PUBLIC LAW

Immigration detention and false imprisonment after Arain

The High Court examined who must justify detention, how a challenge must be pleaded and what changed when the Court of Appeal restrained removal.



Mohammed Akram Arain v The Secretary of State for the Home Department [2026] EWHC 2853 (KB)

High Court of Justice, King's Bench Division / Judgment 6 November 2026

PRACTICAL POINT

The detaining authority must justify detention. A damages claim must identify the decisions, periods and alleged errors in issue, and a court order restraining removal can materially change the assessment of continued detention.

How the claim reached the High Court

Mr Arain sought damages for 50 days in immigration detention from 21 November 2016 to 9 January 2017. At the start of detention, he was seeking permission from the Court of Appeal to challenge a refusal of permission for judicial review. The Court of Appeal later granted an injunction on 22 December 2016 preventing his removal. The Home Office then considered whether the appeal could be expedited before deciding to release him (paragraphs 8-16 and 27).

Following a trial on liability, His Honour Judge Saggerson dismissed the claim on 24 September 2025. Five grounds proceeded to the High Court. Mr Justice Ritchie reviewed the trial decision under Part 52 of the Civil Procedure Rules (CPR), with the high threshold that applies to challenges to findings of fact. He also refused a late oral application to admit fresh material (paragraphs 1, 4-7 and 17).

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The burden of proof and the pleaded case

Once detention is established, the detaining authority must justify it. The statutory power to detain for removal was accepted at trial. The question was whether it had been exercised lawfully, taking account of the pending appeal, family circumstances and alternatives to detention (paragraphs 21-24 and 31-33).

The claimant must identify the facts and alleged errors relied on. A complaint about guidance should identify the provision and the alleged departure. Disclosure may allow more precise particulars later. The High Court held that the trial judge applied the burden of proof correctly to the pleaded allegations (paragraphs 31-33 and 42-43).

The pending challenge and the later injunction

The pending application for permission to appeal did not automatically stay removal. The High Court held that the trial judge could find that Home Office officers had checked and considered the application when detaining Mr Arain and in subsequent reviews (paragraphs 11-14, 25 and 35-36).

The later injunction restrained removal. The trial judge considered enquiries about expediting the appeal and the holiday period when assessing the time taken to decide on release. The High Court upheld that assessment, applying the fact-sensitive limits on detention associated with Hardial Singh (paragraphs 23, 27 and 39-40).

The decision and its scope

The High Court dismissed all five grounds. It upheld the findings on family circumstances and alternatives to detention. The alleged failure to make a referral under internal guidance fell outside the pleaded case, and no amendment was sought (paragraphs 37-38, 45-46 and 49-51).

The detention predates section 12 of the Illegal Migration Act 2023. For the powers it covers, the Act frames the period of detention by reference to what the Secretary of State considers reasonably necessary. The law in force at the time of detention matters when applying Arain to a later case.

JUDGMENT AND SOURCES

Approved judgment, The National Archives

Illegal Migration Act 2023, section 12

This case note provides general information. Its application depends on the facts and law in force.