

The Guardian

UK asylum seekers may have been detained unlawfully, rules court

Detainees cannot be held indefinitely before transfer overseas, says court of appeal



The immigration removal centre at Morton Hall in Lincolnshire. Photograph: Heathcliff O'Malley/Rex/Shutterstock

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Thousands of people may have been unlawfully held in immigration removal centres in recent years, the court of appeal has ruled.

In a test case brought by five asylum seekers who were challenging the provisions of the Dublin III regulations, the appeal court judges ruled that the detained people could not be held indefinitely.

Under Dublin III, asylum seekers must claim asylum in the first safe country they arrive in. If they arrive in the UK and claim asylum and the Home Office discovers that they have passed through another safe country first, the Home Office can send them back to that country.

There is no time limit on immigration detention in the UK. However, senior judges have ruled that the Home Office unlawfully held many asylum seekers who passed through a safe country before reaching the UK.

While discussions between the Home Office and the other European country take place, the asylum seekers may be locked up indefinitely. It is this practice that has been ruled unlawful.

Affected people may now be able to claim damages from the Home Office for false imprisonment.

Krishna Prathepan, of Duncan Lewis Solicitors, who represented two of the five men, welcomed the ruling. “This landmark judgment has huge implications for those who were detained under the provision in the Dublin regulation [Dublin III].

“It is deeply concerning that the Home Office’s unlawful conduct may have led to the detention of so many people without any lawful basis. In effect, the Home Office has unlawfully detained hundreds or even thousands of individuals seeking international protection.”

The judges said in their ruling: “There is no doubt that all the necessary ingredients for the common law cause of action for false imprisonment are satisfied in the case of each of the appellants.”

The appeals related to the meaning and effect of specific parts of Dublin III - detention for the purpose of transfer to another EU member state. The argument was that the only ground for detention was that specified under article 28 (2) that there was a significant risk of absconding.

The court ruled that the Home Office could not detain people indefinitely for the purposes of transfer to another member state at a time when “significant risk of absconding” had not been defined in UK law.

The case was heard by the master of the rolls, Sir Terence Etherton, Lord Justice Philip Sales and Lord Justice Peter Jackson. The ruling was a two to one majority decision.

The judges pointed out that under article 28 of the Dublin convention people should not be detained solely while the procedure of transferring them from one country to another took place.

The rules state that detention should be for the shortest possible time. The judges said that while the power to detain must be retained in the interests of having effective immigration control, the presumption rests with release from detention.

The Home Office said: “We are disappointed with the court’s ruling and are carefully considering the next steps.”

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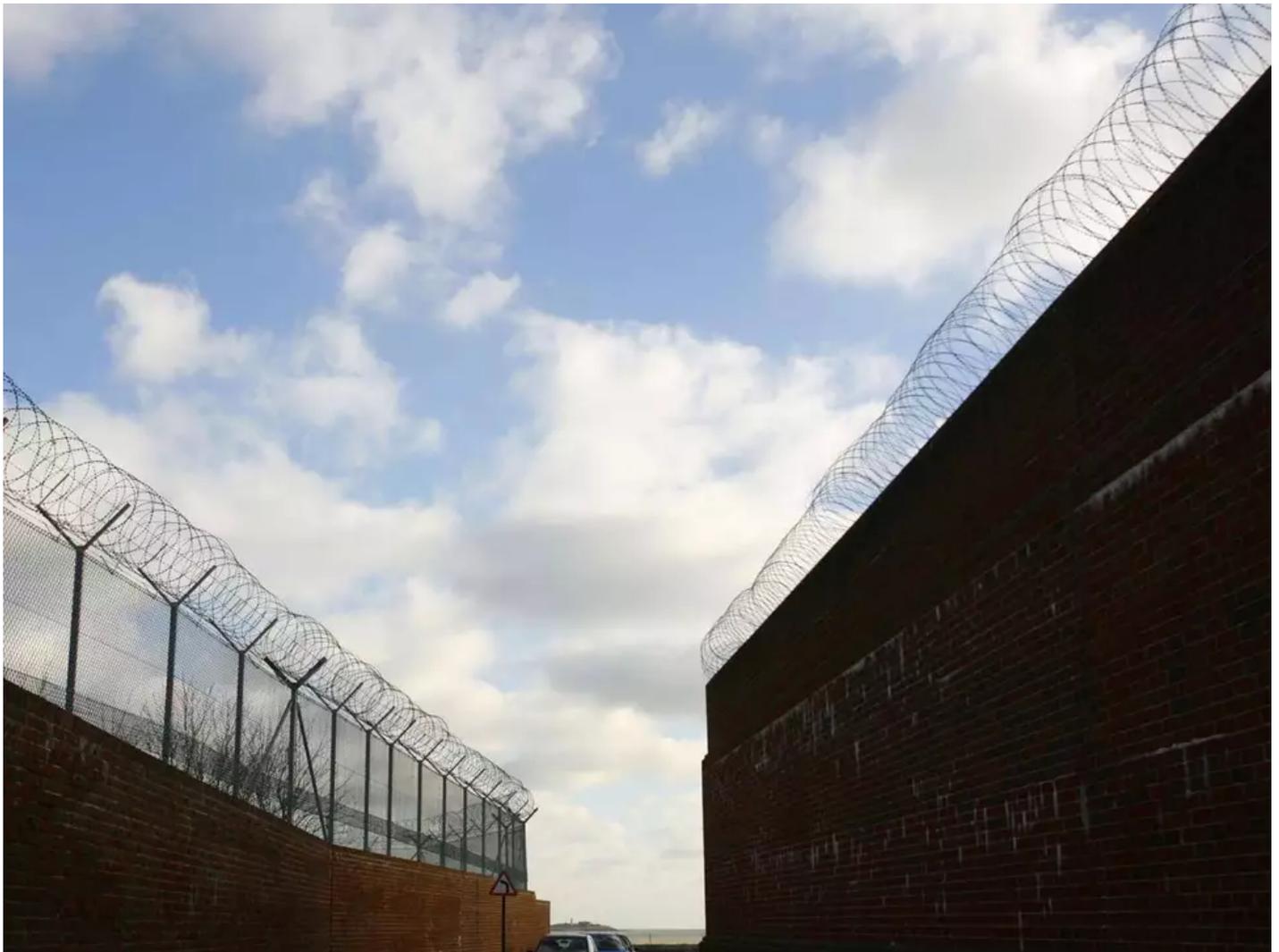
Home Office unlawfully detained asylum seekers in immigration removal centres, rules landmark case

Dozens and potentially hundreds of people wrongly held in immigration detention while their claims were considered under Dublin III regulation, rules Court of Appeal

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A judgement handed down on Thursday means that dozens of people, and potentially hundreds, could have been wrongly placed in immigration removal centres while their claims were considered under the Dublin III regulation.



Under Dublin III, asylum seekers must claim asylum in the first safe country they arrive in. If they arrive in the UK and claim asylum and they passed through another safe country first, the Home Office can send them back to that country.

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The law states that the government can detain people being assessed under the regulation if they are at "significant risk of absconding".

But the appellants in the case, five men from Iraq and Afghanistan who were detained between January 2014 and March 2017, were not, by the Home Office's admission, deemed to be in this category.

The judgment means that anybody detained under Dublin III regulations from 1 January 2014, when it came

into force, until 15 March 2017, were unlawfully detained, as the domestic law at the time set out no criteria for their "risk of absconding".



Bahar Ata of Duncan Lewis Solicitors, the firm that represented the detainees, said the implications of the ruling were “widespread” and that while it was difficult to say how many people would be affected, it was dozens and could possibly run into the hundreds.

She told *The Independent* the case demonstrated “yet another example of [Home Office] policy of unlawfully detaining asylum seekers, without proper consideration of their claims”.

It comes after it emerged that asylum seekers were being left to “languish” in removal centres for months on end after being granted bail because the Home Office refused to fulfil its duty to provide asylum accommodation to enable their release.

The government has also recently been accused of waiting for migrants and asylum seekers to “give up” and leave the country by holding them in detention rather than resolving their cases efficiently.

A Home Office spokesperson said: “We are disappointed with the court’s ruling and are carefully considering the next steps.”





Court of Appeal rules thousands of asylum seekers may have been unlawfully detained

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The **Court of Appeal** has ruled that thousands of people may have been unlawfully held in immigration removal centres in recent years.



In a case brought by five asylum seekers who were challenging the provisions of the Dublin III regulations, judges ruled that detained people could not be held indefinitely.

Asylum seekers must claim asylum in the first country in which they arrive. If they arrive in the UK, but the **Home Office** finds out they first passed through another safe country, it can send them back there.

They may be locked up indefinitely as discussions between countries take place, a practice now ruled unlawful.

Krishna Prathepan, of Duncan Lewis Solicitors, who represented two of the five men, told *The Guardian*: “This landmark judgment has huge implications for those who were detained under the provision in the Dublin regulation [Dublin III].

“It is deeply concerning that the Home Office’s unlawful conduct may have led to the detention of so many people without any lawful basis. In effect, the Home Office has unlawfully detained hundreds or even thousands of individuals seeking international protection.”

The ruling stated: “There is no doubt that all the necessary ingredients for the common law cause

of action for false imprisonment are satisfied in the case of each of the appellants.”

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