

Home Office settles Manston inquiry judicial review

The Home Office has settled the judicial review claims that seek an independent Article 3 ECHR compliant inquiry into events at Manston in 2022.

The claims were brought by individuals detained at Manston in autumn 2022 when there were widespread reports and concerns around overcrowding and very poor conditions, and detention well exceeded the 24 hour statutory time limit. Ten individuals (AA and 9 others) were represented by Wilson Solicitors, and another six (HT and five others) by Duncan Lewis.

The claimants included families, including young children, lone women, people with histories of various forms of trauma (trafficking, torture and other serious ill-treatment), and were broadly representative of the categories of detainees

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who were held at Manston. The claims had been due to be heard by Mrs Justice Lang DBE on 21-22 January 2025. A copy of the sealed order disposing of the claims is available here.

Manston is located in Kent and is a former military facility that is operated as a Short-Term Holding Facility (STHF). In 2022 it was operated as a "holding room", which meant that it was subject to a 24 hour statutory time limit, unless the Secretary of State authorised detention beyond this point on an exceptional basis.

The intention was for people to be processed – including having their asylum claims registered – within this 24-hour period, then granted immigration bail and transferred to asylum support accommodation (usually hotels). However, this system broke down as a result of insufficient asylum accommodation capacity (reportedly, due to policy decisions taken by the then government), resulting in people arriving in the UK having nowhere to be moved onto from Western Jet Foil and Manston. Manston rapidly became overwhelmed beyond its capacity in autumn 2022.

Thousands of people were detained well beyond the 24 hour time limit in severely overcrowded tents where people had to sleep side by side in close quarters on the ground without proper bedding and winter clothing. There were not enough toilets for the numbers of people held in each tent; they were filthy and there was no running water at times, and no shower facilities for a majority of the people held at Manston.

The combination of the physical conditions in Manston and the severe overcrowding led to a break down of order and the inappropriate use of coercive measures including the use of force and segregation. The people detained included families with young children, lone women, unaccompanied

age disputed children, and people vulnerable to harm in detention because of experiences of torture, other forms of severe trauma and trafficking, and mental ill health.

Following the threat of legal action, by late November 2022 Manston was emptied.

In November and December 2022, the claimants initiated pre-action correspondence seeking an independent inquiry that complied with the investigative duty under Article 3 ECHR. It was this duty that was relied upon in the successful judicial review that led to the public inquiry into events at Brook House in 2017.

In addition to requirements of promptitude and independence, like the claimants in the Brook House case, the Manston claimants argued that to be effective, it was necessary for the inquiry to have funding for legal representation to facilitate victims to participate in the inquiry, public hearings to ensure public scrutiny and accountability, and powers of compulsion (in relation to documents and witness evidence) particularly given the involvement of high-level former and current government officials and ministers, and at least half a dozen contractors.

In January 2023, the then Home Secretary, Suella Braverman, decided that there was evidence that the conditions at Manston in 2022 were arguably inhuman and degrading, in breach of Article 3. She decided to commission an investigation by the Independent Chief Inspector of Borders and Immigration (ICIBI), at that time Mr David Neal.

The claimants issued their judicial review claims in May 2023, arguing that the proposed ICIBI investigation did not meet Article 3 requirements. Permission was granted in December 2023 by Eyre J following a 4 hour contested hearing. The final hearing was listed for March 2024.

By the time of the permission hearing, the government had decided not to renew Mr Neal's appointment as ICIBI beyond March 2024. On 20 February 2024, Mr Neal was summarily dismissed. No replacement ICIBI had been recruited who could lead the Manston inquiry.

Shortly before the March 2024 substantive hearing, the government decided to establish a statutory inquiry (under the Inquiries Act 2005), with the features sought by the claimants (powers of compulsion, public hearings, funded representation for victims). This was reported in the press. The judicial review claims were stayed pending the government taking the necessary steps to set up the inquiry.

However, by the time the General Election was called in May 2024, no inquiry had been set up. And, following the election in July 2024, the new Labour government made a new decision in September 2024 to set up a form of non-statutory inquiry instead of a statutory inquiry, and in October 2024, decided that the non-statutory inquiry would not hold public hearings or fund legal representation for victims. As a non-statutory inquiry, the investigator also would not have powers to compel evidence or witnesses.

The judicial review was re-listed for a further substantive hearing in November 2024, challenging the September 2024 decision and the continued failure to establish an Article 3 compliant investigation. On the first day of the hearing, the

Home Secretary indicated that she was unable to defend the September 2024 decision and requested and was granted an adjournment in order to reconsider her decision. The hearing was re-listed in January 2025.

After the November 2024 adjournment, the Home Secretary confirmed that the inquiry is to be chaired by a King's Counsel, yet to be formally appointed. In an order setting out the settlement of this judicial review claim, the Home Secretary has agreed that she will enable the appointed chair to grant funded representation and access to documents and other information held by the inquiry to individuals participating in the inquiry where this is considered to be necessary for Article 3 compliance. The Home Secretary has also agreed that the terms of reference will include a provision enabling public hearings to be held following discussion and consultation with the Chair.

Without powers of compulsion, the inquiry will be reliant on the voluntary co-operation of former government ministers, former Home Office staff numerous private contractors (including people no longer working with contractor organisations). One of the key reasons the High Court decided that the Brook House inquiry required powers of compulsion was the likelihood that individuals responsible for assaults and other abuse would not otherwise co-operate with the inquiry. If the Manston inquiry encounters such difficulties, it will inevitably have to be converted into a statutory inquiry (under section 15 of the Inquiries Act 2005).

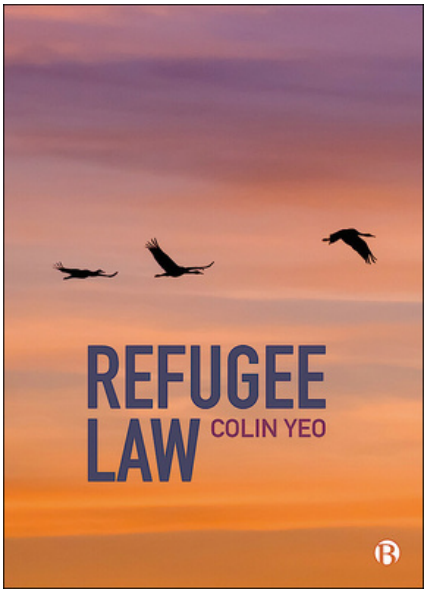
In the Brook House inquiry case, the High Court decided that victims should be able to meet their abusers on equal terms and confront them in public, which meant that funded representation and public hearings were necessary. There are similarly compelling arguments the Chair will need to consider in relation to the Manston victims.

More than two years on from the events at Manston in 2022, it is hoped that the work of the independent inquiry will finally be able to get underway. The thousands of people who were subjected to horrific conditions and other ill-treatment at Manston in 2022 deserve answers for what happened to them.

There are serious questions that must be answered about the conduct of senior members of the previous government in relation to how Manston was operated in 2022 and how it was allowed to become overwhelmed and deteriorate in the way it did. Operational decisions on the ground and the actions of private contractors will need to be scrutinised. There will be important lessons for the current government to learn whatever the noise and toxicity of the politics around immigration and asylum.

Jed Pennington represented the AA Claimants. With thanks to Shu Shin Luh, one of the counsel for the AA Claimants, for her assistance with the post.

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