Immigration Officer or that the actions were immigration related. Was the Claimant's arrest unlawful for the additional reason that no explanation was given to him in a language which he could understand? In my view it was.
56. None of the various purposes of the duty to give reasons for an arrest could be achieved if the person concerned is unable to understand what is said. Nonetheless, as I have already acknowledged, what must be conveyed, how and when is acutely fact sensitive. If an arresting officer unexpectedly encounters language barriers the arrest will not be unlawful because there is some delay before translation facilities are arranged. The position is analogous to *Wheatley v Lodge* (above) where the officers did not know and had no reason to expect that the person they had arrested was deaf. In this case, though, the UKBA knew that the Claimant was Palestinian. Considerable research had been done on his writings and speeches. So far as I can see, all the information available showed that he was someone who spoke and wrote only in Arabic. He was, of course, visiting the UK and he was expected to attend meetings and conferences but that said nothing as to whether he could speak English or would be reliant on translators.
57. Even with the knowledge that the Claimant did not speak English, the test would still be whether the officer did all that was reasonable in the circumstances. There may have been good reasons why nothing more was reasonable to overcome the language barrier, but the evidence is lacking. I do not know, for instance, whether it was impracticable to have an officer who spoke Arabic or a translator as part of the arresting team. If it was, I do not know whether it would have been unreasonable to provide some brief written explanation in Arabic which could have been given to the Claimant when he was arrested. If there were good reasons why the offer of the Claimant's own interpreter to translate was not accepted, I do not know what they were. It is elementary that the presumption in favour of liberty means that it is for those who have arrested or detained someone to show that their actions are lawful. In the present context, that means it is for the Defendant to show that Officer Church did what was reasonable in the circumstances to provide an adequate explanation. In my judgment, the gaps in the evidence to which I have referred mean that the Defendant has not done this. Accordingly, if necessary, I would hold that the failure to provide an explanation for his arrest in a language the Claimant could understand was a second reason why his arrest in the hotel was unlawful.
58. The position was not remedied when the officers and the Claimant were in the car. By then Mr Church was at least able to make use of the translation facility on his iPhone. The Claimant was then at least aware that his arrest was immigration related. However, he was wrongly told that it was for immigration offences. His detention continued to be unlawful. The journey to the police station did not take very long. But in *Lewis* one of the Plaintiffs recovered damages for wrongful arrest because she was not told the reasons for her arrest until her arrival at the police station only 10 minutes after the arrest had taken place. I do not accept the submission that *Taylor's* adoption of the principles in *Fox, Campbell and Hartley* has reduced the requirements of the common law. As Mr Sheldon accepted, *Taylor* was concerned with whether the boy suspect had been given enough information about the offence for which he had been

arrested, not with whether the information had been given to him sufficiently speedily. In any case the use of Convention case law to circumscribe domestic rights would be incompatible with the Convention itself (see Article 53) and the Human Rights Act 1998 s.11(a).

59. At the police station the Claimant was told that he was to be deported but, as Mr Sheldon accepted, the IS91R was not gone through in Arabic. This was contrary to the commitment in the 1998 White Paper. It was also contrary to paragraph 55.6.3 of the *Enforcement Instructions and Guidance*. It also meant, as the Guidance foresaw, that the Defendant was vulnerable to challenge under Article 5(2) of the ECHR because there had not been a prompt explanation of the reasons for his detention in a language which he could understand. I do not accept Mr Sheldon's attempt to distinguish *Faulkner*. He said that the Claimant was not told in that case anything of the reasons for his detention. But Bean J. was prepared to accept that the Claimant in that case knew that the Secretary of State intended to deport him - see [21]-[22] of his judgment quoted above. In this case, the Claimant was given the same information at the police station via the language line. What Faulkner lacked was his IS91R. There was not a language problem in his case, he simply had not been given a copy of the form - see [5] in Bean J.'s judgment. He did not know therefore that the reason why he was being detained was that the Secretary of State considered he presented a risk of absconding to avoid deportation or a risk to the public or both. That was a critical omission. In the present case, the Claimant did not know (as a result of what he was told at the police station) that he was being detained because his deportation was considered to be imminent. That, too, was a critical omission. It is immaterial that the Claimant did not ask for further information as to the reasons for his detention. Neither at common law nor under the Convention is the obligation to provide this information dependent on a prior request from the detainee.
60. Later on the morning of 29th June the Form IS91R was given to the Claimant's solicitors but they did not have the opportunity to translate it to him. Mr Sheldon may be right that the legality of the Claimant's detention did not depend on him being given information as to the reasons for the underlying decision to deport, but what does matter is that even at this stage he was not told in a language which he could understand the reason for his detention - namely that the Secretary of State considered his deportation to be imminent. The Claimant's solicitors could read that for themselves on the form IS91R but Mr Sheldon did not seek to argue that their knowledge should be attributed to the Claimant when they had been unable to communicate it to him.
61. The solicitors were only able to translate the form IS91R for the Claimant on 30th June. Mr Husain accepted that an arrest which was initially unlawful could become lawful if reasons were given belatedly. *Lewis* is authority for that proposition.
62. In my judgment the Claimant's detention became lawful on 30th June. I reject Mr Husain's submission that even then the detention was tainted because whoever completed the IS91R form also ticked the box "You need to be detained while alternative arrangements are made for your care." I accept Mr Sheldon's submission that this was an error. It did not in fact represent the reason why the Claimant was being detained. The error had no effect while the Claimant was at the police station. Since this was not translated for him he was oblivious to the fact that this box had been ticked. His solicitors (and in due course the Claimant) may have been somewhat

mystified as why this box had been ticked, but there is no evidence that they or he were misled or prejudiced by the error.

63. Had it been material, I would have wished to explore by way of oral evidence the question whether the Claimant was told at the police station through the language line interpreter that he was being detained for immigration offences. Mr Sheldon says that Officer Church was in possession of the paperwork which made it quite clear that the Claimant was being deported and that it was not alleged he had committed immigration offences. Mr Sheldon submits that in those circumstances it would be surprising if he had referred to such offences at the police station. Surprising or not, Mr Church's own evidence is that he did use his iPhone in the car to try and tell the Claimant that he had been arrested because of immigration offences. At the police station the custody record sheet contains multiple references to the investigation of immigration offences. The Claimant's statement (which as I have said is generally accepted as accurate by the Secretary of State) says that what he was told at the police station echoed what he had been told in the car.
64. However, in my judgment it is not necessary to resolve this dispute. For other reasons, what the Claimant was told at the police station was deficient and did not render his detention lawful.
65. Consequently, I accept the Claimant's case that he was unlawfully detained from his arrest on the evening of 28th June 2011 until the visit of his solicitors on 30th June 2011.

Conclusion

66. I grant permission to apply for judicial review.
67. I have rejected the Claimant's case that his detention was unlawful because it conflicted with the statutory purpose or the Secretary of State's policy on detention. I have accepted his argument that he was not given proper and sufficient reasons for his arrest on 28th June nor was he given them until some time on 30th June. He is entitled to damages for wrongful detention during that period. I will invite the parties to try to agree an order as to how any remaining matters in dispute should be resolved.