

SPECIAL IMMIGRATION APPEAL COMMISSION

Field House,  
Breems Buildings  
London

Monday, 10<sup>th</sup> February 2014

BEFORE:

THE HONOURABLE MR JUSTICE IRWIN

BETWEEN:

W

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondents

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MS S WESTON (instructed by Public Law Project ) appeared on behalf of the appellant.

MR B McGURKE (instructed by the Treasury Solicitor) appeared on behalf of the Secretary of State.

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Transcribed by Harry Counsell  
Tel: 020 7269 0370

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BAIL VARIATION  
RULING

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MR JUSTICE IRWIN:

1. I am grateful to both sides for the careful way that this has been dealt with and, in the case of Mr McGurke, I think there was rather short notice for the Crown in dealing with this, but I am sure that I have enough material before me to make a proper decision.
  
2. There are various things to be borne in mind. The first is the uncertain overall timetable of this appeal or the appeals from the ruling in SIAC and there is a fairly long and quite open-ended period to be catered for on both sides. That is quite a clear context. The balance of the evidence, both on the previous occasions and today, appears to me to favour the following broad conclusions: firstly, that there are enduring psychiatric problems here, that there is a psychotic aspect to them, that they fluctuate and have fluctuated over time, which is not a surprising conclusion in this sort of situation. Secondly, that we are dealing with someone with limited educational capacity or intelligence and quite a high degree of anxiety. That overall picture is of a genuine constellation of genuine problems, although I cannot and do not rule out that, particularly over a long period of time, someone like this becomes to some degree conscious of how what they say may affect clinicians, may affect the system and will exaggerate or play up or play down, perhaps, depending on mood, some of the content of what they are saying. It seems to me, first of all, that that is not quantifiable in any crisp way and, secondly, it is overlay on a fundamentally genuine psychiatric condition.
  
3. Next I conclude that the suicide attempts to date have not, in fact, been suicide attempts or serious attempts at taking his life, but that does not prevent them from being, potentially, serious indicators for the future. I do not discount them as unimportant, but I have seen

nothing yet that confirms there was a genuine attempt to end his life. Let us hope that there will not be.

4. The bail failures here are real and I do not discount them. It is critical that someone in his position does adhere to the conditions that are set, but it is noteworthy, looking at the tabulated breaches set out in the letter of 9th January, seven minutes, three minutes, ten minutes, 21 minutes, which is the longest failure to call the monitoring company, one minute, four seconds, six minutes, two minutes, 28 seconds, 44 seconds, 32 seconds, two seconds, two minutes, two minutes, two minutes, then, in January, a 19 second failure to report and then the contested curfew absence of seven minutes. I am sorry, that is my confusion, there is an admitted curfew absence of seven minutes, which W explained by saying he had left his key in the local cafeteria and, in addition, there is the contested episode on 26th January where, for six minutes, he was registered as being absent from the flat, but I cannot resolve that dispute of facts and do not intend to. Assuming it is correct rather than a technical failure, it is still a very brief period. Now, those who represent and advise W will, no doubt, understand that, in emphasising how short most of those episodes are, that does not mean that I regard them as unimportant, and they are frequent. Ms Howells is right to remind him of his obligations and, no doubt, Mr Singh will do the same, as he clearly has. That seems to me to be the picture. On the other hand, there has been no repetition of shoplifting, which was the really major matter that got him into such trouble last year. This is not a question of rewarding W or otherwise. This is a question of trying to see, in a very imperfect situation, what may be the best thing to do, both for stability and for the adherence to bail conditions, and, because it is connected, for him. In essence, what Dr Hartree was saying, in alignment with what the submissions have been, was that somewhat extended non-curfew hours would allow for a structure of activities and

a rhythm to the week that that would create a virtuous cycle, she hoped, a lift in his morale, better mental state and, therefore, better compliance, because of reduced activity. That seems to me to be at least plausible and at least worth trying. If the result is extensive breaches, then he may have to go backwards and everyone who is involved will need to understand that.

5. For those reasons, the structure or timing that seemed to me to be right would be to make things as simple as possible, but to be sure that that will work needs time and planning. I will be content with 9 o'clock to 1 o'clock and 2 o'clock to 6 o'clock or 9 o'clock to 2 o'clock and 3 o'clock to 6 o'clock. The reason for having, in the case of the second, a second thought was that it would enable him to be out for the midday meal, which might be a sociable thing to do with those who have been supporting him. I am clear that five hours is the absolute outside limit without return to the flat and, if the 2 o'clock, as opposed to 1 o'clock, is not important, then it would, for security reasons, be better to have two four-hour blocks. It would seem to me sensible to have exactly the same hours every day of the week so that he knows exactly where he is. That is the broad indication.
6. I would wish there to be a two- or three-week period now during which that indication is absorbed, there is a bit of work needed on what the sensible decision should be and, if the suggestion came back that it should be 9 to 12.30 or whatever, some sort of tinkering with those times, of course, that is not of the essence, but the same time every day so that he knows where he is and a proper sense of what he is going to do with it, in part, so, in anticipating this, he will be part of the planning of it, feel himself in possession of his own time to some degree and be part of planning something constructive. I should have thought that the English as a foreign language lessons were a high priority and for that, probably

for nothing else, if it did involve one day a week with a later evening and later start, that might be worth the risk of some variation in the daily rhythm through the week.

MS WESTON: Has the court seen the application for the variation for the assessment itself?

MR JUSTICE IRWIN: Well, I have seen the email of 3rd February, which points out that there is a meeting at half-five on 13th February. I would certainly be inclined to permit him to attend that. I have not seen a formal application. I gather that we have one. We have not had a response on that application so that is why I have not read it. It seems to me that there is quite a high priority on engaging him in language teaching if he can. I am certainly sympathetic to what one-off changes might be necessary.

MS WESTON: With regard to the 13th, I am wondering if the Secretary of State wishes to make a formal response or whether the Secretary of State can just agree, in light of the observations of the court, that that is a permissible variation.

MR JUSTICE IRWIN: Let us see what is said. I do not know where the meeting is. The email I have seen does not tell me that. Is it nearby?

MS WESTON: Can I just take some instructions?

MR JUSTICE IRWIN: Please do.

MS WESTON: The address is on the email. It is 23 North Berbeck(?) Road, Leytonstone.

MR JUSTICE IRWIN: I see, that is where Lisa McGovern has written from. That is not very far away.

MS WESTON: No.

MR JUSTICE IRWIN: If it is a meeting which begins at half-five, does anybody know how long it is intended to go on?

MS WESTON: We will need to clarify that, but it is going to be at least an hour, I would have thought.

MR JUSTICE IRWIN: Assuming that it is an hour and there is a journey time back and you want a margin, we are probably talking about ...

MS WESTON: Now, it says here in the email above that a previous appointment between two and four was canvassed, so it may be that two hours is necessary. I am wondering, perhaps, before we fasten on a time ...

MR JUSTICE IRWIN: Why do you not work that through? I am sympathetic to a one-off and I would have thought that it was pretty obvious that he ought to be accompanied when he goes to that one.

MS WESTON: Yes, my understanding is that they are going to take him and bring him back.

MR JUSTICE IRWIN: I thought that that might be the answer. The sensible thing would be to work out the details rather than get the Secretary of State to respond when we do not know what the times are, but, if it is a visit at around that time, accompanied by Ms Howells, with enough time to get there and back, then that is really what we should be thinking about.

MR McGURKE: We have heard what the Commission says and we will not necessarily oppose. We just need a few more details and it has to be run past other channels, but we hear what the Commission says about it.

MR JUSTICE IRWIN: That is a very helpful indication. There we are. If it can be worked through and then a joint position put in a joint email or agreement, that would be helpful.

MS WESTON: Yes, sir.

MR JUSTICE IRWIN: Is there anything else for now?

MS WESTON: Sir, no.

MR JUSTICE IRWIN: Thank you both very much. As I say, I will await an indication. It does make sense, probably, to say that one would want there to be something in writing before the Secretary of State as to the timing and the rhythm, so that the Secretary of State gets the chance to see that and think about it in light of this ruling within the next ten days or 14 days. We do not want to leave it too long, because he will be told today what the principle is. If the Secretary of State gets notice within, say, ten days, then it can all be dealt with in writing.

MR McGURKE: So that I am absolutely clear, I am not being thick, the existing order will maintain until there is an agreement in principle. .

MR JUSTICE IRWIN: Absolutely.

MR McGURKE: We will put that back in front of the Commission and you will vary it.

MR JUSTICE IRWIN: There is no variation today.

MR McGURKE: Understood.

MR JUSTICE IRWIN: What we anticipate is that, once we have worked it through, a variation along those lines, with notice, and you will have an indication of how it is sought to be fleshed out so that you can think about the details.

MR McGURKE: That is helpful. Thank you.

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