Neutral Citation Number: [2018] EWCA Civ 1260

Case No: C4/2017/3259

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
(ADMINISTRATIVE COURT)
MR JUSTICE LEWIS

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 12/06/2018

Before:

LORD JUSTICE DAVIS
LORD JUSTICE HICKINBOTTOM
and
SIR STEPHEN RICHARDS

- -

Between:

	THE QUEEN (ON THE APPLICATION OF IBRAHIMA JOLLAH)	**Respondent /Claimant**
	- and –	
	THE SECRETARY OF STATE FOR THE HOME DEPARTMENT	**Appellant/ Defendant**

- -
- -

Robin Tam QC and Emily Wilsdon (instructed by **the Government Legal Department**) for the **Appellant**
Dinah Rose QC and Jude Bunting (instructed by **Saunders Law**) for the **Respondent**

Hearing date: 16 May 2018

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Judgment Approved

Lord Justice Davis:

Introduction

1. This appeal involves a consideration of the parameters of the tort of false imprisonment.

2. The context is one of immigration detention. The claimant, who is the respondent to this appeal (and who for present purposes I will call "IJ"), was made subject to a curfew restriction between the hours of 23.00 and 07.00 for a period between 3 February 2014 and 14 July 2016, pending potential deportation. Such curfew was imposed by those acting on behalf of the appellant Secretary of State purportedly pursuant to the provisions of paragraph 2 (5) of Schedule 3 to the Immigration Act 1971 (as it then stood). It has, however, been accepted in these proceedings that,

in the light of subsequent Court of Appeal authority, there was no power to impose a curfew under those provisions. Consequently, the curfew was unlawfully imposed. The question arising is whether IJ is entitled to damages for false imprisonment in respect of the time during which he was subject to the unlawful curfew. The trial judge, Lewis J, decided that he was. Having so decided, the judge at a subsequent hearing assessed the damages at £4,000: [2017] EWHC 330 (Admin); [2017] EWHC 2821 (Admin).

3. The Secretary of State now appeals, with leave granted by the judge, against the decision that IJ was entitled to damages for false imprisonment. IJ cross-appeals, with leave granted by Singh LJ, against the amount of the award of damages. It is said on behalf of IJ that a much greater award should have been made.

4. The Secretary of State was represented before us by Mr Robin Tam QC and Ms Emily Wilsdon. IJ was represented before us by Ms Dinah Rose QC and Mr Jude Bunting. I would like to place on record that the arguments presented to us, in writing and orally, were excellent.

5. We were told that the outcome of this appeal and cross-appeal is likely to have a bearing on a number of other cases where a similar situation has arisen.

Background Facts

6.IJ has said that he is a citizen of Liberia, born on 15 December 1986. There is in fact a dispute as to his identity and nationality: the Secretary of State has said that he in fact is called Diallo and is from Guinea. At all events, IJ claims to have come to the United Kingdom on 6 January 2003 and to have been granted asylum on 29 August 2003.

7. Since arriving in the United Kingdom IJ has, on the Secretary of State's case, not behaved well.

8. On 23 May 2006 he was, according to the Secretary of State, convicted of threatening to harm a witness, juror or person assisting in the investigation of an offence. He was sentenced to 15 months' imprisonment. He was further convicted on 4 September 2006 of assault occasioning actual bodily harm and was sentenced to 6 months' imprisonment. According to the Secretary of State, notice of deportation thereafter was served on him on 4 September 2008. However he was not removed at that time. Subsequently, he was convicted on 15 April 2013 of child cruelty and sentenced to 12 months' imprisonment. He was due for release on licence the following day (in view of time already spent in custody on remand) but was then detained in an immigration removal centre pursuant to powers conferred by the 1971 Act.

9. On 29 October 2013 IJ was granted bail by a judge of the First-tier Tribunal. Bail conditions included a requirement of residence at a particular address in North

Shields. On 30 October 2013 he reported to a relevant immigration officer (as required by his bail conditions). It is common ground that the bail granted by the First-tier Tribunal thereupon came to an end.

10. On that date he was given a document headed "Home Office, Immigration Act 1971, United Kingdom Borders Act 2007". That document provided as follows:

> "NOTICE OF RESTRICTION
>
> To: Thierno Ibrahima Thierno Ibrahima Diallo Guinea 15 December 1988
>
> You are liable to be detained under paragraph 2 of Schedule 3 to the Immigration Act 1971/Section 36 of the UK Borders Act 2007.
>
> The Secretary of State has decided that you should not continue to be detained at this time but, under paragraph 2(5) of Schedule 3 to the 1971 Act/Section 36(5) of the 2007 Act, she now imposes the following restrictions on you:
>
> 1. You must report in person to the immigration officer in charge of North Shields Reporting Centre at:
>
> Northumbria House Norfolk Street North Shields NE30 1LN
>
> 2. You must then report in person to the immigration officer in charge of the North Shields Reporting Centre on Monday 4 November 2013 and Wednesday 6 November 2013 and Friday 8 November 2013 between 10.00 and 16.00 hours and then weekly every Monday, Wednesday and Friday thereafter or on such other days in each week as the officer to whom you made your last weekly reports may allow.
>
> 3. You must live at address
>
> Flat 4,
> 14 Argyle Square
> Sunderland
> SR2 7BS
> 4. YOU ARE TO BE MONITORED ELECTRONICALLY BY MEANS OF TAGGING/TRACKING
> 5. You must be present at the address shown above for induction on Saturday 2 November 2013 between the hours of 10 am to 6 pm, when an officer from G4S will call at your address to install the Electronic Monitoring equipment and explain how the system operates.
>
> 6. Following induction you must be present at the

address shown above between the hours of 23.00 hours to 07.00 am every day, and every day thereafter, between the hours of 23.00 hours to 07.00 am.

7. You **may not** enter employment, paid or unpaid, or engage in any business or profession.

You should note that:

i) You must not change the address at which you live without the agreement of the Secretary of State. If you wish to change your address you should contact the Home Office at the address shown below. If the change of address is agreed you will be notified and a new restriction order will be served.

ii) If without reasonable excuse you fail to comply with any of these restrictions you will be liable on conviction to a fine not exceeding the maximum on level 5 of the standard scale (currently £5000) or imprisonment for up to 6 months or both."

11. Thereafter IJ changed address. On 3 February 2014 he was fitted with an electronic tag; and the relevant monitoring equipment was also installed in the premises where he was living.

12. On 8 March 2014 he was presented with a further Notice of Restriction document. That was, mutatis mutandis, in terms similar to the prior document. In particular, for present purposes, it maintained the requirement to be present at the stated address between the hours of 23.00 and 07.00 every day. The same two notes were also included.

13. Thereafter there were occasions, as was accepted, when IJ did not adhere to the curfew requirements. On some occasions that was with the consent of the Home Office: for instance, when IJ had to attend certain court hearings or for religious purposes. On other occasions IJ failed to abide by the curfew requirements without obtaining any consent. Overall, as the judge was to find, of the total of 891 days when he was subject to the curfew requirement IJ was on 37 occasions absent from his home for the entirety of the curfew period (most of those relating to his attending family court proceedings in Coventry concerning the custody of his daughter); and on 108 occasions absent for part of the time when the curfew was in place (sometimes by only a few minutes). Many of those related to his delayed return from Coventry or delayed return from religious attendance.

14. On 17 May 2016 the Court of Appeal handed down its judgment in the case of *R (Gedi)* v *Secretary of State for the Home Department* [2016] EWCA Civ 409, [2016] 4 WLR 93. That, reversing the decision of the first instance judge in this respect, held that paragraph 2 (5) of Schedule 3 to the 1971 Act did not, on its true construction, empower the Secretary of State to impose a curfew.

15. There was then correspondence between IJ's solicitors and those acting on behalf of the Secretary of State. The Secretary of State maintained that the curfew was lawful. Judicial review proceedings were commenced by IJ on 27 June 2016. On 14 July 2016, on an application for interim relief, Collins J ordered that the curfew restriction be lifted.

16. The matter came on for decision, by way of determination of certain preliminary issues, before Lewis J in February 2017. At that time, the factual position was still not altogether clear. At all events, the judge in a reserved decision handed down on 24 February 2017 declined, in his discretion, to grant a declaration as to the unlawfulness of the curfew. He further decided, however, that damages for false imprisonment were in principle recoverable. He adjourned to a further hearing the quantification of the damages payable, in view of the then evidential uncertainties.

17. At the further hearing, which lasted over three days in October 2017, extensive evidence – which included the oral evidence of IJ himself – was adduced. By reserved decision handed down on 9 November 2017 the judge quantified the compensatory damages payable at £4,000, as I have indicated. A claim for exemplary damages (as also a claim for damages for misfeasance in public office) had previously been withdrawn; and the judge rejected, on the facts, a claim for aggravated damages. For her part, the Secretary of State had by then withdrawn an argument that only nominal damages were payable.

18. I will have to come on to some aspects of those two judgments in due course, in considering both the appeal and cross-appeal.

The legal background

19. The legislative provisions on which the Secretary of State had purported to rely derive from the 1971 Act. It should be noted that at the times in question the original version of the statute had been subject to some amendment as to the relevant provisions; and there has been further substantive amendment since the events in question, with effect from 15 January 2018.

20. Section 36 of the UK Borders Act 2007 confers upon the Secretary of State a power to detain foreign national criminals (as defined) in the circumstances there specified. It provides as follows in the relevant respects:

> "(1) A person who has served a period of imprisonment may be detained under the authority of the Secretary of State (a) while the Secretary of State considers whether section 32 (5) applies, and (b) where the Secretary of State thinks that section 32 (5) applies, pending the making of the deportation order.
>
> (2) Where a deportation order is made in accordance with section 32 (5) the Secretary of State shall exercise the

> power of detention under paragraph 2 (3) of Schedule 3 to the Immigration Act 1971 (c. 77) (detention pending removal) unless in the circumstances the Secretary of State thinks it inappropriate.
>
> ….
>
> (5) Paragraph 2 (5) of Schedule 3 to that Act (residence, occupation and reporting restrictions) applies to a person who is liable to be detained under subsection (1)."

(Section 32 (5), I add, relates to automatic deportation.)

21. So far as Schedule 3 to the 1971 Act is concerned, that, at the relevant times, provided in paragraph 2, in the relevant respects, as follows:

> "(5) A person to whom this sub-paragraph applies shall be subject to such restrictions as to residence, as to his employment or occupation and as to reporting to the police or an immigration officer, as may from time to time be notified to him in writing by the Secretary of State."
>
> (6) The persons to whom sub-paragraph (5) above applies are –
>
> . . . .
>
> (b) a person liable to be detained under sub-paragraph (2) or (3) above, while he is not so detained".

It was common ground before us that IJ fell within paragraph 6 (b).

22. I would also note, without setting out, the provisions of paragraph 3 of Schedule 3 and of paragraph 22 of Schedule 2 to the 1971 Act, relating to detention and bail. Although they featured in pre-action correspondence and initial arguments below they were not ultimately relied upon in this case as conferring a power to impose the curfew as was done here.

23. Section 24 of the 1971 Act, in its form at the relevant times, provided in the relevant respects as follows:

> "(1) A person who is not a British citizen shall be guilty of an offence punishable on summary conviction with a fine of not more than level 5 on the standard scale or with imprisonment for not more than six months, or with both, in any of the following cases:-
>
> . . . .
>
> (e) if, without reasonable excuse, he fails to observe any restriction imposed on him under Schedule 2 or 3 to this Act as to residence, as to his employment or occupation or as to reporting to the police, to an immigration officer or to the Secretary of State."

A power of arrest is conferred on an immigration officer in the circumstances set out in s. 28A (1) of the 1971 Act.

The lawfulness of the curfew restrictions

24. The point thus arises as to whether the imposition of a curfew such as occurred in the present case could count as a "restriction as to residence" within the ambit of paragraph 2 (5) of Schedule 3. One can see the possibility of a broad interpretation to that effect. Indeed that was the view taken at first instance by Edis J in the *Gedi* case, [2015] EWHC 2786 (Admin): see in particular paragraph 52 of his judgment.

25. However, this interpretation was rejected, on appeal, by the Court of Appeal in the decision cited above. The court held that such words did not confer a right to impose a curfew. The court stressed that clear words to that effect would have been needed, particularly where a criminal sanction could follow upon any breach: and such clear words were lacking. That decision is of course binding on this court; and thus it is that the Secretary of State throughout this appeal has accepted that there had been no power to impose a curfew under paragraph 2 (5) of Schedule 3.

26. I should add that, on appeal in *Gedi*, the Secretary of State had further sought to argue that, notwithstanding there was no lawful justification for the curfew in the relevant period, a cause of action in false imprisonment nevertheless did not lie. However, because of procedural irregularities the Court of Appeal declined to entertain the point. It made clear, in doing so, that its decision did not constitute authority for the proposition that a finding of false imprisonment would or should follow in such circumstances. That, therefore, is what this court has to resolve in the present case.

Article 5 of the European Court of Human Rights

27. IJ has never sought to claim a financial remedy by reference to Article 5.1 of the Convention. His claim has, ultimately, been confined to a claim for damages in the tort of false imprisonment.

28. In my view, IJ was correct not to pursue a claim under Article 5.1 in the circumstances of this case and on the present law. But I would like to make a few observations on this aspect.

29. It seems plain that the approach to be adopted with regard to Article 5.1 claims is significantly different from that to be adopted by domestic courts in dealing with claims in false imprisonment. Since the underpinning rationale is similar in each case – namely to safeguard the fundamental right of liberty – one might query the significant divergence in approach applicable. But divergence there is.

30. This is because, essentially, in Article 5.1 cases the courts tend to look at the

restraint in question in the context of the whole picture: and a distinction between deprivation of liberty on the one hand and restriction on movement on the other hand is maintained, involving an assessment of the whole range of factors present, including nature, duration and effects of the restraint, the manner of implementation and execution and so on. Thus even very extensive curfew requirements – far more extensive than occurred in the present case – may not necessarily involve an infringement of Article 5: see, for example, *Guzzardi* v *Italy* (1981) 38 EHRR 17. In the context of control orders made under s. 1 of the Prevention of Terrorism Act 2005, Lord Brown was prepared to contemplate that a home curfew requirement which did not exceed 16 hours per day would not be a deprivation of liberty within the ambit of Article 5: see *Secretary of State for Home Department* v *JJ* [2007] UKHL 45, [2008] 1 AC 385. A corresponding approach involving reference to the whole range of factors present has also been taken, so far as "deprivation of liberty" under Article 5 is concerned, in, amongst other cases, well-known cases involving police stop-and-search and "kettling".

31. However, Article 5.1 provides an irreducible minimum in this context. There is nothing in principle to prevent a member state, by its domestic law, from granting to individuals more extensive rights and remedies for this purpose. At all events the position appears to have been reached whereby, depending on the facts, a case may give rise to a valid claim for damages for false imprisonment at common law but not for breach of Article 5. On the other hand, there can even be cases where a remedy under Article 5 is available where no remedy in false imprisonment is available. Thus there was, for example, a striking divergence in outcome between *R* v *Bournewood Community and Mental Health NHS Trust, ex parte L* [1999] 1 AC 458 where, by a majority, the House of Lords held, in a case with a mental health context, that there was no detention, let alone an unjustified detention, such as to constitute false imprisonment; and the outcome for that same case (sub nom. *HL* v *United Kingdom* (2005) 40 EHRR 22) where the European Court of Human Rights held that there had been a deprivation of liberty for the purposes of Article 5.1.

32. I mention all this because Mr Tam suggested that one solution to the present situation might be to align the concept of imprisonment for the purposes of the tort of false imprisonment with the concept of deprivation of liberty for the purposes of Article 5. However, he rightly accepted that it would not be open to this court to entertain such a proposal. Indeed, he very fairly drew attention to the binding authority of *Walker* v *Metropolitan Police Commissioner* [2014] EWCA Civ 897, [2015] 1 WLR 312. This confirms that the concept of deprivation of liberty under Article 5 is not identical with the tort of false imprisonment and that there may be deprivation of liberty without false imprisonment and vice versa: see paragraph 31 of the judgment of Sir Bernard Rix (with whom Tomlinson LJ and Rimer LJ agreed). I add that in *Walker* the claimant was, given the facts, singularly unmeritorious. Nevertheless he was adjudged entitled to damages, albeit nominal in amount, for a minimal detention by police at a time when he was causing significant trouble: a striking illustration of how strictly the doctrine of false imprisonment can be applied, given the importance attached to the constitutional right of liberty.

33. Ms Rose had in fact come to court prepared to meet an argument that the tort of false imprisonment and Article 5 should in effect now be aligned. However, as I

have said, Mr Tam pursued no such argument, albeit reserving the position of the Secretary of State for argument elsewhere.

The judgments of Lewis J

34. The judgments of Lewis J were conspicuously careful and thorough.

35. In his first judgment, he reviewed the evidence on the basis of the (limited) materials then before him. He reviewed the legislative scheme. He gave full reasons as to why he declined in his discretion to grant a declaration (a point not the subject of any appeal). He then turned to the false imprisonment issue.

36. A very considerable number of authorities had been cited to the judge, as they were to us. For the most part, the judge did not consider it necessary for him to deal with the facts and decisions in each such case. The reason for this was because the judge had been presented with the decision of Edis J, at first instance, in the *Gedi* case (cited above). And on this particular point – identical to the one arising in the present case – Edis J had in terms found that an unlawful imposition of a curfew of this kind did constitute the tort of false imprisonment. As stated above, the Court of Appeal did not itself consider this point.

37. In this regard, Edis J had said this (dealing with one of the periods in contention in that case):

> "66. I have been addressed as to the law by reference to Clerk & Lindsell 21st Edition 15-23/15-28. This is because both sides accept that it accurately states the law. The SSHD submits that she had no intention to detain the claimant in his home between the hours of 00:00 and 06:00 (or during the earlier time regime) and therefore that this element of the tort is not made out. In the light of the warning letters I reject that submission. They were calculated to ensure that he stayed at home during that time in fear of imprisonment if he did not. The tag on his ankle and the equipment in his home demonstrated to him that the SSHD meant business when issuing those threats.
>
> 67. False imprisonment is the unlawful imposition of constraint on another's freedom of movement from a particular place, see paragraph 15-23 of Clerk & Lindsell. I have used the expression "house arrest" above. It appears to me that for the State to threaten a person with imprisonment if he leaves his home is plainly a sufficient constraint to constitute this tort and it is now conceded that those threats during this period were without lawful justification. It appears to me that the elements of this tort are made out during this period."

38. Lewis J was not bound by that decision of a judge of co-ordinate jurisdiction. But, on conventional principles, he entirely properly directed himself that he should not depart from it in the absence of powerful reason for doing so. Lewis J saw no such reason. It is true that he had been presented with far more extensive citation of authority than had been Edis J. But Lewis J held, at paragraph 47, that "as a matter of principle the decision of Edis J is consistent with the existing case law on the meaning of detention for the purposes of the tort of false imprisonment." He considered that the finding that what had occurred in *Gedi* amounted to detention was "readily understandable." He gave other reasons for saying that he saw no sufficient basis for departing from the decision of Edis J: a decision on which Collins J in *MS* v *Secretary of State for the Home Department* [2016] EWHC 3162 (Admin) had also favourably commented, obiter, saying: "it is easy to see why a curfew, breach of which constitutes a criminal offence, falls within that definition [of false imprisonment]."

39. Thus it was that Lewis J followed the decision of Edis J on this point, albeit accepting the possibility that the Court of Appeal might take a different view.

40. In his second judgment, concerning quantum of damages, Lewis J reviewed the evidence very thoroughly. Amongst other things, he made the following findings:

(1) He accepted IJ's evidence that IJ did not want to return to detention or be fined.

(2) He accepted that IJ took steps to ensure that he did comply with the curfew, subject to occasions when he felt that he should attend his mosque for religious observance or should attend the court proceedings in Coventry.

(3) He accepted that IJ was worried when he had come back home late (or when altogether absent) and that "it played on his mind for weeks".

(4) He found that the curfew added to IJ's current depression "only to a very limited degree."

(5) He found that IJ did, broadly, seek to comply with the curfew and that the curfew curtailed his social activities "to a limited extent."

(6) He rejected the suggestion that the curfew had had a material adverse influence on the question of placement of, or contact with, IJ's child.

41. On the assessment of damages, the judge had regard to authorities such as *Thompson* v *Commissioner of Police* [1988] QB 498. He had regard to the curfew times (between 23.00 and 07.00 each day) and the duration of the curfew (3 February 2014 to 14 July 2016, albeit with some absences: some 2½ years). The judge specifically noted, in assessing the appropriate level of damages:

(1) IJ was required by the curfew to be present at his own residential address: he was not being detained in a prison or immigration removal centre.

(2) He was free to come and go as he wished between 07.00 and 23.00 each day.

(3) This was not a case of an "initial shock" at the fact of detention.

(4) As to the effect of the restriction it did not prevent IJ in fact from carrying out his religious observances. Nor did it in fact prevent him from attending the court proceedings (albeit sometimes he did not comply with the curfew in doing so).

(5) The effect of the curfew was to "restrict his activities to a degree" in the form of not attending some community gatherings and parties; to cause him worry as and when he returned late; and to have an impact, "to a very limited degree", on his already current depression. The judge repeated that all this occurred for about 2½ years: "a significant period of time."

42. The judge concluded that, in all the circumstances, the appropriate amount of compensatory damages that the law required to be paid was £4,000.

The arguments on the appeal

43. As has been pointed out in a number of the leading text-books on tort, the phrase "false imprisonment", though hallowed by usage, is somewhat misleading. "False" does not necessarily signify "mendacious" or "fallacious"; "imprisonment" does not necessarily connote being incarcerated (see, for example, Winfield and Jolowicz on Tort 19th ed. at paragraph 4-023).

44. In the present case it is common ground that if, by the curfew restriction, there was "imprisonment" then it was "false". It was false just because it was unlawful. The question thus is whether the curfew restriction here constituted "imprisonment."

45. Mr Tam argued that it did not. He based his argument on a close analysis of the authorities. From those authorities he sought to extract the following five propositions:

> "(a) Voluntary compliance with an instruction or request to remain in a particular physical place does not amount to imprisonment in the relevant sense;
>
> (b) A total or complete restraint is required, and the ability to leave the place by some route means that there is no imprisonment in the relevant sense, as the restraint is

neither total nor complete;

(c) If imprisonment is secured by restraint by means such as the placing of a guard at a door which is in fact unlocked, to prevent the individual from leaving the premises through the door, the restraint must be of a nature that is intended to keep the individual in the same place;

(d) A likelihood that the individual would be immediately detained if he seeks to leave the place does not mean that he is already imprisoned there in the relevant sense;

(e) An ability to leave the place by some route means that there is no imprisonment, even if use of the route involves unlawfulness."

46. On that basis, he submitted that IJ was not imprisoned in the relevant sense. IJ was not subjected to any physical restraint. There was no guard at the door. He was at all times during the curfew hours physically able to leave his house: and not infrequently in fact did so. Mr Tam said that the curfew requirement was "satisfied by voluntary compliance, not by any form of constraint". He further said that the fact that IJ's leaving his home during curfew hours might thereafter give rise to criminal prosecution did not convert the character of the curfew requirement into imprisonment.

47. Ms Rose refuted this argument. She said that it involved far too inflexible an approach to the tort and that some of the propositions advanced in any event were not reflected in the case law. She of course accepted that IJ was not physically restrained. But she submitted that, in abiding by the curfew (as for the most part he did), IJ was acting under the constraint of legal process: namely the official Notice of Restriction, purportedly imposed under paragraph 2 (5) of Schedule 3 and backed by an express warning of criminal liability in the event of breach and by electronic tagging. She said, in effect, that it was a distortion of reality to say that there could be or was voluntary compliance. Rather, IJ was being required by law to remain in his house during those night hours, with any ability to leave during those hours involving (absent reasonable excuse) a prospective breach of the criminal law. She said that this was a plain case of compulsory restraint on the liberty of the subject on the part of the executive which amounted to imprisonment in the sense of the tort. She also stressed the constitutional importance given to the liberty of the subject: citing by way of example extracts from Blackstone's Commentaries (1769) for this purpose.

The authorities

48. Because the arguments of counsel – in particular, those on behalf of the Secretary of State – were so closely linked to the authorities it is, unfortunately, necessary to deal with them in some detail.

49. Nevertheless, I should make clear at the outset that Mr Tam expressed no dissent from the definition of, and exemplification of, the tort of false imprisonment as contained in the leading text-books: in which texts the various cases are referred to in foot-notes. Further, he expressly accepted in argument that there was here some constraint on liberty (albeit, as he argued, falling short of false imprisonment).

50. Thus in Clerk and Lindsell on Torts 21st ed. at paragraphs 15-23, as cited to Edis J in *Gedi* and there accepted as correct (and as repeated in the recent 22nd edition), this is said:

> "**Imprisonment** False imprisonment is "the unlawful imposition of constraint on another's freedom of movement from a particular place". The tort is established on proof of: (1) the fact of imprisonment; and (2) the absence of lawful authority to justify that imprisonment. For these purposes, imprisonment is complete deprivation of liberty for any time, however short, without lawful cause. Even confining an individual in a doorway for a few seconds without lawful authority would amount to a false imprisonment. In the context of someone who is mentally ill, the Supreme Court has ruled that the question of whether that person has been deprived of his or her liberty for the purposes of s. 64(5) of the Mental Capacity Act 2005, means that he or she was under continuous supervision and control and was not free to leave. Whether the same test for "deprivation of liberty" will be applied to the common law on false imprisonment remains to be seen. But what at least is certain is that a prisoner need not be placed under lock and key for the purposes of this tort. It is enough that his movements are simply constrained at the will of another. The constraint may be actual physical force, amounting to a battery, or merely the apprehension of such force, or it may be submission to a legal process. A mere partial interference with freedom of movement does not amount to an imprisonment. If a road is blocked so that a man is prevented from exercising a right of way and he is compelled to turn back, he has not been imprisoned. Nor is making a charge against a person without actual arrest an imprisonment. But where the claimant was invited to enter a waiting-room by two fellow employees who waited outside in the immediate neighbourhood while a third man called the police, it was held that there was evidence of an intention to restrict the liberty of the claimant and therefore of an imprisonment. Any restraint within defined bounds which is a restraint in fact may be an imprisonment."

51. It was common ground before us that there is no requirement of bad faith for the tort to be made out. It was also common ground before us (as, indeed, is reflected in the above cited passage from Clerk and Lindsell) that no physical constraint is necessarily required. As put in Fleming's The Law of Torts 10th ed. at paragraph 2.80:

> "Although false imprisonment is a species of trespass it need not involve the use of actual force or direct physical contact. Provided there is a constraint upon a person's will so great as to induce the plaintiff to submit there may be an arrest without imposition of hands…"

52. In support of his argument that voluntary compliance with an instruction or request to remain in a particular place does not amount to imprisonment, Mr Tam relied on the case of *Arrowsmith* v *Le Mesurier* (1806) 2 Bos. and Pul. NR 211, 127 ER 605. In that case, a constable went with a warrant to the plaintiff's house. He showed it to the plaintiff (without actually executing the warrant by touching the plaintiff with it) and the plaintiff took a copy. After that the plaintiff went with the constable to the magistrate. The jury acquitted of trespass and false imprisonment.

53. The judgment of Sir James Mansfield, with whom the other judges concurred, was the epitome of brevity. He said this:

> "I can suppose that an arrest may take place without an actual touch, as if a man be locked up in a room; but here the Plaintiff went voluntarily before a magistrate. The warrant was made no other use of than as a summons. The constable brought a warrant, but did not arrest the Plaintiff. How can a man's walking freely to a magistrate prove him to be arrested? I think that the jury have done justice."

54. Mr Tam would in effect say: so here. I do not agree. I do not think that the formal imposition by the Home Office of a curfew restriction, backed by a warning as to criminal sanctions and by electronic tagging, can be equated with the situation arising in *Arrowsmith*. Besides, not only was *Arrowsmith* a decision on its own particular facts but even by reference to those facts its authority is suspect. At all events, in *Warner* v *Riddiford* (1858) 4 CB (NS) 189 Willes J (in agreeing with the other judges in that case in giving judgment for the respondent) expressly noted the case of *Arrowsmith* "to express my dissent from the doctrine it lays down".

55. I consider, in agreement with Ms Rose, that a better starting point in the authorities on this aspect of the tort is the case of *Bird* v *Jones* (1845) 7 QB 742, to which almost all of the text-books refer. That involved most unusual facts. The plaintiff had succeeded in climbing into an enclosure at a boat-race. He was then prevented from passing on in the direction he wished to go, although permitted to go in any other direction. It was held that this was but a partial restriction on his freedom of movement and did not involve false imprisonment.

56. However, in the course of his judgment Coleridge J said:

> "… but imprisonment is something more than the mere loss of this power [to be able to go withersoever one pleases]; it includes the notion of restraint within some limits defined

by a will or power exterior to our own."

Williams J said this:

> "Lord Coke, in his Second Institute (2 Inst. 589), speaks of "a prison in law" and "a prison in deed:" so that there may be a constructive, as well as an actual, imprisonment: and, therefore, it may be admitted that personal violence need not be used in order to amount to it. "If the bailiff" (as the case is put in Bull. N. P. 62) "who has a process against one, says to him, "You are my prisoner, I have a writ against you," upon which he submits, turns back or goes with him, though the bailiff never touched him, yet it is an arrest, because he submitted to the process." So, if a person should direct a constable to take another in custody, and that person should be told by the constable to go with him and the orders are obeyed, and they walk together in the direction pointed out by the constable, that is, constructively, an imprisonment, though no actual violence be used. In such cases, however, though little may be said, much is meant and perfectly understood. The party addressed in the manner above supposed feels that he has no option, no more power of going in any but the one direction prescribed to him than if the constable or bailiff had actually hold of him: no return or deviation from the course prescribed is open to him. And it is that entire restraint upon the will which, I apprehend, constitutes the imprisonment. In the passage cited from Buller's Nisi Prius it is remarked that, if the party addressed by the bailiff, instead of complying, had run away, it could be no arrest, unless the bailiff actually laid hold of him, and for obvious reasons…"

57. Not only is that authority, in terms of approach, rather against *Arrowsmith* it also serves to reinforce the point that there may be what is called constructive imprisonment, not involving any physical force. That in turn involves the notion of overbearing compulsion, connoting restraint within some limits "defined by a will or power exterior to our own". It was, I record, expressly (and rightly) accepted on behalf of the Secretary of State in this case that there may indeed be cases of constructive imprisonment not involving the use of actual force.

58. Whether there will be such a degree of compulsion as to constitute constructive imprisonment then depends on the facts of each case. Some of the decided cases involve quite fine distinctions and, it has to be said, are sometimes not always altogether easy to reconcile. At all events, in *Berry* v *Adamson* (1827) 6 B & C 528, 108 ER 546 there was held to be no false imprisonment where the sheriff's agent had requested attendance on the sheriff's officer for the purposes of providing a bail bond, when the agent had produced no warrant and the plaintiff then chose to attend. On the other hand, in *Grainger* v *Hill* (1838) 4 Bing NC 212, 132 ER 769, the sheriff's officer had with him a writ of execution when attending the plaintiff's house (where he was lying ill in bed). The plaintiff, who

owed a sum of money, was told that either he must deliver up a particular ship's register to the officer as security or he must give bail, and if he did not a man would be left with him. The plaintiff was unable to provide bail and "being much alarmed" gave up the register. It was held that, in the circumstances, there was a sufficient restraint upon the person as to amount to an arrest, even though there was no physical contact.

59. The difference is neatly summarised in the Canadian case of *Ferguson and O'Brien* v *Jensen* (1920) 53 DLR 616, a decision of the Court of Appeal of Saskatchewan. In the course of his judgment Haultain CJS said this:

> "There must be a detainer and it must absolutely limit the freedom of motion in all directions. The detainer need not be forcible, as by laying on the hands for assumption of control – as in Grainger v Hill (1888), 4 Bing N. C. 212, 132 E.R. 769- may constitute imprisonment. There seems to me to be an essential difference between the case of a man voluntarily going with a police officer who says, "You are my prisoner", and that of a man who voluntarily responds to a telephone request to call at the police office. In the one case there is at least a constructive imprisonment, although no force is exercised. The party arrested feels that he is obliged to go with the police officer.
>
> In the other case, the party's freedom to go wherever he pleases is not interfered with. He has an escape open to him…"

That illustrates the distinction in this context (even if the actual decision in the case of *Ferguson* – although not of *O'Brien* – seems, on the facts, perhaps surprising). To like effect is the distinction which was made by Alderson B in *Peters* v *Stanway* (1835) 6 Car & P 737, 172 ER 1442.

60. We were also referred to the case of *Meering* v *Graham - White Aviation Co. Ltd* (1920) 122 LTR 44. I do not think that adds very much to the present debate for the purposes of this case on the first proposition (although it is also of some relevance to Mr Tam's other propositions). The judgment of Atkin LJ at all events may be authority for the proposition that there can be false imprisonment where a person is detained without knowing it (for example, by being locked in a room when asleep).

61. In my view, the effect of the various authorities is broadly to support Mr Tam's first general proposition. But what that proposition cannot do is to determine whether or not, in any given case, any compliance is truly voluntary. Thus the proposition has to lend its application to the circumstances of the particular case.

62. As to Mr Tam's second proposition, again we were confronted by a number of authorities. I will restrict my own citation of them. Thus in *Syed Mohamed Yusuf-Ud-Din* v *Secretary of State for India* (1903) 30 LR Ind. App 154, Lord

MacNaghten, giving the opinion of the Privy Council and referring to *Bird* v *Jones* (cited above), succinctly said this at p. 158:

> "Nothing short of actual detention and complete loss of freedom will support an action for false imprisonment."

63. In the case of *B* v *Bournewood Community and Mental Health NHS Trust, ex parte L* (cited above) Lord Goff said this at p. 486:

> "I observe however that no mention is here made of the requirement that, for the tort of false imprisonment to be committed, there must in fact be a complete deprivation of, or restraint upon, the plaintiff's liberty. On this the law is clear. As Atkin LJ said in *Meering* v *Grahame-White Aviation Co. Ltd* (1919) 122 L.T. 44, 54 "any restraint within defined bounds which is a restraint in fact may be an imprisonment." Furthermore, it is well settled that the deprivation of liberty must be actual, rather than potential. Thus in *Syed Mohamad Yusuf-Ud-Din* v *Secretary of State for India in Council* (1903) 19 T.L.R. 496 Lord Macnaghten said that: "Nothing short of actual detention and complete loss of freedom would support an action for false imprisonment." And in the *Meering* case, 122 L.T. 44, 54-55 Atkin LJ was careful to draw a distinction between restraint upon the plaintiff's liberty which is conditional upon his seeking to exercise his freedom (which would not amount to false imprisonment), and an actual restraint upon his liberty, as where the defendant decided to restrain the plaintiff within a room and placed a policeman outside the door to stop him leaving (which would amount to false imprisonment). In cases such as the present it is, I consider important that the courts should have regard to the ingredients of the tort as laid down in the decided cases, and consider whether those ingredients are in fact found to exist on the particular facts of the case in question."

64. In my view, whilst Mr Tam's second proposition is, in one sense, acceptable it does not really address the present situation. In cases such as *Bird* v *Jones*, the plaintiff was free to proceed by a different route. But here IJ was (on his case) confined to the parameters of his own house in the specified hours by reason of the curfew. If that was because of the constraint of the curfew restriction it is capable of being a "complete" restraint for the purposes of the tort of false imprisonment. As *Bournewood* at all events makes clear, the general proposition has to be applied to the facts of the particular case.

65. As to Mr Tam's third proposition, he relied in particular on the above cited cases of *Grainger* v *Hill, Warner* v *Riddiford* and *Meering* v *Graham-White Aviation Co. Ltd.*

66. It seems to me, however, that such proposition scarcely bears on the present case, which is one of constructive imprisonment. Here, it is common ground that there was no physical restraint of any kind. IJ was not locked in after 23.00 hours nor was any guard placed at that time outside his house. Besides, as Ms Rose observed, if someone is unlawfully detained in a prison and told that they must remain there then it would be no defence to an action for false imprisonment to say that in fact all the doors were unlocked and that there were no guards present.

67. As to Mr Tam's fourth proposition, Ms Rose did not dispute that it was correct: albeit, as she would say, "narrowly correct." For this purpose Mr Tam had in particular relied on *Meering* and its approval by Lord Goff in the *Bournewood* case, in the passage of his speech cited above.

68. However, that proposition too does not really, as I see it, bear upon the present case. It is the case that the Notice of Restriction contained a warning as to the criminal consequences of breaching the curfew. It is also the case that had IJ breached the curfew and had he in consequence been arrested and detained in prison then there would unquestionably have been false imprisonment at that stage: just because there would have been no lawful curfew requirement on which the subsequent arrest and detention under s. 24 (1)(e) could have been based. But it simply does not follow from that that there was no prior false imprisonment by reason of IJ otherwise submitting to the curfew. In fact the many above cited authorities under Mr Tam's first proposition, in the context of constructive imprisonment, are illustrations of cases where false imprisonment arises precisely by reason of a threat (eg as to arrest) if co-operation is not given.

69. Finally, as to Mr Tam's fifth proposition, he relied on a case going as far back as 1699. It is *Wright* v *Wilson* (1699) Ld Raym 739, 91 ER 1394.

70. In that case, very briefly reported, Holt CJ decided that an action of false imprisonment would not lie against a defendant in circumstances where he locked the plaintiff in a room, but where the plaintiff was in a position to go out by the door of an adjoining room even though to do so might involve a trespass.

71. It is difficult to know what to make of that case. It is well-established that a restraint will not involve false imprisonment if there is a reasonable means of escape. Presumably in *Wright* v *Wilson* it was considered reasonable, on the facts, for the plaintiff to avail himself of such a means of escape, even if it involved a trespass. Besides, Holt CJ had also held that the plaintiff may have an alternative remedy against the defendant by a special action on the case. That case is hardly any authority for a principle of so generalised a kind as advanced by Mr Tam under his fifth proposition.

72. In this context, I should perhaps also refer to *Robinson* v *Balmain New Ferry Co. Ltd*. [1910] AC 295 – if only because it would appear to be almost the ultimate example of seemingly frivolous litigation being pursued to the highest available court of jurisdiction, in this case the Privy Council. Perhaps it was not irrelevant that the plaintiff, Robinson, was a barrister.

73. In that case, the plaintiff entered a wharf proposing to catch a ferry. The terms, on a prominently displayed Notice, were that one penny should be paid on entering or leaving the wharf, without exception. The plaintiff paid one penny to enter. He then changed his mind about catching the next ferry and sought to leave without paying a further penny. He was for a time physically prevented from doing so. He sued for damages for assault and false imprisonment. Wholly unsurprisingly, it was held that there was no false imprisonment at all: "the plaintiff was merely called upon to leave the wharf in the way in which he contracted to leave it" (at p. 299 per Lord Loreburn LC). It was also pointed out that it had further had been open to the plaintiff to proceed on his journey by catching the next ferry, without paying a further penny.

74. That case is therefore an illustration of there being no complete restraint in that the plaintiff had a perfectly viable of means of lawfully exiting the wharf. But that is different from the present case: because in the present case IJ could only leave his house during the curfew hours (absent a reasonable excuse) in circumstances which could attract a criminal sanction.

Disposition

75. I have cited the various authorities at some length, out of deference to the citations of counsel. But in my view they do not lend unqualified support to all of Mr Tam's five general propositions; and, more importantly, they lend no support to a conclusion in favour of the Secretary of State when one has regard to the facts of this case.

76. I am in no real doubt but that what occurred here constituted imprisonment, in the sense deployed for that word for the purposes of the tort of false imprisonment. It is clear enough on which side of the line this case falls. Were it otherwise - although I do not base my ultimate conclusion on this point - the resulting position would be, as Mr Tam both accepted and asserted, that persons such as IJ would be restricted to a public law remedy such as a declaration (if the court were prepared to grant one). They would have no remedy in damages.

77. It is true that was there was no guard and that IJ was not locked in. But, as is evident from the judge's findings, IJ was, in remaining in his house during the curfew hours, operating under constraint. He would not always have so acted were it not for the Notice of Restriction, backed as it was by the threat of criminal sanction and by electronic tagging. In the language of *Bird* v *Jones*, there was "restraint within some limits defined by a will or power exterior to his own".

78. Mr Tam objected that there was no entire restraint on IJ's will. He had the option of breaching the curfew: indeed it was an option which he sometimes took. That, as I see it, may bear on the issue of damages. But it cannot, in my opinion, bear on the issue of whether he was falsely imprisoned: for the following reasons.

79. The principal issue here, in my view, is whether there was "voluntary

compliance" with the Notice of Restriction, in terms of Mr Tam's first proposition. This is not a case of a kind such as *Berry* v *Adamson*. This is not a case within the illustration given in *Ferguson and O'Brien* of the man who voluntarily responds to a telephone request to call at a police station. Here IJ was, as found, operating under the *compulsion* of the formal Notice of Restriction, backed by criminal sanction and tagging. It thus is, in my opinion, completely wrong to say, as Mr Tam sought to say, that the curfew requirement was being satisfied by voluntary compliance. It was not: compliance was compelled. IJ was, in the words of Clerk and Lindsell, acting by way of "submission to a legal process."

80. I agree that, in general terms, the possibility of future arrest does not necessarily of itself change the character of the relevant instruction in question or necessarily of itself mean that the instruction in question amounted to imprisonment (cf. the observations of Lord Goff in the *Bournewood* case and of Atkin LJ in *Meering*). But in the present case the threat of criminal sanction remains highly material to the whole issue: just because it bears on whether IJ's will was being overcome. As I have said, in many of the reported cases, such as *Grainger* v *Hill*, it was precisely the threat of future arrest which was adjudged to have operated to overcome the plaintiff's will and thereby to give rise to false imprisonment. In the present case, moreover, on the judge's findings, it cannot be said that IJ was totally heedless of or indifferent to the curfew restriction.

81. The argument that the restraint here was not sufficiently "complete" for the purpose of the tort for like reasons also leads nowhere. It suffices that, under force of compulsion of the Notice of Restriction (coupled with the threat of criminal sanction and with tagging), IJ was, and felt himself to be, obliged to be confined within the parameters of his home during the specified hours. That, moreover, cannot possibly be equated with a "mere restriction on movement", as was suggested.

82. Viewing matters overall, therefore, it is in truth inapposite to say that IJ had the ability to leave his house – in that he could not physically be prevented from doing so, even if doing so involved unlawfulness. As indicated above, *Wright* v *Wilson* provides no adequate authoritative basis for so generalised an approach. The key here is *reasonableness*. In cases such as *Bird* v *Jones* and *Robinson* v *Balmain New Ferry Co. Ltd*. (cited above) the plaintiffs had reasonable and lawful alternative means of escape or of reaching their destination. Hence there was no false imprisonment. In the present case, however, it cannot be adjudged to be reasonable that IJ could circumvent the curfew instruction by acting in a way which necessarily would attract a potential criminal sanction of a fine and/or imprisonment. That any subsequent arrest (and prospective further detention) would have been of a different character, and might result in detention in a different environment, seems to me to be irrelevant. The point remains that IJ was already falsely imprisoned in his own home. It could, indeed, be an entirely appropriate description of his situation, in those hours, as being under a sort of "house arrest". And that house arrest, by virtue of the Court of Appeal decision in *Gedi*, was unlawful.

83. Mr Tam anxiously speculated that if false imprisonment were to be the outcome in

this case then what might be the outcome for other cases? I was not, however, in the slightest bit moved by the examples he gave. Each case will depend on its own facts. One example, for instance, which he gave was a "mere instruction" by a department store employee to a shopper to stay where he was whilst a police officer was summonsed. But that would not necessarily of itself constitute false imprisonment; and nothing in what I have said above would compel such a conclusion. All would depend on the precise circumstances. And I also repeat that in no way here can this Notice of Restriction, an official document served by the Home Office, fairly be described as a "mere instruction."

84. Another example which he gave was of a prankster driving along a street with a loud-hailer through which he falsely orders residents to remain indoors as required by emergency regulations. But here too I do not see that that example would of itself give rise to the tort of false imprisonment at all (it might give rise to other torts). It might be different, however, if the prankster dressed up as a policeman and issued such orders as a policeman, purportedly claiming to rely on emergency regulations in giving the orders.

85. Ultimately, therefore, each such case is fact specific.

86. I do not propose to say more. I consider that Ms Rose was correct in her submission that this was indeed a case of false imprisonment. In my opinion, Edis J was right to rule as he did on this point in paragraphs 66 and 67 of his judgment in G*edi*. I would approve his decision and reasoning in that respect. It also follows that, in my opinion, Lewis J was correct to adopt the same approach in the present case.

87. I should add that Ms Rose sought to reinforce her arguments by reference to certain authorities relating to escape from lawful custody; by reference to the position arising in respect of those in an open prison; and by reference to the provisions relating to qualifying curfews for sentencing purposes under s. 240A of the Criminal Justice Act 2003. It may well be that those points lend some limited further support for her arguments. But they succeed without them in any case.

88. For these reasons, I would dismiss the appeal of the Secretary of State.

Cross-Appeal

89. I turn to the cross-appeal. I can take this rather more shortly.

90. It is to be noted at the outset that the many cases involving an assessment of damages for false imprisonment in an immigration detention context have eschewed the setting of some kind of general tariff: each case is left to be decided by reference to its own facts and circumstances.

91. The present case is, of course, very different from the usual run of cases of assessing damages for false imprisonment in an immigration detention context. Those almost invariably involve round-the-clock detention – whether for a short period or a long period - in an immigration removal centre or prison. But that, of course, is not this case.

92. Ms Rose emphasised the continuing application in this context of the constitutional principle relating to the liberty of the subject. I accept that: it is, in truth, inherent in the tort. But even so the differences – in terms of assessing the appropriate amount of compensatory damages to be awarded – between those cases involving total detention on the one hand and cases such as the present involving a night-time curfew at a home address on the other hand are manifest. Indeed at this stage the wider considerations of the kind addressed in the European jurisprudence in Article 5 cases with regard to deprivation of liberty can also potentially come into play.

93. In the present case, the restrictions on IJ's liberty self-evidently were by no means complete or total for the entirety of each day. His loss of liberty was of a far lesser order than that of someone wrongly remanded in custody. During the hours of 07.00 to 23.00 he was free to come and go as he wished. He could associate with whomsoever he chose. He was subject to no constraints or restraints of any kind whatsoever in that period. He was not subject to any detention regime or prison rules. He could, in effect, do as he pleased.

94. Even during the hours of night, between 23.00 and 07.00 (the hours of the curfew restriction), IJ was free to move around in his own home. It is of course the case that his liberty was constrained by the curfew (reinforced, moreover, by the electronic tagging). Further, I entirely accept Ms Rose's point that by no means everybody has a lifestyle whereby they always choose to be tucked up in bed by 11 pm. But in the present case the judge, having appraised the evidence, held that there had been no actual prevention of IJ carrying out his religious observances; and the judge further found that the effect of the curfew only restricted IJ's activities "to a degree" in that there were occasions when he could not attend community gatherings or parties as he wished. There conspicuously was no finding, however, that the curfew interfered with IJ's chosen lifestyle in some kind of wholesale way.

95. In this regard, the judge had also been entitled to bear in mind that in point of fact IJ had felt himself justified in absenting himself, and had unilaterally absented himself, without permission on quite a significant number of occasions (and also had obtained permission from the Home Office for relaxation of the curfew on other occasions). That, overall, had caused him some anxiety: but it contributed only "to a very limited degree" to the depression he was already experiencing. Further, this was not an "initial shock" kind of case. Thus, overall, the judge had found, on the evidence, that the actual adverse effects on IJ were relatively limited over the 2½ year period.

96. Ms Rose in particular referred us, among other authorities, to the decision of Jay J in *AXD* v *The Home Office* [2016] EWHC 1617 (QB) and to the decision of

Karen Steyn QC, sitting as a Deputy High Court Judge, in *R (Belfken)* v *Secretary of State for the Home Department* [2017] EWHC 1834 (Admin). In the latter case, after reviewing various authorities, the judge awarded the sum of £40,000 for unlawful detention for a period of 295 days. By comparison with that, Ms Rose said, the judge's award in the present case of £4,000 for this curfew restriction, reinforced by tagging and threat of criminal sanction and lasting some 2½ years, was much too low: it corresponded, she said, to less than £5 per day of the curfew restriction. She proposed a figure approaching the region of £30,000 as an appropriate compensatory award: albeit she acknowledged that the fact that IJ was being confined in the hours of night-time only and in his own home was a discounting factor. But a figure of £4,000 was, she maintained, simply much too low and was plainly wrong.

97. On an assessment of damages, the appellate court will not interfere with the evaluation of the trial judge absent proper reason. In the present case, I reject the suggestion that the judge erred in principle in failing to take a starting-point figure appropriate for "full" wrongful detention before discounting for the significantly more limited restraint on liberty involved in the night-term home curfew as imposed in the present case. The qualitative difference between the two situations is simply too pronounced for that to be the required approach. Besides, if it be relevant, so experienced a judge as Lewis J would have well-known, in general terms, of the kinds of awards made in "full" detention cases; and a number of authorities, such as *AXD*, had in any event been cited to him.

98. In the present case Lewis J gave ample reasons for his conclusion. He did not leave out of account relevant considerations. He did not take into account irrelevant considerations. He had reminded himself of the relevant principles and requisite approach as set out in cases such as *Thompson* (cited above) and *MK (Algeria) v Secretary of State for the Home Department* [2010] EWCA Civ 980. I reject the further submission that an award of £4,000, in the circumstances of this case, was plainly wrong such that this court should interfere.

Conclusion

99. In the result I would, for my part, dismiss both the appeal and the cross-appeal.

Lord Justice Hickinbottom:

100. I agree.

Sir Stephen Richards:

101. I also agree.