

**IN THE COURT OF APPEAL REF: C4/2020/0251
CIVIL DIVISION
IN THE MATTER OF AN APPLICATION FOR INTERIM RELIEF
BETWEEN:**

DETENTION ACTION

Claimant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Defendant

UPON CONSIDERING an application for reconsideration by the defendant together with correspondence and other documents

AND UPON being satisfied that no oral hearing is necessary

IT IS ORDERED that:

1. The application is refused.
2. Costs reserved.

REASONS:

1. This application is made under the liberty to apply provision. It identifies practical difficulties in confirming whether detainees had functioning non-O2 sim cards so that the practical effect of the order made earlier is to prevent the defendant from returning anyone at Colnbrook IRC or Harmondsworth IRC on the charter flight tomorrow, and raises the difficulty of reorganising the charter flight soon. Further, there is a suggestion that the defendant was denied the opportunity of filing evidence in response to evidence filed by the claimant today.
2. I carefully considered the evidence of Frances Hardy, filed in response to the application, before making the order this evening. Her statement said,
“On 5 February 2020, as a matter of priority, C&C offered new EE SIM cards to all detainees detained in Colnbrook and Harmondsworth who are scheduled to be removed on the charter flight to Jamaica on 11 February 2020”.

Despite that statement, records disclosed by the defendant appear to show, contrary to Ms Hardy’s statement, that three detainees were not in fact offered an EE SIM card until 6 February 2020 and that there is no record in relation to when 16 of the IRC Colnbrook/Harmondsworth detainees scheduled for the Jamaica flight are said to been offered non-O2 Sim cards.

3. Further, the recent contention of the defendant that *“all but three of the individuals at Colnbrook IRC and Harmondsworth IRC on 5th February 2020 due to be removed on the charter flight were offered EE sim cards on 5th February 2020, and the three individuals who were not offered EE sim cards on that date have been removed from the flight”* is contradicted by the evidence in Bella Sankey’s witness statement (see para 10) where she says 11 individuals who had been given removal directions were recorded to have said on 8-9 February 2020 that they had not been offered a non-O2 Sim card.
4. I cannot resolve this factual dispute but it remains my view that a clearly arguable case is raised in these circumstances, particularly given the defendant’s published policy stating that detainees must be given a minimum of five working days to enable them to seek legal advice, and the means of doing so was through provision of sim cards, but these were not provided until at least two days into the minimum period. Furthermore, in light of the evidence of Mr Hossain (para. 5, 2nd statement), it is clearly arguable that the five days is necessary to secure

access to justice and is not simply a matter of administrative convenience. Mr Hossain says removals on 72 hours' notice are automatically stayed on the filing of a claim for judicial review (save in certain limited circumstances) whereas chartered flights are not, suggesting it takes longer to make an effective injunction application in the case of a chartered flight.

5. I remain of the view that the balance of convenience favours the order made earlier, and the interests of justice do not require a reconsideration of my earlier order.
6. The application is therefore refused.

Ingrid Simler

11 February 2020 (00.26am)