



Neutral Citation Number: [2025] EWHC 47 (Admin)

Case No: AC-2025-LON-000016

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 16/01/2025

Before :

MR JUSTICE CHAMBERLAIN

Between :

THE KING
on the application of
EBOU JASSEH

Claimant

- and -

SECRETARY OF STATE FOR THE HOME
DEPARTMENT

Defendant

Ebou Jasseh (in person) for the **Claimant**
Julie Anderson (instructed by **Government Legal Department**) for the **Defendant**

Hearing date: 8 January 2025

Approved Judgment

This judgment was handed down remotely at 10am on 16 January 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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MR JUSTICE CHAMBERLAIN

Mr Justice Chamberlain:

Introduction

1. This judgment deals with a procedural issue which is of general importance in immigration cases where an application for interim relief to stay the claimant's removal from the United Kingdom is made or expected. The issue concerns communications from the Government Legal Department (acting for the Home Secretary) to the Administrative Court about planned removals.

Background

2. The claimant is a national of The Gambia. He entered the United Kingdom in 2004 or 2005. He was convicted in 2016 of rape and sentenced to 6 years' imprisonment. A deportation order was made. Between October and December 2024, he filed five claims for judicial review, in each case with the aim of challenging or postponing his removal. All these claims failed at the permission stage.
3. Directions were given for the claimant's removal on a flight to The Gambia on 9 January 2025. The claimant was detained at Colnbrook Immigration Removal Centre, near Heathrow Airport. He filed a sixth claim on 3 January, again in the Upper Tribunal, and applied for interim relief to stay his removal. He was unrepresented and drafted the claim and application himself.
4. The claim was transferred to the Administrative Court because it included a challenge to the Home Secretary's decision to reject the claimant's case that he was a victim of trafficking and the Upper Tribunal declined jurisdiction on the ground this fell outside the scope of the Lord Chief Justice's Direction. The application for interim relief was referred to me. On 6 January, I gave directions permitting the Home Secretary to respond to the application by 12 noon on 7 January and the claimant to indicate by 4pm on the same day whether the application was still maintained. If so, there was to be a remote hearing on 8 January.
5. Although the claimant was at one point represented, the solicitors assisting him came off the record. He indicated that wished to proceed with the hearing, which took place remotely on the morning and afternoon of 8 January. I heard submissions from the claimant and from Julie Anderson for the Home Secretary. I gave an oral judgment refusing interim relief, but also indicated that I would give a separate written judgment on the procedural issue, which I drew to the parties' attention at the start of the hearing.
6. The claimant was not in fact removed on 9 January for reasons outside the Secretary of State's control. The removal has been rescheduled for 16 January. On 10 January, I received a letter from GLD about the procedural issue, parts of which I set out here.

The procedural issue

7. The procedural issue arises from an email which was sent to the Administrative Court Office by a Government Legal Department lawyer, on the evening 7 January 2025 at 21:21. The terms of the email were as follows:

“Dear Administrative Court,

Strictly confidential – Gambia Charter

We act on instructions from the SSHD, the Defendant in a number of judicial review claims previously issued by Mr Ebou Jasseh. Mr Jasseh is scheduled to be removed via charter flight on 9 January 2025 at approximately 07:45am. GLD and counsel are instructed by the SSHD to consider and potentially defend any applications for interim relief or judicial review which are filed in relation to Mr Jasseh’s removal. We can also assist with any other challenges to the charter flight.

The GLD lawyers on call are myself and [name given] (copied). We have instructed Julie Anderson as Counsel. Our contact details are below:

...

In case we can assist the Court, GLD and counsel are available to provide any information or responses, the ‘Immediates’ or on-call judges may require prior to making any interim relief orders. We are all on call 8 – 9 January 2025, including partially out of hours. If you cannot contact us, please contact OSCU in the usual manner.

Mr Jasseh has issued six judicial review claims since October 2024, several of which did not present all relevant information before the Upper Tribunal. As a result, UTJ Hirst requested that we provide the Court with a bundle outlining the litigation history.

Mr Jasseh has already issued one claim on 3 January 2025 ..., which was transferred to the Administrative Court the same day. However, we anticipate that more claims may follow. To assist the Court with any future claims, we will provide four bundles and a chronology, which will be sent across multiple emails due to size. Please advise if there is another manner you would prefer these to be provided.

Please note that we have already provided these documents on a separate email chain for considering in the present judicial review claim...

We would be grateful if you can acknowledge receipt of this email and confirm that the relevant judges and their clerks are aware of the above.

Attached: Chronology, Bundle 1, and Bundle 3

Kind regards...”

8. This email was passed to me on the morning of 8 January 2024. At the start of the hearing, I questioned why this email, headed “Strictly confidential”, had not been copied to the claimant. Julie Anderson for the Home Secretary told me on instructions that there was a published policy not to disclose the time of charter flights for removals, because doing so could enable targeted disruption, which in turn could endanger staff as well as those subject to removal.
9. In their letter of 10 January 2025, GLD explain that the email was headed “Strictly confidential” because it contained the departure time of the charter flight. Reference was made to the Home Office’s policy *Enforced removals: notice periods (version 2.0)*, published on 29 April 2024. That contains the following at p. 30:

“In general persons subject to enforced removal should be provided with as much information about their departure as is practicable. This includes, where known:

- departure time
- flight number
- departure airport
- departure airport terminal
- arrival time
- arrival airport
- arrival airport terminal

However, in certain circumstances it may be appropriate to provide only the date of departure, destination and any transit stops.

...

Charters

For charter flights, which can often be the subject of targeted disruption, you must only include the date of departure, the destination and names of any transit stops.

See the section on charter flights for further information.”

10. On p. 56, there is the following:

“To protect the safety of those on board a chartered aircraft to particular destinations it may be necessary, for security reasons, to not provide additional information such as departure time, airport name and terminal details. In these cases, all those being removed by that flight will be only given the destination, date of departure and any transit stops in the notice of departure details (NDD).”
11. GLD explain that, whenever a charter flight is planned and litigation is anticipated, GLD sends an email to the Upper Tribunal and Administrative Court Offices. The email

includes the time of departure of the flight and the contact details of the GLD lawyers and counsel instructed to deal with applications in relation to that flight. An example of such an email is attached to GLD's letter. It was sent to the Administrative Court Office on 14 October 2024 and says this:

“We would be grateful if you could please pass on the below to the ‘Immediates’ and ‘on-call judges’ for 16-17 October 2024.

GLD and counsel are instructed by the Home Office to consider and potentially defend any applications for interim relief or judicial review which are filed in relation to a forthcoming charter to Nigeria and Ghana at 22:00 hours on 17 October 2024.

The GLD lawyers are [names given] (copied). We have instructed [name given] as Counsel. Our contact details are below:

...

In case we can assist the Court, GLD and counsel are available to provide any information or responses the ‘Immediates’ or on-call judges may require prior to making any interim relief orders. We are all on call on 16-17 October, including partially out of hours. If you cannot contact us, please contact OSCU in the usual manner.

We would be grateful if you can acknowledge receipt of this email and confirm that the relevant judges and their clerks are aware of the above.”

12. GLD further explain that the purpose of the email sent in the present case was twofold: first, to notify the court of the contact details for the lawyers representing the Home Secretary; second, to file bundles containing papers relating to previous applications made by the claimant. Judges of the Upper Tribunal had made orders requiring the Home Secretary to file these, because there had been a concern that the claimant had failed to provide the Tribunal with a complete picture of his legal challenges. The reason why the email was headed “Strictly confidential” and not copied to the claimant was that it contained the departure time of the flight.
13. GLD continue as follows:

“17. With hindsight, we can see that this email could be interpreted as containing submissions and is an inadvertent breach of CPR 39.8. We apologise unreservedly for this error.

18. In light of this, we are currently reviewing our internal procedures in respect of emails proactively sent to the Tribunal and Court in advance of charter flights. We would welcome feedback whether the Court wishes to be notified of the details of GLD's on call immigration lawyers and if this assists the Court.”

Discussion

14. CPR 39.8 provides as follows:

“(1) Any communication between a party to proceedings and the court must be disclosed to, and if in writing (whether in paper or electronic format), copied to, the other party or parties or their representatives.

(2) Paragraph (1) applies to any communication in which any representation is made to the court on a matter of substance or procedure but does not apply to communications that are purely routine, uncontentious and administrative.

(3) A party is not required under paragraph (1) to disclose or copy a communication if there is a compelling reason for not doing so, and provided that any reason is clearly stated in the communication.

(4) A written communication required under paragraph (1) to be copied to the other party or parties or their representatives, must state on its face that it is being copied to that person or those persons, stating their identity and capacity.

(5) Unless the court directs otherwise, a written communication which does not comply with paragraph (4) will be returned to the sender without being considered by the court, with a brief explanation of why it is being returned.

(6) In addition to returning a communication under paragraph (5), where a party fails to comply with paragraph (1) the court may, subject to hearing the parties, impose sanctions or exercise its other case management powers under Part 3.

(7) Paragraph (1) does not apply to communications authorised by a rule or practice direction to be sent to the court without at the same time being provided to the other party or parties or their representatives.

15. CPR 39.8(1) reflects the fundamental common law principle that a party has a right to know the case against him and the evidence on which it is based. This is an essential ingredient of natural justice: see e.g. *Al Rawi v Security Service* [2011] UKSC 34, [2012] 1 AC 531, at [12]. The situations in which the law permits exceptions from this principle are limited. As was pointed out in *Al Rawi* itself, public interest immunity is not a true exception, because a claim to public interest immunity, if upheld, has the effect of excluding the evidence which attracts immunity so that the court cannot take it into account when determining the case. Statutory closed material procedures are exceptions, but they typically have detailed safeguards, which are incorporated into the CPR. In these cases, CPR 39.8(7) would apply. There are no special procedural rules for immigration removal cases. The applicable regime is therefore to be found in CPR 39.8(1)-(3).

16. Once proceedings have been filed, GLD's client is a "party to proceedings" and CPR 39.8(1) applies. Principle dictates that this rule should also apply where proceedings have been threatened. In either case, private communications with the court on matters of substance or procedure have implications for the principle of natural justice. CPR 39.8(3) recognises that there may be exceptions to the rule in CPR 39.8(1), but the exceptions must be narrowly confined.
17. The email sent on the eve of the hearing in this case plainly contravened CPR 39.8(1). It was about a particular case; it was sent after proceedings and an application for interim relief had been issued and were before the court; and it went well beyond a "routine, uncontentious and administrative" communication of the kind mentioned in CPR 39.8(2). It contained submissions about what had happened in previous litigation, including a submission that the claimant had failed (whether deliberately or otherwise) to provide a complete picture to a tribunal. For these purposes, it does not matter whether the submission was well-founded. There was no reason, let alone a compelling reason within CPR 39.8(3), for not copying this part of the email to the claimant.
18. If any such private communication is received by the court in future, it should be referred to Administrative Court lawyers, who will direct that it is returned to the sender under CPR 39.8(5) and may refer the matter to a judge under CPR 39.8(6) for consideration whether sanctions should be imposed or other case management directions given.
19. CPR 39.8(1) does not prevent GLD from sending to the court a private communication of the kind set out in para. 11 above, containing the departure time of a planned charter flight and the contact details of the GLD lawyers and counsel instructed to deal with any litigation relating to it. If such a communication is sent before proceedings have been brought or threatened, it does not engage CPR 39.8(1) at all because at that stage the party on whose behalf the communication is sent is not a "party to proceedings". Knowledge of the time of departure assists the court to assess whether any application subsequently filed needs to be considered by the King's Bench Division duty judge out of hours or over the weekend or (as is generally preferable) can wait to be considered by the Administrative Court immediates judge on the next working day. It may also assist the immediates judge to prioritise cases. If the court has the contact details of the lawyers instructed for the Home Secretary, it can contact GLD as soon as an application is filed, without waiting for the papers to be issued and served.
20. Once proceedings have been started or threatened, however, GLD and counsel for the Home Secretary must keep under review whether it is proper to continue to withhold from the claimant the intended departure time. This matter should be considered through the prism of the duty of candour (see Administrative Court Judicial Review Guide §15.3), as well as under CPR 39.8(3).
21. On the facts of the present case the information about the flight departure time contained in the email of 7 January was not relevant to any issue and could not affect any decisions of the claimant about the timing of the hearing, since the hearing had already been fixed and the claimant knew that it would be concluded on the day before departure. In those circumstances, the duty of candour did not require disclosure to the claimant of the precise time of departure.

22. In other cases, however, the flight departure time may be material to the timing of the court's consideration of interim relief. In such cases, fairness may require communication to the claimant of more detailed information about the intended time of departure. If, for example, the Home Secretary were notified in the late afternoon or evening of an intended application for interim relief, it would not be fair to keep the claimant and/or his or her lawyers wholly in the dark about the flight departure time. If there were a genuine concern about targeted disruption in an individual case, the duty of candour might be satisfied by disclosure of a "not before" time, sufficient to enable the claimant to understand whether an out of hours application was necessary. At all events, it should be emphasised that the Home Office policy does not override the Home Secretary's obligations as a litigant.

23. From now on, where proceedings have been filed or threatened, any communication to the Administrative Court about a removal which is not copied to the other party or parties should:
 - (a) make clear in the subject line that it has not been copied to other parties;
 - (b) indicate whether this is because the communication is "routine, uncontentious and administrative" in nature (CPR 39.8(2)) or because there is a compelling reason not to copy it to the other party (CPR 39.8(3));
 - (c) if CPR 39.8(3) is relied on, set out the "compelling reason" why it has not been so copied and record that the author considers that the reason applies to the whole content of the communication;
 - (d) explain what the claimant has been told about the matters being communicated to the court; and
 - (e) record that the author is satisfied that this complies with the defendant's duty of candour, with a brief explanation of the reasons why.