More on judicial review transfer

Colin Yeo — 19 December 2013 — Leave a comment

Following on from two recent posts on this subject (Judicial review in the Upper Tribunal, Do not lodge Upper Tribunal judicial reviews by post if urgent), there has been *another* warning about the transfer of judicial reviews into the Upper Tribunal. A claim that includes an element of unlawful detention must remain in the High Court according to the Lord Chief Justice's Practice Direction on transfers. In the case of *R (on the application of Ashraf) v Secretary of State for the Home Department* [2013] EWHC 4028 (Admin) Cranston J goes on the war path:

> It seems to me that to lodge a challenge to removal in the Administrative Court, including a ground going to the lawfulness of detention, when there is no obvious distinct merit in that aspect, could well constitute an abuse of process by the lawyers engaged in the case.

Mr Justice Cranston

Just why Mr Justice Cranston thinks that immigration lawyers would deliberately include a meritless ground of a claim in order to appear in the High Court rather than the Upper Tribunal is a bit of a mystery.

He goes on specifically to threaten Hamid-style proceedings and/or costs sanctions against any such lawyers. Note that the lawyers involved in this case are not sanctioned and their conduct not criticised, despite some very grumpy final words from the judge. Indeed, it was Declan himself who flagged this up with me for the attention of Free Movement readers.

Speaking from an advocate's point of view, it seems that *Hamid*-style Star Chamber proceedings are now going far beyond sanction for deliberately misleading the court or deliberately lodging late injunction applications. Some judges are using them as a cudgel to threaten representatives for reasons that are, frankly, rather questionable.

In this case the judge's threats were based on a disagreement about the legal merits of one aspect of the case. Funding had been granted some time previously for the unlawful detention challenge and many claimant lawyers would say there was an obviously arguable case that detention was unlawful based on the independent medical report and the other facts of the case. Home Office policy is not to detain victims of torture where there is independent evidence of torture and there was independent evidence in this case.

Further, some of the findings and the old, outdated case law relied on in the judgment are potentially open to criticism. The age old allegation that a doctor is a mere scribe for the patient resurfaces, for example. This is based on no evidence, misunderstands the role of the doctor and utterly devalues clinical method and opinion. In the intervening years the immigration tribunal has moved on from such a blinkered, arguably arrogant, approach so it is a shame to see it dredged up in the High Court.

It looks like we can expect Mr Justice Cranston or others to haul some other immigration lawyers over the coals in the near future. How many of us will be left willing to accept instructions for injunction applications? Is that the point of these hearings? Or are these threats becoming so routine and absurd that they risk losing their effect?

Related posts:

Do not lodge Upper Tribunal judicial reviews by post if urgent

Judicial review in the Upper Tribunal

R (Ignaoua) v Secretary of State for the Home Department

In Judicial review, Procedure

Colin Yeo

Posts Website Twitter Facebook Google+

A barrister specialising in UK immigration law at Garden Court Chambers in London, I have been practising in immigration law for 13 years. I am passionate about immigration law and founded and edit the Free Movement immigration law blog.

Dignity has no nationality:...

No Comments

Be the first to start the conversation.

Leave a comment

Enter your comment here...

The Free Movement immigration law blog is written by members of the immigration team at Garden Court Chambers in London, ranked as top tier in both Chambers and Partners and The Legal 500. The editor is Colin Yeo.

Recent | Comments

More on judicial review transfer
19 December 2013

Dignity has no nationality: Our Day 2013
18 December 2013

Incompetence, neglect and failure to show due diligence
18 December 2013

On email

Subscribe to new blog post alerts:

Email Address

Subscribe

On The Forum

New grounds of appeal during S.3D Leave by Shahid Aslam

Elderly dependent success on appeal by Kitty Falls

Child Registration by Sonya King

Regulation 9 EEA – Surinder Singh by Sumera Ashraf

When did the right to retained right of residence come into force by Visa Legal

On Twitter

Tweets

BID
@BIDdetention
22 children entered immigration detention in Nov 2013
Retweeted by Colin Yeo
Expand

Colin Yeo
@ColinYeo1
VERY dark humour on the Syrian resettlement non-act
Show Media

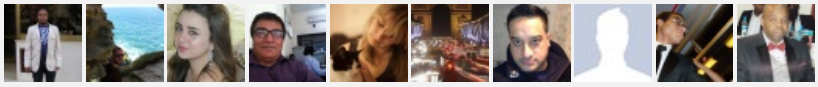
Colin Yeo
@ColinYeo1
Any suggestions on things to ban that are already banı
Expand

Rob Ford (England)
@robfordmancs

On Facebook

Free Movement
Like

483 people like Free Movement.



Facebook social plugin

On this blog

Select Category

On other blogs

Asad Khan immigration blog

BritCits

JCWI blog

Life Without Papers

NCADC blog

Nearly Legal

Pink Tape

Strasbourg Observers

UK Constitutional Law Group

UK Human Rights Blog

UK Supreme Court Blog

From the archives

Detention unlawful when Secretary of State faffs around

One of the more pernicious aspects of the so-called automatic deportation provisions in the UK Borders Act 2007 is the... Read more...

By Greg Ó Ceallaigh | Published on 9 December 2013

Judicial review in the Upper Tribunal

Since 17 October 2011, some immigration judicial reviews have been heard in the Upper Tribunal. Until now this was confined... Read more...

By Colin Yeo | Published on 12 December 2013

Disclaimer

The information and commentary on this blog is provided free of charge for information purposes only. The information and commentary does not, and is not intended to, amount to legal advice to any person.

Views expressed in blog posts are those of the author only, not Garden Court Chambers as a whole.

About the blog

The Free Movement blog was founded by Colin Yeo in 2007. Colin continues to edit the blog and other members of the immigration team at Garden Court Chambers also contribute. More about the blog

Login

Username

Password

Remember Me

Log In

Lost Password?