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MOJUK: Newsletter 'Inside Out' No 809 (02/09/2020) - Cost £1

Weight of Evidence Where Court Finds Serious Possibility it Was Obtained by Torture

Lexology: The Supreme Court has held that it was permissible for a trial judge, in determining whether a bribe had been paid, to have regard to the possibility of the confessions of bribery having been obtained by torture, even though torture had not been proved on the balance of probabilities: Shagang Shipping Company Ltd v HNA Group Company Ltd [2020] UKSC 34. The court overturned the judgment of the Court of Appeal, which had held that the possibility of torture should have been disregarded. The court noted that it is settled law, and was common ground in the case, that where it is proved on a balance of probabilities that a confession (or other statement) was made as a result of torture, evidence of the statement is not admissible in legal proceedings. However, the court said, it does not follow that where torture is not proved on a balance of probabilities, evidence of torture must be ignored. Such a rule would be irrational, as well as inconsistent with the moral principles which underpin the rule excluding evidence obtained by torture.

The decision is of interest as a relatively rare Supreme Court decision on the approach the court should take in assessing the weight of evidence. The decision underlines the distinction between the court's approach to the facts in issue in the case – ie those which must be proved to establish a claim or defence – and its approach to the facts that would tend to support or undermine the facts in issue. The court must determine the former category on the balance of probabilities, but the same approach does not apply to the latter category, including matters which merely affect the admissibility or weight of evidence. As the Supreme Court put it: "Judges need to take account, as best they can, of uncertainties and degrees of probability and improbability in estimating what weight to give to evidence in reaching their conclusions on whether facts in issue have been proved. It would be a mistake to treat assessments of relevance and weight as operating in a binary, all or nothing way."

Background: The claimant was the owner of a vessel which was chartered to a subsidiary of the defendant under a charterparty which was concluded in August 2008 and was to run from delivery of the vessel in 2010. The defendant guaranteed the performance of its subsidiary's obligations under the charterparty. The guarantee was governed by English law and subject to the exclusive jurisdiction of the English courts. In August 2008 the relevant chartering market was at its height, but by the time the vessel was delivered in April 2010 market rates were considerably lower as a result of the financial crisis in the autumn of 2008. The charterer defaulted in making payments and the claimant ultimately terminated the charterparty. The claimant obtained an arbitration award against the charterer for damages of US$58,375,709 for the loss caused by its repudiatory breach. The charterer was wound up and the claimant commenced the present action against the defendant under its guarantee.

The defendant alleged that the charterparty was procured by bribery and the guarantee was therefore unenforceable. The allegation of bribery was founded on evidence of confessions made by the individuals who had allegedly paid and received the bribe. The claimant in turn alleged that the confessions were obtained by torture and were therefore inadmissible as evidence in the proceedings. The judge concluded that torture could not be ruled out as a reason for the confessions and that in any case the allegations of bribery had not been proved. He therefore found that the contract was enforceable and awarded damages to the claimant. The Court of Appeal allowed the defendant's appeal from that decision and remitted the case for redetermination. This was on a number of grounds, including that in determining the question of whether a bribe had been paid the judge should not have taken into account his finding that torture could not be ruled out. The Court of Appeal held that, as a matter of law, since the allegation of torture had not been proved on the balance of probabilities, the court should have disregarded it entirely when estimating the weight to be given to the confessions as hearsay evidence in the proceedings.

The claimant appealed to the Supreme Court. The Supreme Court allowed the appeal, concluding that the Court of Appeal was wrong to interfere with the judge's factual findings, and was also wrong in its approach to the question of whether the judge was entitled to take into account his finding that torture could not be ruled out in deciding whether the confessions were reliable evidence that bribery had in fact occurred. Lord Hamblen and Leggatt gave the court's judgment, with which Lords Hodge, Briggs and Burrows agreed.

Approach to considering admissibility: The Supreme Court accepted that, where there is an issue as to whether important hearsay evidence is admissible, it is logical first to decide that issue before going on to consider its weight and evidential impact. This is not however a mandatory approach: how to deal with questions concerning the admissibility and weight of evidence is very much a matter for the trial judge, and there is no "one size fits all" approach. In the present case, the judge had in effect admitted the confession evidence de bene esse. In other words, he had taken it into account on the assumption, without deciding, that it was admissible, so that – unless the evidence turned out to be critical to his decision – he did not need to determine the question of admissibility. While he ought to have made it clearer that this was his approach, it was apparent that that was in fact the case. Since the judge concluded that there was no bribery, notwithstanding the confession evidence, he did not have to decide whether that evidence was inadmissible because obtained by torture.

Whether the possibility of torture was irrelevant: The Court of Appeal's conclusion that the judge should not have taken into account his "lingering doubt" as to torture was founded on the binary principle that, if a legal rule requires a fact to be proved, the court must decide whether or not it happened. The court cannot decide that it might have happened. If there is doubt, the doubt is resolved according to who carries the burden of proof. The Supreme Court accepted this principle, but rejected its application in the context being considered in this case. As the court put it, not all legal rules require relevant facts to be proved in this binary way. In particular, the rule governing the assessment of the weight to be given to hearsay evidence in civil proceedings does not. It requires the court to have regard to "any circumstances from which any inference can reasonably be drawn as to the reliability or otherwise of the evidence" (under section 4(1) of the Civil Evidence Act 1995). Such circumstances are not limited to facts which have been proved to the civil standard of proof. One circumstance specifically listed in section 4 is whether any person involved had any motive to conceal or misrepresent matters. As the Supreme Court commented: "It is difficult to think of a motive which would more seriously undermine the reliability of a confession than a desire to escape intense physical pain and suffering caused by torture."

The court noted that the defendant's argument depended on an assertion that, if a party failed to prove that a fact happened for the purpose of a particular legal rule, that fact must be treated as not having happened for all other purposes in the litigation. But there was no logical reason why that should be so. In particular, there was no reason to think that a failure to prove that a fact happened for the purpose of determining whether evidence is admissible means that the fact must be treated as not having happened for the purpose of assessing the weight to be given to the evidence, if it is admissible. The requirement to discharge the legal burden

of proof, which operates in a binary way, applies to facts in issue at a trial – ie the facts necessary to prove in order to establish a claim or a defence. But, the Supreme Court said, it does not apply to facts which make a fact in issue more or less probable. In the present case, the facts in issue included the question of whether a bribe was paid, but not the question of whether torture was used to procure the confessions. It was therefore unnecessary for the judge to make any finding on this question on the balance of probabilities.

The court commented that, on the modern approach to evidence, there are very few categories of relevant evidence which are inadmissible in civil proceedings. One such category, however, is evidence obtained by torture. Accordingly, if it is proved on a balance of probabilities that a confession (or other statement) was made as a result of torture, evidence of the statement is not admissible and must be excluded from consideration in the proceedings. This is a rule founded on public policy and morality, not just relevance. However, it does not follow, and there is no rule, that where torture is not proved on a balance of probabilities, evidence of torture is not admissible and must be ignored. A rule that required a court to disregard evidence which disclosed a serious possibility that a confession was made as a result of torture would, the court said, not only be irrational; it would also be inconsistent with the moral principles which underpin the exclusionary rule.

Direction case' Part One: Miller (Nos 1 and 2) in the National Security Context?

Daniella Lock, UK Constitutional Law Association: The 'Third Direction case', soon to be brought before the Court of Appeal, concerns the lawfulness of a previously secret national security policy of the UK Government. The policy authorises agents of the Security Service (MI5) to engage in criminal activity, which the claimants allege include the carrying out of torture and murder. Hearings on the case were held in November last year in the Investigatory Powers Tribunal (IPT), a specialist tribunal which adjudicates complaints on state surveillance and the conduct of the Security Services (MI5, MI6 and GCHQ). The IPT produced a judgment remarkably quickly, published in December. The background to the Third Direction case is complicated, and the constitutional issues it raises are extensive. This initial discussion of the case is therefore presented across two posts. This first presents the background to the case and its key issues, while highlighting its parallels with the Miller cases.The post goes on to emphasise two important differences between the cases which reflect significant challenges in maintaining the rule of law in national security litigation. It argues that such challenges are contributing to a widening gulf of uncertainty between the law and national security practice. A second post will follow this analysis setting out the findings of the IPT in this case and evaluating its response to the rule of law challenges set out in this initial post.

Background to the Case: The policy forming the subject of the Third Direction case came to light in previous IPT litigation on bulk surveillance powers (bulk personal datasets and bulk communications data). The IPT examined the oversight associated with the powers, which included a 'direction' provided by the Prime Minster to the Intelligence Services Commissioner to oversee the exercise of bulk personal datasets. Two other directions were referred to in the evidence presented in the case – one in the public domain relating to the UK's involvement in detention overseas and one now known as the 'Third Direction' not in the public domain. The litigants brought a separate claim to establish the nature of this direction.

The Third Direction: Following a failed attempt to have the claim regarding the Third Direction struck out, the UK Government disclosed the subject matter of the Third Direction on 1 March 2018 via a written statement to Parliament. The statement referred to the 'Investigatory Powers Commissioner (Additional Directed Oversight Functions) (Security Services agent participation in criminality) Direction 2017', made on 22 August 2017, which required the Investigatory

Powers Commissioner to 'keep under review' the application of the 'Security Service guidelines on the use of agents who participate in criminality'. Subsequent IPT proceedings revealed that the direction had replaced an earlier one with the same subject matter given on 27 November 2014, which in turn replaced a non-statutory direction made on 27 November 2012, which had been issued to the Intelligence Services Commissioner (who provided oversight in this area before the role of Investigatory Powers Commissioner was created in 2016)

The Policy: While the authorisation policy in the public domain is heavily redacted, we do know that it allows the Security Service to authorise agent participation in crime in order to obtain or maintain access to intelligence. An agent in this context is a person who can provide intelligence on individuals of interest to MI5. Previous iterations of the policy were consolidated in the 'Guidelines on the use of Agents who participate in Criminality (Official Guidance)'. The claimants contend that the policy has been in place since around 1992, and was introduced following the murder of lawyer Pat Finucane by loyalist paramilitaries.

This power contrasts with two other key statutory powers relating to the Security Service and ordinary criminal law. First, there is an explicit statutory power under section 7 of the Intelligence Services Act 1994 which allows a Minister to permit UK personnel to commit criminal acts, however such acts must be committed abroad. Secondly, there are powers under Part Two of the Regulation of Investigatory Powers Act 2000 (RIPA) for a Covert Human Intelligence Source (CHIS) to engage in activity which looks very similar to criminal activity. However, according to MI5's own guidance from 2011, that RIPA authorises criminality is a 'common misunderstanding' and it is 'better' to think of RIPA as 'authorising merely the element of interference with privacy occasioned by the conduct or use of the agent' (see p73 of the guidance).

A key area of contention between the parties is whether the policy authorises activity which would breach fundamental rights, including torture. The claimants argue that nothing in the policy rules out such activity and that past Service operations, such as Operation Kenova, shows that authorisation of agent participation in criminality has resulted in both murder and torture of individuals. Conversely the Government emphasises that its policy does not authorise such activity and that it is 'inappropriate' to rely on evidence of past practice which is subject of investigation elsewhere (for example, Operation Kenova is currently the subject of a public inquiry).

While the Government made clear statements in its submissions to the IPT that the policy does not permit torture, it also emphasises that whether certain activity constitutes torture or inhuman or degrading treatment under article 3 of the European Convention on Human Rights (ECHR) 'depends on context' (e.g see para 81). Furthermore, on the first day of proceedings on 5 November 2019, Lord Evans speaking on the policy refused to rule out it being used to authorise torture when interviewed on the Today Programme. The rest of the evidence on this matter was presented in closed hearings.

Parallels with Miller 1 and 2: The claimants in the Third Direction case claim that the policy is unlawful on the basis of a number of different factors, including UK constitutional law and under the ECHR. Other important issues they have raised include whether the policy has the result of the executive undermining both the role of the Director of Public Prosecutions as well as current devolution arrangements. There are clear parallels in this case with the Miller cases. These include that one of the key questions in the Third Direction case is whether the exercise of executive power has undermined or restricted Parliamentary power. In particular, the claimants argue that the policy allows the executive to dispense with criminal law and that this contravenes the fundamental UK constitutional principles that the executive has no power to act beyond the criminal law (e.g. as is required by the Bill of Rights and the Case of

Proclamations) and that the executive cannot exercise power in a manner in which the practical effects will undermine law passed by Parliament (e.g. Miller (No 1)). The claimants also argue that the policy undermines Parliamentary power by violating ECHR rights, principally through authorising conduct in breach of negative obligations established in articles 2, 3, 5 and 6 ECHR and by not being 'in accordance with the law'

Another parallel is that the areas of executive action being scrutinised by the courts in both cases are those traditionally considered to fall within exclusive executive competence. The Third Directions case relates to national security policy which is a classic area in which the executive used to claim sole competence. The same is true of Miller (No 1), which grappled with executive treaty-making power, and Miller (No 2), concerned with the power of the executive to prorogue Parliament.

Differences Reflecting Challenges: i Secrecy and Secret Law. While a few of the documents in Miller (No 2) were redacted, a big difference between the Miller cases and the Third Direction case is that all the evidence related to the operation of the executive policy in the Third Direction case was presented in secret proceedings. Indeed despite there being a number of safeguards in IPT procedure to limit secrecy, there remains a strong risk of blanket secrecy surrounding the Government's evidence.

For example, there exists a 'Counsel to the Tribunal' who is present in closed hearings and may flag closed evidence they think may be made public without harming national security. However the role of the Counsel of the Tribunal is not to protect specifically the interests of the claimants (though it can be directed to carry out this role by the Tribunal, see para 8 of Liberty v GCHQ (No 1)). Even if the Counsel is able to persuade the IPT that certain documents should be disclosed, the Tribunal has no power to compel the Government to publish the documents, but can only recommend disclosure.

The risk of blanket secrecy surrounding the policy's operation in the Third Direction case reflects a common rule of law challenge in national security litigation which is (at least) threefold. In the first instance, and as has been the subject of much academic scholarship, secret proceedings undermine the rule of law by shielding the governmental party from the non-governmental party and the public. This undermines equality of arms between the parties as well as open justice in a particular case.

There is a second impact on the rule of law that occurs over time across rather than in an individual case. Despite compelling proposals from Liora Lazarus that there should be a time limit on the confidentiality of material presented in closed proceedings (see Security and Human Rights, Ch 7), closed material and judgments in all areas of national security law are currently set to remain permanently closed. Lazarus highlights that this impacts the rule of law over time by eroding Government accountability for its national security activity as well as setting up barriers to scholarly scrutiny of national security activity.

Thirdly, and relatedly, as closed material and judgments swell in mass over time, this not only shields Government activity but also the development of related legal precedent. Closed material screens the operation of national security practice, including secret internal Government policies, as well as the treatment of that practice and internal procedures by judges. This is resulting – presumably – in the development of 'secret law'. Such secret law is likely to relate to important issues such as whether internal necessity and proportionality tests applied by the Government to national security powers are adequate for the purpose of protecting against the abuse of power, as is required under the ECHR.

ii. Statutory Authority rather than Prerogative Power: Operating in tandem with secrecy, another difference is that in the Third Direction case, unlike in the Miller cases, the Government is arguing that the policy has statutory authority rather than operating on the

basis of prerogative power. Specifically, the Government argues that the policy has a lawful statutory basis in the Security Service Act 1989 (SSA). Section 1 of the SSA sets out the 'functions' of the Security Service, which include the 'protection of national security' and to 'safeguard the economic well-being' of the UK.

The claimants argue that these functions as laid out in the SSA cannot contain actual powers, particularly in light of the explicit provision of similar powers in other legislation regulating the Security Service (for example, see section 7 of the Intelligence Services Act 1994 which specifically allows ministers to permit MI6 personnel to commit criminal acts abroad). However, the Government contends that embedded within each of these functions must be vires to do what is necessary to perform those functions. The Government seems to implicitly accept that the passing of the SSA 1989 has placed any prerogative powers enjoyed by MI5 in abeyance.

Whether or not the functions referred to in the SSA are ultimately found by the courts to have vires embedded within them, it is clear that the idea that section 1(2) of the SSA would implicitly authorise the policy is likely to require some form of creative or broad interpretation. While such interpretations of statutory language occur in many areas of the law, including where the protection of human rights is concerned, they have been a repeating theme in recent national security litigation in the IPT. The IPT has accepted a number of broad interpretations of statutory language in establishing the legality of surveillance powers disclosed in the wake of the Snowden leaks. This occurred, for example, in the case of Liberty v GCHQ (No 1) & (No 2), whereby section 8 (4) of RIPA was accepted by the Tribunal to authorise the bulk interception of internet communications, including communications within the UK (for example, where individuals in the UK were using websites relying on an international server such as Twitter or Google). The Tribunal found that s8 (4) authorised this form of interception despite the provision only explicitly authorising the interception of 'external' communications – that is 'a communication sent or received outside the British Islands' (see clause 20 of RIPA as originally enacted) – while authorisation of interception for communications within the UK was provided for separately in s 8 (1) of RIPA. It is also noteworthy that RIPA was passed in 2000, when surveillance on the scale of bulk interception of internet communications was not considered as a possibility by Parliament when considering the provisions under RIPA. An interpretation of s 8 (4) as authorising the interception of internet communications within the UK therefore represents an interpretative stretch on the part of the IPT. The Tribunal has relied on comparably broad interpretations in its findings that statutory authority existed prior to the Investigatory Powers Act 2016 for 'computer network exploitation' (or hacking as it is more commonly referred to) and bulk personal datasets.

A succession of broad statutory interpretations in national security law will have its own corrosive effect on legal certainty and therefore the rule of law. It will help to widen the gap between the legal expectations of the Government held by Parliament and citizens based on an ordinary reading of the national security legislation and the operation of national security law in practice. This gap is also significant, as is highlighted in Simms, on the basis that where Parliament's language relating to rights is ambiguous, this carries with it the risk that 'their unqualified meaning may have passed unnoticed in the democratic process' (per Lord Hoffmann). In this way this stretched legal interpretations may not only undermine legal accountability through corroding certainty, but also political accountability.

Conclusion: Part One of this post has presented the background to the Third Direction case, and argued that it represents a version of the Miller cases in the national security context, though one that illustrates significant obstacles to the rule of law persistently arising in national security litigation. These challenges are contributing to a broadening gap of uncertainty between formal, public, national security law and the way that such law operates in practice.

This discordance within the current system is undermining both the legal and political accountability of the UK Government for its national security activity. Part Two examines the IPT judgment produced in December and highlights some its key implications for the rule of law, before setting out the issues soon to be before the Court of Appeal.

***Third Direction Part Two*: The Doctrine of Necessary Implication and Uncertainty**

Part One of this post presented the background to the 'Third Direction' case, which concerns a recently disclosed Government policy to authorise agents of the Security Service (MI5) to participate in criminal conduct, and will will soon be heard in the Court of Appeal. Part One argued that from its the outset the case illustrates significant obstacles to the rule of law which commonly arise in national security litigation, and which are contributing to a broadening gap of uncertainty between formal, public, national security law and the way that such law operates in practice. Part Two examines the IPT judgment on the Third Direction published in December, which includes a majority ruling (per Lord Justice Singh, Lord Boyd and Sir Richard McLaughlin) and two dissents (per Charles Flint QC and Professor Graham Zellick QC). The post argues that the findings by the majority, in particular its application of the doctrine of necessary implication, principally serves to enhance uncertainty with regards to the operation of national security law. The majority ruling raises a number of questions regarding the nature of the powers found to be lawful, the role of law in national security policy, and the precise role being played by oversight bodies in this area.

The judgment examines four principal issues related to whether the policy: 1. Has a lawful basis in statute or common law; 2. Amounts to an unlawful de facto power to dispense with the criminal law; 3. Whether the secret nature of the policy, in the past and in its current form, means it is unlawful under domestic principles of public law; 4. Whether the policy, the practices authorised under the policy, and its oversight, are compatible with the UK upholding its obligations under the ECHR. The majority found in favour of the Government on all four issues, concluding that the policy was lawful. The judgment represents the first time an IPT judgment has publicly included a dissent, and will be the first IPT judgment to be appealed following the coming into force of s67A of Regulation of Investigatory Powers Act 2000 (RIPA) inserted by the Investigatory Powers Act 2016 (IPA).

T*he Doctrine of Necessary Implication:* The majority found that a lawful basis for a policy permitting the commission of criminal offences was necessarily implied by s 1(2) of Security Services Act 1989 (SSA) read with s 2(1) of the SSA. S 1 (2) SSA states the 'function' of the Security Service shall be 'the protection of national security and, in particular, its protection against threats from espionage, terrorism and sabotage, from the activities of agents of foreign powers and from actions intended to overthrow or undermine parliamentary democracy by political, industrial or violent mean'. S2 (1) SSA refers to the need for the 'efficiency' of the Service, which the Director-General is responsible for ensuring.

In coming to this conclusion, the majority first emphasised that it is 'well-established in public law that a public authority has not only those powers conferred upon it by statute but also implied powers' [55]. Second, the majority reasoned that the ability of the service to infiltrate proscribed organisations was both essential and dependent on the policy being found to be lawful. The majority reasoned that prior to the passing of the SSA, the Security Service must have been engaged in the 'running of agents, including the running of agents who are embedding in an illegal or criminal organisation' [60]. Furthermore the 'express terms' of the SSA 'make it clear' that it was intended to continue the existence of the Security Service and its operation [60]. On this basis, the majority concluded that it was 'impossible' to 'accept that Parliament intended in enacting the 1989 Act to bring to an end some of the

core activities which the Security Service must have been conducting at that time, in particular the context of the "Troubles" in Northern Ireland' [60]. The majority further noted the reference to 'efficiency' in s2 (1) SSA and states that it could 'hardly be said to be an efficient exercise' of the performance of either the Director-General's or the Security Service's functions if they 'could not carry on doing an essential part of their core activities' [61]. In concluding there must be an implied power for the policy in the SSA, the majority asserted that the closed evidence it had examined and the 'events of recent years, for example in Manchester and London in 2017' serve to 'underline the need for such intelligence gathering and other activities in order to protect the public from serious terrorist threats' [63].

Dissents: Both dissents in the judgment depart from the majority ruling in its application of the doctrine of necessary implication. The dissent of Charles Flint QC stated thathe was unable to find a necessary implication from the words of the 1989 Act that the commission of a tort or crime against a person could be authorised by the Director-General of the Service. Flint noted that since the Interception of Communications Act 1985 'exceptional powers' have been granted using 'substantially the same drafting technique' whereby such powers are drafted in a manner which requires a warrant or authorisation which establishes a lawful means for the power to be exercised. He highlighted that this is the general scheme used in the SSA, Intelligence Services Act 1994 (ISA), RIPA for example at section 21(2)) and the IPA (for example at section 6(3)) [129]. Flint stated that an implied power which 'authorises conduct contrary to the general criminal and civil law' but leaves the person engaging in such conduct 'liable to criminal prosecution' would be 'extraordinary' [129].

The second dissent was given by Professor Graham Zellick QC. Zellick argued there was no evidence of any power to authorise agents to participate in criminality prior to the SSA [144] – [145], just as there was not for lawful interference with property until it was expressly introduced by s3 SSA. Zellick contended that s1 of the SSA is not the source of any of the Service's powers but 'sets our functions or purposes' and 'might be called an objects clause' which in fact 'defines the limits or scope of the Service's activities', rendering it therefore a 'limiting provision' [151]. Zellick further described the intention attributed by the majority to Parliament as 'fanciful' [161] and detailed instances both prior to and following the SSA where the prospect of passing legislation relating to agent participation in criminality was explicitly discussed by MI5, government departments, legal advisers, ministers and the Law Officers but put to one side due to fears it would not be supported by Parliament [163]. According to Zellick, the majority's use of necessary implication did not satisfy the requirements of leading authorities regarding the doctrine of necessary implication which require it to be only narrowly constructed ([170] – [173]). He stated that while the power to participate in criminality 'may well be sensible and desirable, even essential' Parliament would likely be 'astonished to be told that it had conferred this power in 1989' ([174]).

Uncertainty in National Security Law: The dissents provided against the majority application of the doctrine of necessary implication are powerful and determining the proper application of the doctrine of necessary implication in this context will be a key issue in proceedings brought before the Court of Appeal. Despite the fact that the case represents an attempt to clarify an area of national security law, it is clear that if the majority view is upheld, the case will create further uncertainty in the legal regime underpinning the Government's national security activity – including in relation to the areas set out below.

*Uncertainty Surrounding The Nature Of National Security Powers:*The reasoning employed by the majority raises the question as to what other forms of criminal participation may now be considered lawful beyond membership of proscribed organisations. This is linked to what may be aptly described as 'backwards reasoning' on the part of the majority in the IPT ruling. The reasoning is backwards insofar as the necessity of a specific power – for agents to join pro-

scribed organisations – is used as a starting point to infer the necessity of a broader set of powers – a general power for agents to participate in criminality. This is in order to determine the lawfulness of that broader set of powers. This contrasts with the more common approach to judicial reasoning required by the principle of legality, for example as is endorsed in ex p Simms, which is to only infer the existence of specific powers (where such powers are invasive state powers) that are clear and unambiguous. Even if the case that there might be a need for specific powers is found to be clearly made out, that is not usually taken to determine the lawfulness of a broader set of powers of which they are part. This is because even if that broad set is desirable, Parliament will ordinarily wish to legislate including safeguards and limitations to protect the public interest and appropriately constrain the powers of the intelligence agencies. Indeed, this is reflected in comparable recent legislation passed in Canada. The legislation refers to criminal conduct which may be engaged in by the Canadian Security Intelligence Service and sets out clear limits on the kind of criminal conduct that may be engaged in (see Section 20 (18)).

Questions regarding the nature of the powers to participate in criminality are particularly significant as the majority ruling notably avoided any analysis of whether or not action which potentially breaches ECHR rights was authorised by the policy. This is aside from stating that there was 'nothing inherent' in the policy which creates a 'significant risk' of a breach of article 3 [100]. In avoiding ruling on such matters the majority stated that a 'fundamental difficulty' is that the 'question of whether there has been a breach of a Convention right is usually one to be determined after the event on the concrete facts of a particular case rather than in the abstract' [101]. It is not clear what this means in light of the IPT presumably having examined evidence pertaining to the application of the policy in practice in closed proceedings. Ultimately the Tribunal ruled that the parties to the case did not have standing to determine the breach of Convention rights [107]. Again the reasoning for this is not entirely clear given that parties to the case included the Pat Finucane Centre which represents families affected by the conflict in Northern Ireland and therefore potentially at risk of having been directly affected by the Government's policy ('potentially at risk' of ECHR violations is the basis for standing in relation to surveillance cases considered by the IPT in the case of Human Rights Watch and ors v Secretary of State for Foreign and Commonwealth Office and ors.).

Uncertainty as to the Role Of Law In National Security Protection: That such a legal basis for such a broad set of powers could be inferred to exist from a general statutory provision also raises questions as to the role of more specific legal provisions in national security law. If the Government can have national security powers read into statutory provisions which are not explicit about providing powers at all, let alone a broad set of powers, this begs the question as to the purpose of provisions which are more specific in setting out powers to govern activities of the security services. Lawmakers themselves may also question what is the point of scrutinising specific and sometimes complex statutory schemes for powers, such as those referred to by the dissenters and contained in SSA and RIPA, when the Government is able to operate on the basis of broad policies it has written up in-house and given a legal basis by general statutory provisions.

Uncertainty Regarding the Need to Disclose National Security Policies: The majority ruling also sends mixed signals regarding the need for Governments to disclose their national security policies. In deciding whether the policy was consistent with the principle of legality prior to its disclosure, the majority ruling stated it saw 'no practical purpose would be served by this Tribunal granting any remedies to the Claimants in this regard' [90]. In avoiding a finding of historic illegality of the policy, the Tribunal departed from its previous approach to similarly broad, invasive and previously

secret policies (for example in Liberty v GCHQ (No 2) and Privacy and Greennet.). It also contrasts with a recent ruling made by the Federal Court of Canada which found extensive unlawfulness with regards to participation in criminality by the Canadian Security Intelligence Service prior to the passing of legislation which explicitly regulated such conduct. Importantly, the IPT ruling indicates to the Government that it will not necessarily be penalised when it keeps secret policies governing a significant aspect of its activity, in a manner which enables it to essentially operate outside of the law, leaving it unclear whether the Government needs to disclose such policies at all.

Uncertainty as to the Purpose of IPCO/ISC: Other questions raised by the majority ruling in the judgment include the precise role of the bodies responsible for providing oversight in national security law. On the question as to whether there were adequate safeguards against the abuse of powers provided by the Government's policy, the claimants argued that as the Intelligence and Security Committee (ISC) and the Investigatory Powers Commissioner's Office (IPCO) had been told by the Government that their role was not to consider the lawfulness of such a policy, it was not subject to proper oversight [94]. The majority argued in response that 'it was not necessary' to ask the ISC or IPCO (the ruling says 'IPT' but this is presumably a typo) to 'provide any endorsement of the policy' as this was 'not their function' [95]. The majority adds that such 'questions of law' are 'ultimately ones for courts and tribunals to determine' [95].

While no one would disagree that courts make determinative assessments of law, the idea that the function of oversight bodies does not include making assessments regarding the lawfulness of activities of the Security Service is not consistent with the image often presented of the role of oversight by the UK Government, as well as by the IPT itself. Indeed in requesting that Parliament pass RIPA, the UK Government (in the form of Jack Straw, Home Secretary at the time) expressly stated that the role of the commissioners would be to 'reassure Parliament and the public' that investigatory powers used by the Security Service and law enforcement 'are being used properly' (see para 777), and former judges are required to be appointed in both bodies to make such assessments (see RIPA, s59 (5), now repealed, and s227 (2) of the IPA). Conclusions on the lawfulness of Security Service activities by the ISC and IPCO have also been quoted by the IPT. This includes when reasoning that the Government's powers are lawful, precisely by virtue of these bodies existing to determine 'compliance' of the security services with their 'obligations', which must include their legal ones – thus satisfying ECHR requirements that sufficient safeguards exist to ensure such powers are not subject to abuse. This was a key factor in the IPT finding that hacking powers were lawful in Privacy and Greennet [77]. In light of this, the majority's commentary on the ISC and IPCO exposes a lack of coherence in the system of national security oversight.

Concluding remarks: It is true that national security litigation is always underpinned by some degree of uncertainty, due to the presence of secret proceedings and intentionally broad legal definitions meant to enable the security services to respond to unpredictable national security-related threats. However, as this post has highlighted, the majority ruling in the IPT in this case raises questions pertaining to the fundamental functioning of the regime underpinning Government activity in the domain of national security. The result is to enhance uncertainty in this area of executive activity and thus undermine the rule of law in its already fragile state as far as national security powers are concerned.

NI: Executive Office Unlawfully Stymieing Implementation of Troubles Pension Scheme

Scottish Legal: The Executive Office is unlawfully stymieing the implementation of the legacy pension scheme for victims of the Troubles, the High Court in Belfast has ruled. Mr Justice Gerry McAlinden handed down judgment this morning Friday 21st August 2020, in respect of two separate judicial reviews brought by Jennifer McNern and Brian Turley. By refusing to designate a depart-

ment to administer the scheme, the judge said the Executive Office is "deliberately stymieing the implementation of the scheme in order to pressure the Secretary of State to make a different scheme". He added: "This is a truly shocking proposition. It demonstrates either wilful disregard for the rule of law, or abject ignorance of what the rule of law means in a democratic society." Solicitor Darragh Mackin of Phoenix Law, who represented Mr Turley, said: "For too long victims have anxiously awaited the implantation of the pension scheme. It is entirely unsatisfactory that despite the legislation having been enacted, they were unable to avail of the payments that were properly due to them. "For Mr Turley, who has a previous conviction, today's ruling bears a personal significance. He for too long has been deprived of the redress to which he is entitled to as a victim of the horrendous treatment to which he sustained at the hands of the state."

Guidance on Digital Records Held on Electronic Devices in Criminal Proceedings

Taylor Wessing, Lexology: The issue of electronic evidence is not a new one. Since the disastrous and well publicised case of Liam Allen in 2017, the courts have been grappling with the issue of relevance and reviewing/disclosing evidence from the digital devices of witnesses in a case. In Allen's case, he was on bail for over a year before being charged with several counts of rape. During the trial, his barrister obtained a copy of the complainant's text messages, including several which directly conflicted with her witness statement decimating her credibility, and ultimately the Crown's case.

In recent criminal cases of R v CB and R v Sultan Mohammed, the Court of Appeal has given guidance on the use of digital records held on electronic devices (such as mobile phones) by prosecution witnesses. In both cases, the defence sought to adduce digital records evidence – including from social media and mobile phone messages – but were ultimately unsuccessful. Although both cases related to sexual assault, the issues of principle considered in the respective judgments are relevant to a wide variety of circumstances.

The Court set out the following guidance for investigators seeking to disclose details of a witness' digital communications: Any request to inspect must have a "reasonable foundation" – ie there must be reasonable grounds to believe that an inspection will reveal relevant material; it mustn't be a fishing expedition. There is no presumption that a complainant's device will be inspected. Any review of a witness's electronic communications should be proportionate, and where possible cause the least inconvenience to the witness. Investigators should consider whether the review can be undertaken remotely without requiring the device and whether it would be sufficient to view limited areas (such as a particular conversation or set of social media posts). Investigators should also note that if a more detailed review is needed, the device should be returned without unnecessary delay, that searches of large amounts of material should be limited with data parameters (such as search terms), and that irrelevant personal information should be redacted.

Complainants and witnesses should be kept informed and reassured regarding disclosure of any records. Complainants and witnesses should be told that: they will be informed of disclosure decisions, how long the device(s) will be retained and what information is being extracted and examined; content will only be copied or inspected if no other method of discharging disclosure obligations is available, and material will only be provided to the defence if it meets the strict test for disclosure and is suitably redacted. What are the consequences if the complainant deletes or refuses to permit access to relevant digital records?

The reasons for refusal should be carefully considered and reassurance regarding the disclosure procedure should be provided. If a stay of proceedings is suggested on the basis

that a fair trial is not possible, this should be considered along with the adequacy of the trial process. The court should not make guesses about the content and significance of the unavailable material but should assess the impact of its absence. A witness summons may be sought so that a device may be provided and, in the case of deletions, cross-examination or directions could be sought. If the trial were to proceed, the lack of cooperation from the complainant/witness would be an important consideration for the jury.

It will be interesting to see in practice how investigators will approach cases where a complainant or witness' phone is required. How much pressure will the defence apply to ensure phones are interrogated? How much push back might there be from complainants and witnesses? Will this finally encourage those accused of offences to put some meat on their bare bones defence statement to justify their disclosure application? After all, in this digital age, surely it's not right to only hear one side of the story?

What Decolonising the Curriculum Really Means

Sofia Akel, Each Other: Throughout centuries of British imperialism, universities were not benevolent institutions who abstained from the violent massacring, plunder and invasion of 90% of the world's countries. We must first understand what is meant by 'colonial' education and its intrinsic link to academia. The way in which we come to know, understand and view the world – what academics term 'epistemology' – is learned throughout our lifetimes from many influences, known as formal and informal agents of social control. These include the state, the law, religion, our families, our neighbourhoods and public opinion. This process is known as socialisation, and it is ideologically reinforced through our education. The British education system itself, is firmly rooted in colonial epistemology, which centres and upholds the British empire and the forms that it takes today. What this can look like in schooling is a whitewashed retelling of the history of empire that speaks only to its 'successes,' whilst omitting its evils, the voices of the oppressed and the lasting legacy of imperialism today.

Within education there exists a complex web of coded and overt systems through which some forms of knowledge are 'legitimised' – those which fit a narrow, conservative view of 'British values' and the government of the day's agenda. This is no accident. Education in Britain has and continues to be greatly intertwined with the state. Decolonisation typically refers to the withdrawal of political, military and governmental rule of a colonised land by its invaders. Decolonising education, however, is often understood as the process in which we rethink, reframe and reconstruct the curricula and research that preserve the Europe-centred, colonial lens. It should not be mistaken for 'diversification,' as diversity can still exist within this western bias. Decolonisation goes further and deeper in challenging the institutional hierarchy and monopoly on knowledge, moving out of a western framework.

Subjects such as anthropology, the study of human societies and their culture, were inextricably linked to the colonial project. Anthropologists would voyeuristically study the 'subjects' in former colonies, providing highly sought-after insights about the peoples Britain wished to rule over. The surveillance of communities enabled the plunderers to strategically plan invasions, divide, conquer and quell insubordination. Certain fields of science, such as medicine, were not exempt from this either. Colonialists were exposed and vulnerable to 'new' types of diseases, terrain and environments that hindered their exploits. Therefore, research into "tropical" diseases and medicine was carried out to maintain good health of those invading, not necessarily the invaded.

Sir Ronald Ross, former lecturer at Liverpool School of Tropical Diseases reportedly believed

that "in the coming century, the success of imperialism will depend largely upon success with the microscope." Ross' life and work was actively shaped by empire, born in India he later became a surgeon in the British Imperial army, using his research to strengthen colonial rule and eventually winning the Nobel Prize for his Malaria research.

The impact of university curated racism, which supported the notion of the 'white man's burden' to 'civilise' the world, echoes loudly today. In 2020, we have witnessed historic global protests against racism and police brutality. Racism that has also masqueraded as academia, fortified in the dusty hallways and dark corridors of Britain's universities. Eugenics, the 'study' of improving the human race through selective breeding, was widely subscribed to and even set up as legitimate research subjects in universities prior to the Second World War. Eugenicists believe the 'white race' is naturally the most superior of all. This pseudoscience was a catalyst for the Holocaust and plays a large role in our educational and societal inequalities today. The Prime Minister Boris Johnson himself expressed eugenicist views and has called for the recolonisation of Africa. While only two years ago, secret eugenics conferences were held at University College London, attended by prominent white supremacists.

When many of us reflect on our journeys through compulsory, further and higher education, we don't often recognise the knowledge we gain as inherently political. But it is impossible to divorce our worldview – including our political and moral values – from the subject matter we're taught. If we don't challenge the colonial roots of our education, we are ultimately breathing life into an ideological framework borne out of an empire steeped in blood. The task then, is for each of us to consciously and intently work to decolonise both our own minds and the institutions that uphold this. There are revolutionary futures that we can imagine for ourselves through alternative ways of understanding the world that do not start, end and seek validation from darkness.

€7,000 for Inadequate Investigation of Police Assault Due to Destruction of Police Video

Elliot Gold, Police Law Blog: In Posa v Hungary [2020] ECHR 522, the European Court of Human Rights awarded €7,000 to a person whose complaint of police assault could not be properly investigated due to destruction of the incident footage after thirty days. The applicant claimed that on 3 November 2011, anti-terrorist officers used excessive force when arresting him on suspicion of involvement in a robbery by kneeling on him, twisting his arms, striking him, handcuffing him, dragging him on the floor, kicking him several times and punching him repeatedly in their car [4]-[5]. Due to a lack of evidence, the court felt compelled to dismiss the applicant's claim of a breach of the substantive limb of article 3 [26]-[27]. Nevertheless, the court held that the injuries and circumstances of arrest gave rise to a reasonable suspicion that the police may have ill-treated him [28]. In those circumstances, the authorities had an obligation to perform an effective investigation into the applicant's allegations of police assault [29]. As to this, there was police video of the entire incident but this had been destroyed after the statutory thirty-day period. This was a remarkably tight deadline. Had this not been the case, the authorities may have had strong evidence to prove or disprove the applicant's allegations. Further, there was no police medical report sheet, normally completed on the apprehension of suspects, which could have shed more light on the circumstances of the incident [31]. In consequence, the authorities were unable to perform a thorough and effective investigation of the complainant's claim of ill-treatment. An adequate investigation would have required diligence and promptness whereas the prosecutor requested the video on 29 February 2012, nearly four months after the incident and when the statutory thirty-day period for retention had long expired [32]. This amounted to a breach of the article 3 procedural limb, for which the court awarded €7,000 [35].

Crown Admits 'Malicious' Prosecution of Rangers Administrators

Scottish Legal News: The Court of Session has awarded an interim payment of £600,000 to two Rangers FC administrators after the Crown admitted a "malicious" prosecution. David Whitehouse and Paul Clark were appointed as administrators of Rangers in February 2012 and the club was liquidated in October 2012, shortly before both left their positions. Mr Whitehouse and Mr Clark were both arrested and charged in relation to their positions as administrators for Rangers FC. The charges were later dropped and the two men allege that the Crown Office and Police Scotland subjected them to wrongful detention, arrest and prosecution. The pair are claiming for a total of £14 million in damages and although the case is still ongoing, Lord Tyre in the Outer House ordered an interim payment of £600,000 after new revelations from prosecutors. Lord Mulholland was Lord Advocate at the time and had previously denied any wrongdoing. However, this week the court was told by the former Lord Advocate's lawyer Gerry Moynihan QC that the Crown was now admitting liability for wrongdoing in parts of the prosecution. Mr Moynihan said that the Crown now accepted that the treatment of Mr Whitehouse and Mr Clark during the prosecution was in breach of Article 5 of the European Convention on Human Rights and that the prosecution – beyond the initial hearing – was "malicious". Lord Tyre continued the matter for a further procedural hearing next month, and a full hearing is scheduled for January 2021.

Force Feeding Not In Anorexia Patient's "Best Interests"

Rosalind English, UK Human Rights Blog: In this carefully nuanced judgment, (Northamptonshire Healthcare NHS Foundation Trust v AB [2020] EWCOP 40) the Court of Protection has ruled that although a patient with a chronic eating disorder would in all probability face death if she did not gain weight, it would not be in her best interests to continue being subjected to forced feeding inpatient regimes.

AB is a 28 year-old woman who has over many years suffered from anorexia nervosa. She was first diagnosed when she was a teenager of 13 and now has a formal diagnosis of a Severe and Enduring Eating Disorder ('SEED'). The NHS Trust and the team of treating clinicians who have been responsible for providing care for AB applied to the COP for declaratory relief pursuant to ss 4 and 15 of the Mental Capacity Act 2005 in these terms: (i) it is in AB's best interests not to receive any further active treatment for anorexia nervosa; and that (ii) AB lacks capacity to make decisions about treatment relating to anorexia nervosa.

Litigation capacity: it was not in issue that AB did have the capacity to instruct her solicitors. General capacity: this was a more difficult question to be decided under Section 3 of the Mental Health Act. The key question was, did she have the mental capacity to make a decision about the specific medical treatment proposed. Roberts J had to decide one way or another on whether she should be tube fed, probably under sedation (otherwise she would remove the tube). The Trust argued that she did not have this capacity, relying on evidence from AB's treating psychiatrist Dr B.

Best interests: Was it in AB's interests to discontinue any tube feeding? The unanimous professional view of her treating team was that palliative care and no further tube feeding was in her best interests. This was however, since the decision not to have any further forced feeding was a life-threatening one, the case had to be referred to the Court of Protection. Roberts J noted that she could not treat AB as being incapacitous in relation to decisions about her medical treatment merely because she had made a decision which was unwise. That would be to allow the "tail of welfare to wag the dog of capacity". (Peter Jackson J's words in Heart

of England NHS Foundation Trust v JB [2014] EWHC 342 (COP) at para [7]

Nor was the outcome of the decision in respect of which capacity was in issue relevant to the specific enquiry into capacity for the purposes of the 2005 Mental Health Act. The decision not to undergo potentially life-saving treatment through nasogastric tube feeding might be seen as an "unwise decision with potentially fatal consequences." However, to do so would risk introducing into the capacity test under the MHA; elements which risk penalising individuality and demanding conformity at the expense of personal autonomy in the context of a diverse, plural society which tolerates a range of views on the decision in question, per MacDonald J in Kings College Hospital NHS Foundation Trust v C and V [2015] EWCOP 80 at para 30.

As MacDonald J said in Kings College Hospital NHS Foundation Trust v C and V (supra) at para 38: a person cannot be considered to be unable to use and weigh information simply on the basis that he or she has applied his or her own values or outlook to that information in making the decision in question and chosen to attach no weight to that information in the decision making process. In this context the judge was aware of the risk, in cases of vulnerable adults, that all professionals involved with treating and helping that person – including, of course, a judge in the Court of Protection – may feel drawn towards an outcome that is more protective of the adult and thus, in certain circumstances, fail to carry out an assessment of capacity that is detached and objective."

However Roberts J decided that, given the chronic nature of AB's illness and its current clinical presentation, her decision in connection with food were so infected and influenced by her "fixated" need to avoid weight gain at all costs that true logical reasoning in relation to these specific matters was beyond her capacity or ability. In my judgment, the fact that she does not want to die and sees many reasons to continue living are, in themselves, the clearest manifestation of the extent to which her judgment is impaired in relation to this narrow field of decision making. She therefore concluded that AB lacked the capacity to decide whether or not she should be tube fed. On the other hand, this finding did not result in a requirement that AB should undergo further tube feeding. To embark on that course would anyway now be futile and may well precipitate her death in any event.

Best interests; Anorexia nervosa (from the Greek an-/without -orexia/appetite) is a pernicious condition. In its severe form it is life-governing and potentially fatal. In order to stay alive, a human being needs air, water and food. The normal energy intake for an adult woman is about 2,000 calories a day. A healthy Body Mass Index (BMI) is between 18.5 and 25. If the body uses more energy than it gains over a prolonged period, the result is malnutrition, with a global effect on well-being. The physical consequences can include endocrine disorder preventing the onset of puberty, slow heart rate, low blood pressure, hypothermia, anaemia, reduction in white blood cells, reduction in bone density and reduced immune system functioning.

Since AB was diagnosed with anorexia at the age of 13, she had been admitted to hospital under compulsory treatment orders for nano-gastric feeding eleven times. According to Dr B, AB found this "incredibly distressing". It was, quite simply, physically and psychologically too traumatic for her and there was a clear risk that she may suffer a cardiac arrest as a result of "refeeding syndrome". In the course of building up a rapport with AB, albeit over a video link, the judge gained "the clear impression that AB is an intelligent and emotionally responsive young woman who is both thoughtful, articulate and insightful in terms of the position in which she now finds herself. The depth of her emotional attachment to, and love for, her parents and close family is transparently clear."

Roberts J was struck by AB's description of her hospital experiences, which I reproduce here at length: To say however simply that I have had 11 in-patient admissions doesn't in and of itself convey what happened during those admissions. It couldn't. I have been held down by my legs with a tube thrust forcefully and forcibly up my nose. I have had food inserted through a syringe so quickly and violently that I was sick. I have had my mobile phone removed from me so that I couldn't call my friends or my family, and they couldn't contact me. I have been restrained and force fed in front of other patients. I have been left covered in bruises and scratches. I have been thrown down on to a bed because I refused to sit in a chair. I have had my feet stamped on when being manhandled. I have been lied to, blackmailed, promised that something would happen, only then to be told that it won't, and threatened. I have been searched on returning from leave, as have my parents. I have been helpless – and watched helplessly – as every aspect of my life, every aspect of my being, has been controlled by those with the power to do so. In turn, I have kicked and screamed until I've been hoarse. AB wondered whether in fact the mental stress of being treated against her will would eventually kill her. Roberts J ordered that a declaration that palliative care was in AB's interests should therefore to be made. She was also at pains to make it clear that AB's inability independently to make an Advance Decision about the prohibition on future tube feeding (for example in the event of an emergency admission) should not expose her to the possibility of this intervention by a different hospital or Health Trust.

Asylum-Seeker Deportation Flight Halted by Legal Challenge

BBC News: A plane due to remove asylum-seekers from the UK has been cancelled after legal challenges. The Home Office said the charter flight was "paused" to allow time for the applications to be considered. On Wednesday, 12 migrants were returned to France and Germany by plane. Asylum-seekers at a detention centre near Gatwick Airport are on hunger strike in protest at the proposed flights and some are reported to have tried to take their own lives. In a Twitter post, the Home Office had earlier claimed that EU regulations that determine where an asylum claim is heard were being used by "activist lawyers" to delay and disrupt returns flights. Simon Davis, president of the Law Society of England and Wales, said it was "highly misleading and dangerous" for the Home Office to claim "fundamentally that lawyers are not to be trusted. Attacks on the integrity of the legal profession undermine the rule of law," he said. Charity Detention Action said 22 asylum-seekers at Brook House, near Gatwick Airport, were on hunger strike, while eight had tried to take their own lives. The Home Office said it was "right that we seek to remove migrants who have travelled through a safe country and have no right to remain in the UK". Attempts to return migrants to EU countries were often "frustrated" by last-minute legal challenges, which it said were "very often baseless and entirely without merit, but are given full legal consideration, leading to removal being rescheduled," it added. Twenty-seven people - from Afghanistan, Iran, Iraq, Kuwait, Sudan, Syria and Yemen - have been flown back to European countries this month. The majority had arrived in the UK on small boats. On Thursday morning, 26 migrants from Sudan crossed the Channel in three dinghies. More than 5,000 people have reached the UK in this way this year.

Serving Prisoners Supported by MOJUK: Walid Habib, Giovanni Di Stefano, Naweed Ali, Khobaib Hussain, Mohibur Rahman, Tahir Aziz, Roger Khan, Wang Yam, Andrew Malkinson, Michael Ross, Mark Alexander, Anis Sardar, Jamie Green, Dan Payne, Zoran Dresic, Scott Birtwistle, Jon Beere, Chedwyn Evans, Darren Waterhouse, David Norris, Brendan McConville, John Paul Wooton, John Keelan, Mohammed Niaz Khan, Abid Ashiq Hussain, Sharaz Yaqub, David Ferguson, Anthony Parsons, James Cullinene, Stephen Marsh, Graham Coutts, Royston Moore, Duane King, Leon Chapman, Tony Marshall, Anthony Jackson, David Kent, Norman Grant, Ricardo Morrison, Alex Silva,Terry Smith, Hyrone Hart, Warren Slaney, Melvyn 'Adie' McLellan, Lyndon Coles, Robert Bradley, Thomas G. Bourke, David E. Ferguson, Lee Mockble, George Coleman, Neil Hurley, Jaslyn Ricardo Smith, James Dowsett, Kevan & Miran Thakrar, Jordan Towers, Patrick Docherty, Brendan Dixon, Paul Bush, Alex Black, Nicholas Rose, Kevin Nunn, Peter Carine, Paul Higginson, Robert Knapp, Thomas Petch, Vincent and Sean Bradish, John Allen, Jeremy Bamber, Kevin Lane, Michael Brown, Robert William Kenealy, Glyn Razzell, Willie Gage, Kate Keaveney, Michael Stone, Michael Attwooll, John Roden, Nick Tucker, Karl Watson, Terry Allen, Richard Southern, Peter Hannigan.