

P. Patel  
First  
Claimant  
9.12.13

IN THE HIGH COURT OF JUSTICE  
QUEEN'S BENCH DIVISION  
ADMINISTRATIVE COURT

CO/17247/2013

B E T W E E N:-

THE QUEEN  
(on the application of  
THE PUBLIC LAW PROJECT)

Claimant

- and -

THE SECRETARY OF STATE FOR JUSTICE

Defendant

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STATEMENT OF PRAGNA PATEL

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I, Pragna Patel of Southall Black Sisters, 21 Avenue Road, Southall, Middlesex, UB1 3BL, will say as follows:

1. I am the Director of six years Southall Black Sisters and I make this witness statement in support of the Claimant's application for judicial review.
2. Southall Black Sisters was set up in 1979. It operates a specialist centre for women fleeing gender-based violence and is well known for its work which includes advising, representing, counselling and providing other practical support to them and campaigning on their behalf. The women it helps range in age from approximately 13 to 60+ years old and mainly come from the Indian Sub-Continent, Africa, Afghanistan, the Caribbean and the Middle East. Some are first generation having come to the UK on marriage whilst others were born and brought up in the UK.

3. The issues which Southall Black Sisters deals with are very much interrelated. They include the following: domestic violence, rape, sexual abuse, “honour” crimes, forced marriages, dowry-based violence, homicide, suicide aggravated by domestic violence and other forms of familial abuse including imprisonment, restriction of movement, abandonment, abductions to countries of origin and denial of education and independent careers, and more prevalent issues concerning homelessness, immigration, mental health, destitution and poverty. Its casework has an international dimension (e.g. threats to abduct or take women and children abroad, being forced abroad, forced into marriage and abandonment abroad).
4. Many of the women approach Southall Black Sisters as an option of last and quite often desperate resort especially given that domestic violence, divorce and separation are taboo in the communities of many of the women who approach us. Many users’ vulnerabilities are exacerbated by their mental health problems, destitution or very low incomes, and sometimes lack of knowledge of English. Southall Black Sisters does not provide legal advice itself, but instead provides practical assistance and critical access to specialist publicly-funded legal practitioners where necessary.

**Public law challenges of local authority refusals to provide statutory protection to victims of domestic violence and children in need**

5. The proposed exemptions to the residence test for victims of domestic violence are inadequate and will remove the final safety net that our highly vulnerable users depend on for protection. They only apply to narrow categories of legal matters under LASPO when our experience is that many cases involve multiple, complex and overlapping issues needing to be addressed together if protection is to be effective. Partial protection in the form of protection orders or regularising immigration status by no means ensures effective protection – instead obtaining alternative financial, housing and other welfare support is often critical to achieving this along with long-term rehabilitation. Many of our domestic violence and immigration matters also, for example, have public law aspects grounded in child and community care law.

6. The following anonymised cases are a non-exhaustive illustration of cases which could no longer be brought if the residence test is implemented, unless the individuals concerned were granted exceptional case funding. This will frustrate the very purpose of and undermine the ability of vulnerable migrant women to assert their rights under domestic law and policy protecting the rights of victims of domestic violence (such as the *Call to End Violence Against Women and Girls* (2010) strategy and the domestic violence concession under the Immigration Rules).

6.1. **Pooja**, an Indian national, fled from terrible abuse at the hands of her husband and mother, brother and sister-in-law where she had been treated like a domestic slave and subjected to physical, mental and sexual violence (including her husband on another occasion trying to set fire to the room where she was sleeping). Pooja was on a spousal visa subject to a 'no recourse to public funds' condition (and so was not entitled to welfare benefits or local authority accommodation). She later gave birth to her daughter and Southall Black Sisters gave her temporary shelter and subsistence. However Social Services then refused to carry out an assessment of her need for community care services because she lacked documentation and information concerning her previous abusive place of residence. Southall Black Sisters successfully challenged the refusal by way of judicial review and Social Services were ordered to continue assisting Pooja and her baby daughter. However, Pooja would no longer be able to assert her rights under public law as she would now fail the residence test because she had not been in the UK for a continuous period of 12 months prior to leaving her husband.

6.2. **Anoushka**, entered the UK on 2 year spousal visa and sought our help following the permanent breakdown of her marriage to a British national due to domestic violence (she had experienced physical, emotional and verbal abuse including being kept isolated and prevented from having any contact with her family or friends, she fled following a particularly brutal attack when her husband threatened to kill her). Anoushka regularised her immigration status but was not entitled to have recourse to public funds despite being homeless and destitute. Our referral of her and her children

tom Social Services for support under s 17 Children Act 1989 was refused. However, community care advice and representation later enabled her to be assisted by Social Services. However, Anoushka would now fail the residence test and be barred from access to such community care representation because she had not been in the UK for a continuous period of 12 months prior to leaving her husband. Although Anoushka would now be eligible for the Destitution Domestic Violence ('DDV') concession discussed below, as explained below many clients are mistakenly still made subject to a no recourse to public funds condition. If that had happened to Anoushka, she would not have been eligible under the Residence Test for legal aid to challenge either the incorrect imposition of the condition, or the failure of the local authority to provide support in the interim.

6.3. **Ruby**, an Indian national, contacted us homeless and destitute having fled her abusive British citizen husband and in-laws. Although she had entered the UK as a spouse, she had become an 'overstayer' for a significant period of time. Social services refused to provide her and her two British citizen children with more than one night's accommodation. In June 2008, we assisted Ruby in securing a court order requiring Social Services to accommodate her and her children pending an assessment of their needs. However, Social Services thereafter refused to accept any responsibility for Ruby and her children, instead referring her to her council's asylum team despite Ruby not being an asylum seeker. At the same time, Ruby's husband began to harass her and her children at their school. In October 2008, the issue of housing and subsistence support for Ruby and her children returned to court and the Council was once again ordered to provide long-term support to the family. However, Ruby would now fail the residence test and be barred from access to such pressing public law matters because at the time she needed legal advice she was not a lawful resident.

6.4. **Dorothy**, a Nigerian national, arrived in the UK on a visitor's visa to join her British citizen husband. Her husband would assault her on an almost daily basis and the second time that he abandoned her and their two British citizen children, Dorothy ran out of money and food after a few weeks and sought assistance from us. Her husband had not assisted her in regularising her stay

and had taken their children's British passports with him when he left. Social Services assisted all three of them for 28 days, but Dorothy was unable to resolve her immigration status in that time (because her since expired immigration status documents were retained by her husband). Social services subsequently cut off her support, threatened to take her children into care, and Dorothy became homeless. With the assistance of a community care solicitor Dorothy successfully challenged Social Services' decision to cut off her support unlawfully. However, Dorothy would now fail the residence test and be barred from access to such pressing public law matters because she was not lawfully resident in the UK at the time that she and her two British citizen children needed it.

7. Some of the above cases occurred before the introduction of the immigration law DDV concession. However, our concern is that migrant women with insecure immigration status (especially those who do not fall for consideration under the DDV concession, e.g. Dorothy) would not be able to challenge unlawful local authority decisions. The result is that vulnerable women are likely to face the stark choice between facing complete destitution in the UK and either returning to highly abusive relationships or to their countries of origin where it may be that they face discrimination, destitution or persecution because of their changed marital status. Our cases which are referred to legal specialists and which sometimes raise very compelling reasons for funding have never been the subject of a decision to fund under the exceptional funding scheme.

**Public law challenges to matters of public importance, namely UK Border Agency refusals to grant immigration status under the DDV Concession**

- 7.1. **Mwahasi**, an Ethiopian National, was forced to marry her husband when she was 16 years old. In August 2012, she joined her husband in the UK on a post-flight spouse visa, but her husband subjected her to repeated domestic and sexual violence (he also took her earnings and threatened to send her back to Ethiopia). Mwahasi began self-harming and feared return to Ethiopia as a disgraced woman. After calling the police she was taken to a night shelter, but her immigration status prevented her from claiming benefits. We assisted Mwahasi in finding temporary accommodation and in

submitting an application for temporary immigration status under the DDV Concession, but her DDV Concession application was refused on the basis that she was not technically on a spousal visa. However, Mwahasi's immigration solicitor has since challenged this refusal by way of judicial review and the case is pending at the High Court. It raises an important public interest matter regarding the proper remit of the DDV Concession immigration status. In the meantime, she has been given temporary leave to remain by the UKBA, which allows her recourse to public funds. However, Mwahasi would no longer be able to bring this case because she would fail the residence test because she had been resident for less than 12 months. Furthermore, the Legal Aid Agency also refused Mwahasi's application for exceptional funding to make an application for indefinite leave to remain in the UK under the Immigration Rules on domestic violence. Mwahasi did not qualify for legal aid under paragraph 28 of Part 1 of Schedule 1 because she was not granted leave to enter as the partner of a person settled in the UK (as her husband had only limited leave to remain as a refugee). She was told by the Legal Aid Agency that it would only be granted if there was a successful outcome of the judicial review proceedings in respect of the DDV Concession.

7.2. **Raheena**, also from Ethiopia, arrived in the UK in May 2012 with 'leave outside the immigration rules' (because she was unable to satisfy the criteria for a spouse visa notwithstanding that her husband was a British citizen). Raheena fled the matrimonial home in December 2012 following violence and abuse from her husband (including threats that she would be sent back to Ethiopia and forcibly separated from her daughter). Social Services refused to give her assistance on the basis that they only owed her British citizen daughter a duty of care. Raheena's application for immigration status under the DDV Concession was refused but luckily Raheena was able to turn to the High Court in a successful judicial review challenge of UKBA's decision. The High Court not only overturned UKBA's decision which led to her immigration status being granted, but it also ordered the local authority to assist Raheena and her daughter under the Children Act 1989. However, Raheena would no longer be able to assert her public law rights under the

residence test as she would not have not accrued 12 months' lawful residence at the time she would have applied for legal aid for the JR .]

8. Given the residence test, neither Mwahasi or Raheena would be entitled to legal aid to challenge the UKBA's refusal of their applications under the DDV Concession for support and temporary stay, even though their cases raise matters of public importance in respect of the proper remit of the DDV Concession. Mwahasi and Raheena were not technically spousal visa applicants, but whether their cases nevertheless should fall within the remit of the DDV Concession is an issue of public importance.

**State failure to undertake effective investigation into the circumstances surrounding the deaths or serious injuries of victims of domestic violence**

9. We are deeply concerned about the adverse impact that the residence test will have on accountability in both state and non-state abuse of power matters. In particular, we often assist the families (who live abroad) of women residing in the UK who after marrying British nationals have been killed or driven to suicide due to domestic violence. These cases sometimes involve a state failure to undertake effective investigation into the circumstances surrounding the deaths or serious injuries sustained. However, families will no longer be able to bring meritorious cases highlighting these issues as the following previous client's case illustrates:

- 9.1. **Nosheen** came to the UK on a spousal visa in 2006 to join her British citizen husband and in-laws following an arranged marriage in Pakistan. From the outset of her marriage she was repeatedly abused, imprisoned, forced to conceive, forbidden from having contact with her family in Pakistan or relatives in the UK, and not allowed to attend her GP surgery unless accompanied by her mother-in-law. She had little opportunity to fully disclose her experiences of abuse and imprisonment to others, but those relatives with whom she had spoken told her to 'adjust'. After 7 months Nosheen was hospitalised with 60% burns found after being found set alight in her garden. Despite her requests there are reasonable grounds to believe that the hospital allowed her husband and in-laws unrestricted access to her

and following one of their visits, she suffered catastrophic brain injury. The oxygen ventilator to which she was connected became inexplicably dislodged and as a result of her brain injuries she is now cortically blind, minimally conscious and needs 24 hour care. Her condition is life-long.

- 9.2. Notwithstanding this the UKBA tried to deport her in this condition. She was appointed an Official Solicitor and an immigration lawyer as she could not give instructions and the decision to deport was thankfully successfully appealed. Although the police conducted a superficial investigation (suspending investigations following her brain injury), the hospital did not investigate and so to date there has been no effective investigation into how she came to suffer serious harm at her home or at the hospital. Nosheen's father is a Pakistani citizen with a UK visit visa (which was granted only after considerable difficulty). When he is in the UK, he visits Nosheen who is in a near vegetative state on a daily basis at the nursing home where she resides. However, he has had no explanation as to why there has been no state scrutiny to bear on the matter.
- 9.3. Southall Black Sisters is assisting Nosheen's father to get some of the answers he seeks in this arguable case of a state failure amounting to a violation of investigative and protective obligations under Articles 2 and 3 European Convention on Human Rights. (It is the first time that an individual is demanding a human rights inquiry regarding a 'near miss' case that has occurred in the private sphere, i.e. amongst the family.)
- 9.4. However, Nosheen's father would not have been able to get any public law advice because he was initially not resident in the UK but in any event had not subsequently built up the requisite 12 months' UK residence (and could not do so because visitors are only normally permitted to enter for up to six months at a time). Without the benefit of legal aid he would have had no means by which to demand an inquiry and challenge any refusal by the state through judicial review, despite the serious allegations of wrongdoing and the merit of the case. I do not know for certain whether exceptional funding would be available in this case, but from our experience of never having had

exceptional funding being granted in respect of any of our cases, I would expect a positive decision to be highly unlikely.

### Evidential difficulties

10. Our experience is that many abused women do not have proof of identity, address, or immigration history when they come to us in need of legal advice and we are concerned that the need to prove that they meet the residence test will prevent them from getting legal advice when they most need it. The women who come to us will often have fled highly abusive relationships without having [thought about or had a chance to take] all their belongings and documents proving their identity, address, and immigration history and such documentation is sometimes deliberately withheld or destroyed. At the very least, we would expect lack of documentation to cause delays in bringing legal proceedings because of the difficulty of for example establishing 12 months continuous lawful residence. We fear that these additional hurdles will put the lives of already vulnerable women and children at further risk (see for example Pooja's case above).
11. Lawful residence and 12 months continuous lawful residence are likely to be difficult to prove in certain types of cases including in respect of those who have not grown up in the UK and have had to flee their homes due to violence and abuse leaving status documents behind or having had those documents retained by their abusive family members. Other cases include girls who are young British citizens or lawfully resident, who have been taken abroad, forced into a marriage, and then abandoned - they often need practical and potentially legal assistance to return to the UK and to assert their legal rights on return. A further category is that of married women who are taken abroad and stranded there with or without their children and in similar need of practical and legal support then and on return to the UK. Here is a real example of the second kind of case:
  - 11.1. **Farah** was young autistic British citizen woman from Luton in her early twenties. Her grandmother lured her to Pakistan on the promise that she would meet Farah's boyfriend's parents in Pakistan and arrange from them to get married. Instead, on arrival Farah was subjected to violence, her

passport was confiscated and she was held against her will for two years at her grandmother's house in Pakistan where she was introduced to potential suitors. In order to escape her imprisonment she agreed to marry a cousin and eventually managed to contact the British Embassy which arranged for her return to the UK. We met Farah at Heathrow Airport and provided her with the immediate support she needed. It was not easy for her to access welfare benefits and housing support because she had been absent from the UK for over six months.

11.2. However, as Farah had no documents to prove that she had been lawfully resident in the UK for a continuous period of 12 months at some point in the past, she would not have satisfied the residence test in order to challenge any unlawful decisions by local authority not to support her with her housing and welfare needs. Her passport had been retained by her family along with all other documents indicating her previous life in the UK. It is imperative that vulnerable young women like Farah have access to legal aid when they most need it, yet this will no longer be the case.

12. We are also concerned about many forced marriage repatriation cases where the Forced Marriage Unit retains an individual's passport pending repayment of a loan used to finance their return to the UK. These young women have no original proof of identity and may have difficulty proving that they meet the residence test resulting in delays in receiving the much needed community care legal support that they need putting them at risk of continued sexual and economic abuse.

### **Transnational abandonment**

13. Southall Black Sisters has had an increase in transnational abandonment cases, which are the emerging but under-researched social phenomenon of stranded or abandoned spouses which concerns the plight of women who are left abroad by their partners or families on whom they are entirely socially and financially dependent for survival without resources. They are often abandoned without essential documents abroad, at the homes of their in-laws or parents, or at the airport, and subjected to threats of violent reprisals if they report their

experiences or assert their rights. These women often come from backgrounds where they cannot return to their own families due to the immense stigma and shame that is attached to divorced or separated women, where it is generally very difficult for women to achieve social and economic independence. Those who are perceived to live unconventional lives are treated as social pariahs and the targets of harassment, discrimination and exploitation which can border on the extreme and lead to death. Cases frequently involve children and Southall Black Sisters has witnessed a rise in the reporting of these types of cases.

14. We are concerned that these victims will no longer have access to the considerable legal advice and representation that they may well need to for example facilitate their return to the UK and assert their legal rights on return to the UK in respect of family, children, community care, and accommodation and support issues. As the following cases illustrates, this is because they are unlikely to have documents that demonstrate their lawful residence or 12 months' previous lawful residence in the UK.

14.1. **Aina** came to the UK on a two year spousal visa following her arranged marriage to a British citizen. She was later the victim of transnational abandonment, and needed legal representation from community care lawyers to secure accommodation and subsistence support for her and her British citizen son (who she had subsequently given birth to) from Social Services having initially encountered substantial difficulties. However, Aina would now have difficulty proving that she met the residence test at the time she needed legal representation because she would have difficulty proving that she had 12 month's lawful residence at some point in the past. The factual background to her case is as follows.

14.2. Within months of arriving to the UK Aina was subjected to a catalogue of abuse and violence by her husband and in-laws who treated her like a domestic slave (she was made to get up at 5 o'clock every morning to do all the household chores for the extended family; was forbidden from having any contact with her sisters in the UK or mother in Pakistan; was given no money; her mother-in-law took control over every aspect of her life, constantly complaining about her; and her husband physically beat her,

threatening to divorce her and report her to the Home Office for deportation on the grounds that she was mentally ill and that the marriage was no longer subsisting). When Aina became pregnant her mother-in-law tried to force her to have an abortion and when she refused she was compelled to accompany her in-laws on a short trip to Pakistan albeit heavily pregnant. She was abandoned at her in-laws' home in Pakistan where she was kept as a domestic slave, but when she overheard her in-laws plotting to kill her she managed to escape. She later managed to return to the UK on a visitor's visa with her son but faced considerable difficulty in getting support from Social Services. Southall Black Sisters assisted her in instructing a community care lawyer and eventually following a letter from them, Social Services agreed to provide her with alternative accommodation and subsistence support.

14.3. **Nadira** is a Pakistani national who also came to the UK on a spousal visa following an arranged marriage to a British citizen and was later subjected to transnational abandonment whereby her son was taken from her and she was left stranded on a trip to Pakistan. The British High Commission refused to assist her (despite her needing to be reunited with her British citizen son) as her in-laws had deliberately taken her passport from her, and she was not a British citizen. Southall Black Sisters confirmed to her that her son was present and well in England and assisted her in returning to the UK. However she would no longer be able to conduct the subsequent legal proceedings regarding child residency and contact issues under the residence test because she would have difficulty proving that she had 12 month's lawful residence at some point in the past. The factual background to her case is as follows

14.4. On arrival in the UK Nadira lived with her husband and his extended family, but soon after arrival she was subject to controlling behaviour by her mother-in-law, made to do numerous domestic chores for the family, and increasingly beaten by her husband. She fell pregnant but was beaten so relentlessly that she missed for example her first GP appointment. In 2011, a year after she gave birth to her son, Nadira was made to travel to Pakistan where she was told by her in-laws that she needed to renew her visa from.

On arrival her in-laws took her son off her and returned to England, leaving Nadira stranded there, ceasing all communication with her and taking her passport from her. With our assistance she managed to return to the UK and bring legal proceedings for residency and contact in respect of her son.

### **Conclusion**

15. I am concerned that the majority of our users who are marginalised, destitute, isolated and vulnerable to all forms of gender-related violence, will be seriously hindered from accessing legal advice and representation because they will fail to meet, or have substantial difficulty proving that they meet, the residence test. I am also concerned about the far-reaching consequences for those who do not reside in the UK but who are victims of unlawful actions of UK authorities and have a right to hold the UK authorities to account. The proposal will compromise the right to effective protection as set out in the Government's own policies and strategies on violence against women, as well as in international human rights law and standards including those on gender discrimination and violence against women<sup>1</sup>.

I, Pragna Patel, believe the facts stated in this witness statement to be true.

Signed

**PRAGNA PATEL**

Dated **9 December 2013**

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<sup>1</sup> See for example the Convention on the Elimination of all Forms of Discrimination against Women, the Convention on Preventing and Combating Violence Against Women and Domestic Violence signed by the Government in June 2012 and the Government's Call to End Violence Against Women and Girls (2010) and the accompanying Action Plan (2011)