United Nations: Concluding Observations 7th Periodic Report United Kingdom

Fair trial and Administration of Justice: 22. The Committee is concerned that the Justice and Security Act 2013 extended the use of closed material procedures to civil proceedings involving sensitive material, the disclosure of which would damage national security, including to civil claims for damage and in historic conflict-related legacy cases in the Northern Ireland. The Committee notes the serious concerns in relation to the adequacy of the safeguards in place, notably the Special Advocate System that has been widely criticized, including by the Joint Committee on Human Rights, for not securing sufficiently the rights of the affected parties, including equality of arms. The Committee is also concerned that the new test for a miscarriage of justice introduced in 2014 may not be in compliance with article 14, para. 6, of the Covenant. It is further concerned about the impact of reforms to the legal aid system on access to justice, including cuts to legal aid in Scotland, the shortcomings in the exceptional funding scheme introduced by the Legal Aid, Sentencing and Punishment of Offenders Act 2012, plans to introduce a residence test for civil legal aid and the linkage between legal aid for judicial review applications and whether permission to proceed with the case is granted by the court. Finally, the Committee is concerned about the delays across the criminal justice system in Northern Ireland (arts. 2 and 14).

The State party should: (a) Ensure that any restrictions or limitation to fair trial guarantees on the basis of national security grounds, including the use of closed material procedures, are fully compliant with its obligations under the Covenant, particularly that the use of closed material procedures in cases involving serious human rights violations do not create obstacles to the establishing of State responsibility and accountability as well as compromise the right of victims to a fair trial and an effective remedy; (b) Review the new test for a miscarriage of justice with a view to ensuring its compatibility with article 14, para. 6, of the Covenant; (c) Ensure that changes to the legal aid system do not undermine the right of access to courts and effective remedy, inter alia by addressing the weaknesses in the exceptional funding scheme for legal aid, by reviewing the need for a residence test and for the restrictions for legal aid; (d) Take concrete measures to reduce avoidable delays in the criminal justice system in Northern Ireland, including by introducing custodial time limits. (E) Engage in consultation with stakeholders at all levels to identify ways to give greater effect to the Covenant in all jurisdictions that fall under its authority or control or with regard to which it has formally undertaken to implement the Covenant. F) Ensure that the Bill of Rights for Northern Ireland incorporates all the rights enshrined in the Covenant and expedite the process of its adoption; H) Ensure that any legislation passed in lieu of the Human Rights Act 1998, were such legislation to be passed, would be aimed at strengthening the status of international human rights, including the provisions of the Covenant, in the domestic legal order and provide effective protection of those rights across all jurisdictions.

Hostages: 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, Glen Cameron,Warren Slaney, Melvyn 'Adie' McLellan, Lyndon Coles, Robert Bradley, John Twomey, Thomas G. Bourke, David E. Ferguson, Lee Mockble, George Romero Coleman, Neil Hurley, Jaslyn Ricardo Smith, James Dowsett, Kevan Thakrar, Jordan Towers, Patrick Docherty, Brendan Dixon, Paul Bush, Frank Wilkinson, Alex Black, Nicholas Rose, Kevin Nunn, Peter Carine, Paul Higginson, Thomas Petch, Vincent and Sean Bradish, John Allen, Jeremy Bamber, Kevin Lane, Michael Brown, Robert Knapp, William Kenealy, Glyn Razzell, Willie Gage, Kate Keaveney, Michael Stone, Michael Attwooll, John Roden, Nick Tucker, Karl Watson, Terry Allen, Richard Southern, Jamil Chowdhary, Jake Mawhinney, Peter Hannigan, Ihsan Ulhaque, Richard Roy Allan, Carl Kenute Gowe, Eddie Hampton, Tony Hyland, Ray Gilbert, Ishtiaq Ahmed.

Miscarriages of JusticeUK (MOJUK)
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MOJUK: Newsletter 'Inside Out' No 540 (30/07/2015) - Cost £1

Observations of a Joint Enterprise Trial in Action Josh Radcliffe

To the casual visitor to Birmingham's court twelve on any given day between early January and the end of April 2015, the importance of the proceedings taking place would likely be lost. First appearances may often be deceptive, and this is probably truer of murder trials than most other things. Murder trials can limp along for days, weeks or even months with little happening of interest to those not directly involved in them. Murder trials, peculiarly you may think, often lend themselves to being dull as ditchwater by their very nature. For a start, legal reasons relating to the credit given for a 'guilty plea' and the mandatory life sentence that all murderers (including, as we shall see, 'murderers' who are in no true sense of the word murderers) face, mean that very few people, whatever the evidence against them, plead guilty to murder. Thus most murders result in a trial, and in some cases the outcome is painfully obvious from the outset. Tellingly, many a first year law student, bursting with curiosity, walks into a murder trial expecting a feast for their senses, with excitement and intrigue at every turn. They often leave, bored, after a few minutes of hearing a bespectacled forensic scientist giving some very niche interest evidence about magnifying low copy DNA samples, and watching a disappointingly normal looking defendant fidget in the dock. Well, the trial in court twelve was not to be such a simple trial.

The defendants who found themselves facing a murder charge had, as is so often the case in joint enterprise murder trials, between the seven of them just a handful of convictions (for offences as minor as driving without insurance). They were all male, aged between sixteen and thirty four, all but one were of Afghani origin and they had, crucially, never all associated as a group together before. Indeed as a point of note, it was not until the first day of their trial, 5 January 2015, that all seven had sat together in the dock; having been arraigned (i.e. entered their pleas) at different times over the preceding five months.

The murder itself took place on 2 July 2014, on Grantham Road, a non-descript street filled with terraced houses in the south Birmingham suburb of Sparkbrook. Ikram Ullah Khan, also known as Ikram Elahi, a 28-year-old of Pakistani origin bled to death within minutes of being stabbed in the neck with a kitchen knife. This much was agreed between the prosecution and the defence; however, very little about what led up to the murder, who actually committed the murder and who should be held responsible for the murder was common ground.

The prosecution narrative was that one of the seven men to face trial, Umar Zazai, had had a dispute with a group of Pakistani men; and they called a witness to attest to this. The witness, a young man, must have left the jury confused more than anything else. He gave a very different version of events than that given in his statement to the police. It is far from unusual for a witness to depart from their statement to the police, and indeed provisions of a law dating back to the nineteenth century exist solely to govern how courts deal with witnesses who are said to have 'turned hostile' against the party who called them, but either way, the young man who was called by the Crown to give evidence of a motive was woefully unclear about what he had seen and heard.

The violence took place against the backdrop of the Muslim festival of Ramadan. This is important insomuch as, because they were fasting, large numbers of men congregated on the streets of Sparkbrook on the evening in question. They were shown on CCTV greeting each other in an Aldi

car park. Not just the defendants I add, but literally hundreds and hundreds of men. Yes, six of the seven defendants were in the Aldi car park in the minutes leading up to the violence which claimed Ikram Khan's life, but the prosecution burdened that fact with a probative value it simply did not have. It may make sense in the Alice in Wonderland world of joint enterprise that because the six men met up in the Aldi car park they were planning violence, even though they were among hundreds of others in the car park. At any rate, one of the seven defendants, Naweed Bashardost, was not seen in the Aldi car park and yet found himself facing a murder charge too.

The arrests: The defendants were arrested in a haphazard fashion in the months following the murder. Two of the defendants were arrested on the day of the murder. Umar Zazai, the man the Crown alleged had had the dispute which led up to the murder, and another of the defendants, Naweed Bashardost, were both arrested in their hospital beds; having suffered extremely grave injuries in the fracas. Zazai, the man whom the Crown named as the principal (i.e. the person who actually carried out the murder), was hacked with machetes so viciously that the surgeon who operated on him observed that his lung and ribcage had been exposed. Bashardost had suffered equally serious injury: having been blasted in the face at close range with a sawn-off shotgun as he fled the violence. What led the police to arrest them is unclear, there were absolutely no people who came forward to identify them as parties to the killing (indeed not a single civilian, i.e. non-police, witness was called by the prosecution to support their contention that these men were guilty of murder), but they were arrested and charged within a week or so of the murder.

Next to find himself facing a murder charge was Khalid Jan, a friend of Umar Zazai's, who had actually approached the police on the day of the murder offering his assistance to their enquiries. It is true that the police may have reasonable suspicion that a person is involved in a murder even if that person has approached them to help their enquiries, however it has been a mark of many joint enterprise murder prosecutions that witnesses to violence find themselves being arrested; which can only discourage witnesses from coming forward.

The police then arrested Sardar Khattak, a 34-year-old father of two, eighteen days after the murder. The basis for arrest was as flimsy as they come. He did not know a single one of the other six defendants, by sight or by name, was from a different ethnic group to the other suspects, did not have any of their mobile phone numbers and had had no contact with them whatsoever. He, quite simply, had the misfortune to have driven his car through the vicinity of the violence, in between cars belonging to several of the other defendants, and been picked up on CCTV. Again, the sinister semantics of joint enterprise prosecutors were deployed to turn a coincidence into a conspiracy: the Crown accepted that they couldn't prove he knew a single one of the other defendants, and accepted that being on the Aldi car park simply made him one of hundreds of people to congregate there, but argued that his car formed part of a convoy transporting weapons and/or 'troops' to the scene of the planned violence. He had indeed given a lift to two men, but neither of those men found themselves facing a murder charge … belying the prosecution suggestion that he was transporting troops to the scene of what they dubbed an act of 'medieval' carnage.

The next arrests did not come until October, three months after the murder. A 'person of interest' to the police, Mujahid Chambili, had 'fled to Afghanistan' days after the murder. The police interest in him stemmed from him having been seen on CCTV with Umar Zazai, the 'stabber', and from driving his car in the purported 'convoy of killers'. He had indeed gone to Afghanistan in July, to visit his sick wife he later told the court. He returned to the UK in October, only to be arrested on suspicion of murder at the airport. When interviewed he largely made 'no comment' but did identify his brother, Mirwais, aged just sixteen, and a friend of his, Ezatullah Ahmadzai, as being people in footage

Gherson Secures Removal of Red Notice for Refugee

After months' of continued pressure Gherson are pleased to announce that we have secured the removal of a Red Notice published by Interpol in respect of one of our clients, who has been listed on Interpol's public site for over six years. The pre-existing policy of maintaining persecutory Red Notices against individuals who had defeated extradition and been recognised as refugees was unjust and has led to many individuals subject to persecutory politically motivated allegations in perpetual limbo. Despite having being recognised as a refugee and therefore being protected from extradition in the asylum-granting state they remain at risk of arrest internationally. Furthermore, the act of placing an individual onto the Interpol Red Notice list can have profound implications for an individual both personally and commercially, as many business and banks will refuse to deal with individuals who are unlucky enough to find themselves on the list. The route to challenging Red Notices remains complex and incredibly slow. More must be done to reform the system not least to deal with the incredible backlog of cases that are dealt with by the chronically underfunded Commission for the Control of Interpol's files. Gherson has extensive experience in dealing with and defeating politically motivated extradition requests in the UK and worldwide. Furthermore, our experience in securing refugee status in high profile cases and in managing the continuing after effects of an extradition request including dealing with Interpol is unparalleled.

Jeremy Bamber 30 Year of Wrongful Conviction - Update

Our web page on the telephones at White House Farm has been updated. The latest evidence we discovered is a report by DI Ainsley which confirms that on the morning the police broke into White House Farm, the spare telephone was on the shelf in the upstairs office. Curiously after this date the spare telephone was moved to a pile of magazines in the kitchen and the prosecution blamed Jeremy for this suggesting it was 'hidden' by him even though it was not discovered until the 23rd of August. DI Ainsley and Essex Police did not advise the court of it's original whereabouts and allowed the trial to believe the phone was in this position on the morning of the 7th of August 1985. This is another important piece of evidence not disclosed to the jury in order to point the finger at Jeremy Bamber.

Second Annual International Wrongful Conviction Day October 2, 2015

On October 2,each year, Innocence Groups from around the world will undertake activities to raise awareness about wrongful convictions worldwide. Wrongful Conviction Day is a specifically allocated annual day to focus attention on and discuss the problem of wrongful convictions around the world.

Why: The conviction of innocent people is an international human rights issue. Wrongful convictions are serious miscarriages of justice that call into question the legitimacy and integrity of our criminal justice systems. We believe that frank and open discussions about the causes of wrongful convictions will lead to positive change in our criminal justice systems and help reduce future wrongful convictions.

Who: Innocence Groups headquartered around the world are committed to identifying, advocating for, and exonerating individuals who have been convicted of a serious crime, which they did not commit, and to preventing future wrongful convictions through awareness, education and justice system reform.

How: Awareness can be raised in any number of ways, including through media releases, interviews, educational forums, church services, exoneree presentations and involvement, commemoration services, vigils, book signings, film festivals, blogs, Facebook, websites, Twitter, magazines.

Our father Philmore Mills aged 57, was a patient being treated for pneumonia at Wexham Park Hospital, now known as Frimley Health NHS Foundation Trust, when he died on 27 December 2011, shortly after being restrained by two police officers and hospital security. Three and half years on we still have many unanswered questions and now look to the inquest in 2016 where we can take a full part in the proceedings which will be held in public."

Kate Maynard, the family's solicitor said: "These proceedings came under the old regime for police misconduct hearings where they are usually held in private, and where the panel is chaired by a senior officer of the same force. The panel relied on expert evidence given by retired police officers to exonerate the officers, and the family was unable to test the evidence. It really doesn't feel that justice is done in these circumstances."

Support Kevan Thakrar at Court on 14th August

Thank you to everyone who turned up to my support demonstration at Manchester Crown Court on 22 May, especially those who went on to write about the experience, and not forgetting those who couldn't attend but helped organise. I was sorry not to be able to see you all, but it seems my appearing by video-link was no mistake.

The judge gave an order at the previous hearing that I be produced in person following HMP Full Sutton staff having assaulted me prior to the video-link, then refusing to leave the room to allow for a private legal conference pre-hearing with my barrister, resulting in nothing of substance being achievable. It seems that no intention of enforcing this order every existed, and it was simply made for the sake of appearances to a courtroom packed with supporters. Wakefield's Head of Security claims they applied to Manchester Crown Court on 12 May to be able to ignore this order and received confirmation that they could do so on 19 May, yet nobody told either my legal team or me until I lodged an internal complaint at the prison for its failure to produce me. Supporters in the court will recall the judge cutting me off when I questioned my attendance – and now they know why.

So the judge gave another order, this time that I must be produced for the dismissal hearing on 14 August. Let's see if I am there. I do hope that as many of you as possible will be there to make some noise, hopefully before they cut the link this time though! I have to warn you though, don't be shocked by my appearance. I haven't been allowed out to cut my hair since January with them breaking one set of my clippers and refusing to issue the other. All of this is because of a couple of spurious allegations against me of common assault and witness intimidation made by a Manchester prison officer. The CPS had agreed not to proceed with the assault charge but the officer – represented by one-time esteemed prisoners' advocate Hugh Southey of Matrix Chambers – took a judicial review to get the charge reinstated.

Ever since I was proven to have been acting in self-defence against prison officers at HMP Frankland in 2010 I have been held in isolation within England's version of the US Supermax torture units, which is the Close Supervision Centre (CSC). I am currently allocated to the Exceptional Risk Unit within the CSC and the charges emanating from these false allegations are being used to attempt to defend this increase in oppression by labelling me as one of the eight most dangerous prisoners in the country, which is a prerequisite to being here. The last person to progress from this unit, Fred Lowe, did so in a body bag, having died of age-related illnesses after many years here, so please show up at Manchester Crown Court on 14 August to make sure the same fate does not happen to me.

Thank you in advance for all of your support.

Kevan Thakrar A4907AE: HMP Wakefield,5 Love Lane,Wakefield,WF2 9AG

he was shown. This identification was enough for the police to arrest his brother and his friend. This brought the total number of people in the dock up to seven.

The trial: By the time the trial was underway the police had served a great deal of additional evidence on the defence. But, quality is much more important than quantity and, as with many joint enterprise prosecutions, the 'evidence' against the defendants generated more heat than light. A summary of the evidence is as follows. There were provable connections between Umar Zazai, Khalid Jan, Ezatullah Ahmadzai and the Chambili brothers (Mujahid and Mirwais); telephone records showed contact between them. This 'evidence of association' proves little in the real world, but is a supporting pillar for those bringing joint enterprise prosecutions in portraying the defendants as members of a 'gang' or 'wolfpack'. So, five of the defendants knew each other to varying degrees. A sixth defendant, Naweed Bashardost, knew Umar Zazai very vaguely (Zazai had even saved his number in his phone under the name 'Hamid' not 'Nawed', suggesting that he didn't even know his name). Zazai had attended his mother's wake, and they had swapped numbers. But Bashardost did not know any of the other six defendants. And Sardar Khattak didn't know a single one of the six defendants!

The knife was to play a central role in the prosecution case. It had been found in the forensic sweep of the murder scene, discarded in the garden of a house near where the murder took place. In the words of the forensic pathologist who conducted his autopsy, it was 'most likely' the knife which killed Ikram Khan, and was found to match a set uncovered in the kitchen of Zazai's home. Analysis proved that, unsurprisingly, it had skin fragments and blood matching Zazai to a probability of 1 in 1 billion on it. It also had the blood of the deceased. Utterly overwhelming evidence that he stabbed the victim you may think? Think again, because a third DNA profile was found on the handle of the knife, belonging to an unidentified person; definitely not the deceased and definitely not Zazai or any of the other defendants. Zazai accepted that the knife had been in his car, and he accepted that it was possible one of his passengers (again, so topsy-turvy is the world of joint enterprise that his passengers did not face trial) had taken it out and used it, but he vehemently and consistently denied being the stabber himself. So, the knife yielded evidence which prejudiced more than it proved.

More such evidence was to come. The police had found evidence suggesting that there had been a large amount of mobile phone contact between the defendants, obviously with the exception of Khattak, on the day of the murder. Cell site evidence is circumstantial evidence at its most circumstantial; analysis can show that a mobile phone was used at a particular time to contact a particular other mobile phone and can show, with varying degrees of specificity, the physical location of both phones at that time. The last part of that is done by employing a method known as 'triangulation'; where a telecommunications expert uses the relative strength of a phone's signal relative to various radio masts to work out its physical location. In fairness, when used in urban areas it can usually be used to pinpoint a phone's location to within a few feet. In rural areas, with fewer masts, it is less accurate. However, it has two major shortcomings: it does not prove who used the phone, and it does not prove what was said (indeed, as of 1984, quite ironically, evidence gathered by tapping phones is inadmissible in English courts). So, the prosecution could show contact was made, but not what the contact was about.

There were more fragments of evidence. Naweed Bashardost, who the prosecution claimed had been picked up by a car before the violence, was proven by CCTV to have been in Birmingham city centre forty minutes before the violence. For those not au fait with Birmingham's geography, it is entirely possible to walk the distance from Birmingham city centre to

Sparkbrook in forty minutes. The prosecution claimed he was picked up by car, he claimed he walked a particular route. A CCTV check didn't show him walking, but nor did it show him being picked up. Again, inconclusive and unhelpful. But, quantity can be used to discombobulate a jury and to generate suspicion about a suspect without actually proving anything. Furthermore, Bashardost had had sporadic mobile phone contact with Umar Zazai throughout 2 July, but he had an innocent explanation which he gave promptly to the police when interviewed (in short, Bashardost had a trip planned to Afghanistan in early July and had agreed to take some things to a relative of Zazai's). The other prosecution evidence was fairly minimal. Mostly just the 'motive evidence' of the boy who gave the police a statement about Zazai.

So, the trial began against a backdrop of circumstantial evidence and conjecture. Empty vessels make most sound, and the evidence in this case certainly qualifies it as an empty vessel. The prosecution's opening remarks were given ample press coverage; and Timothy Spencer QC, an imposing ex-British Army officer with a string of successful joint enterprise prosecutions under his belt certainly provided good copy. He thundered to the jury, telling them that Ikram Khan had died in 'extreme violence', akin to 'medieval warfare'. Such flowery, emotive language is hardly uncommon in the speeches given by barristers, for the prosecution or the defence, but it does nothing to aid the jury in their task of discovering the truth. That Ikram Khan died a savage death was agreed by all parties, that several other people (two of the defendants included) sustained life-changing injuries in the violence of 2 July was agreed by all parties and that whoever killed Ikram Khan meant to do so was agreed by all parties: but by impressing upon the jury the sheer brutality of the murder, the prosecution tapped into their feelings of disgust and contempt for what happened, not into their logical, rational brains.

The evidence of the prosecution was paraded out over the course of the next few weeks. The Crown called a detective constable who had analysed the CCTV footage of the Aldi car park, the crucial 'meeting point', hundreds of times, as well as other pieces of CCTV from nearby cameras: he told the court that he could identify all seven of the defendants (or their cars) at various points. Much of what he told the court proved to be uncontentious. All seven of the defendants had accepted being within the vicinity of Ikram Khan's murder; though Bashardost was never proven to have met up with the other defendants on the Aldi car park. The cell site evidence was produced and given to the jury in the most digestible form possible for such evidence. Other bits of forensic evidence were used to bolster the prosecution's case. A handprint belonging to Naweed Bashardost on one of the 'convoy cars', his blood on Grantham Road, where the murder took place, and where he denied having been, as well as CCTV showing Khalid Jan carrying a baseball bat near to the scene of the murder and grainy, low-quality images of CCTV said to shown Naweed Bashardost at the scene of the murder. The evidence of Khalid Jan carrying a baseball bat is less important than it may seem for the purposes of joint enterprise. At this point I should add, all seven of the defendants were charged with murder, on the basis of joint enterprise (i.e. that they had done some act encouraging or assisting Umar Zazai in stabbing and killing Ikram Khan and that they had been aware that he had a knife), but all seven faced a second charge of conspiracy to commit grievous bodily harm: this charge was a conspiracy charge, not a joint enterprise charge, and related to a number of baseball bats which were recovered from cars belonging to the defendants. The CCTV evidence showing Jan with the baseball bat was adduced to support the conspiracy charge, not the murder charge.

The evidence chugged on for weeks, with the prosecution believing that they had built a strong circumstantial case that Zazai was the stabber and that the other six defendants had been present at the scene of the murder purposefully.Jury At the close of the prosecution case all of

The Harris Review recommended that more young adults should be diverted from custody and from the criminal justice system. Is it appropriate to seek to divert more young adults from custody and the criminal justice system, and if so, how would this best be achieved?

4. What legislative or other barriers are there to more appropriate practices for young adult offenders and how could these be overcome? 5. What impact, if any, has the introduction of maturity as a mitigating factor in sentencing decisions had on sentencing practice for young adults? Do sentencers have sufficient information to make assessments of maturity? 6. What impact, if any, has the inclusion of the concept of maturity in guidance for assessing culpability (in the Code of Conduct for the Crown Prosecution Service) had on prosecution decisions? Do prosecutors have sufficient information to make such assessments? 7. How could a criminal justice system which would treat young adults on the basis of maturity rather than age operate in practice?

Evidence submitted to the Harris Review, should not be resubmitted to this inquiry.

Deadline for written submissions to be made is Wednesday 30 September 2015.

Submitting written evidence: The personal information you supply will be processed in accordance with the provisions of the Data Protection Act 1998 for the purposes of attributing the evidence you submit and contacting you as necessary in connection with its processing. The Clerk of the House of Commons is the data controller for the purposes of the Act. We may also ask you to comment on the process of submitting evidence via the web portal so that we can look to make improvements.

Each submission should: a) be no more than 3,000 words in length b) be in Word format with as little use of colour or logos as possible c) have numbered paragraphs d) include a declaration of interests. Please note that: Material already published elsewhere should not form the basis of a submission, but may be referred to within a memorandum, in which case a hard copy of the published work should be included. Memoranda submitted must be kept confidential until published by the Committee, unless publication by the person or organisation submitting it is specifically authorised. Once submitted, evidence is the property of the Committee. The Committee normally, though not always, chooses to make public the written evidence it receives, by publishing it on the internet (where it will be searchable), by printing it or by making it available through the Parliamentary Archives. If there is any information you believe to be sensitive you should highlight it and explain what harm you believe would result from its disclosure. The Committee will take this into account in deciding whether to publish or further disclose the evidence. Please Be Aware That The Justice Committee Is Unable To Investigate Individual Cases.

Justice Committee, House of Commons, London, SW1A 0AA

Mills Family Failed By Police Disciplinary Process

The family of Philmore Mills makes the following statement after the conclusion of the misconduct proceedings relating to the two police officers who restrained him before he died: "A misconduct hearing called by Thames Valley Police came to a disappointingly abrupt close on Monday 20th July. Just 3 days into the hearing, Thames Valley Police concluded that the officers involved had not breached professional standards. The officers were judged against their training which was found inadequate in key respects, and they were somehow excused of the need to exercise any common sense in exercising their police powers.

It was a frustrating process for the family to sit through, behind closed doors with most of those involved in the process either serving in the police or having served in the police. We were shocked to see the police exonerate each other without the two officers having to answer any questions about their conduct. They were therefore not held to account by this inadequate process.

85,681, 97.7 per cent of operational capacity; is appalled by the report's findings that squalid and cramped living conditions are common across the estate due to overcrowding; and therefore calls on the Government and the Ministry of Justice urgently to review the situation on the prisons estate across England and Wales to ensure the safety of staff and prisoners is no longer compromised and to ensure that the growing prison estate is staffed sufficiently.

Sponsors: Lavery, Ian / McDonnell, John / Corbyn, Jeremy / Lucas, Caroline / Saville Roberts, / Liz Maskell, Rachael - House of Commons: 20.07.2015

Put your MP to work demand they sign EDM's 344/340

You can contact your MP for free, through: WriteToThem.Com http://www.writetothem.com/

New Inquiry: Young Adult Offenders

The Justice Committee has decided to hold an inquiry into the treatment of young adult offenders in the criminal justice system. The number of young adults in custody is falling, partly as a consequence of there being fewer younger offenders both entering the criminal justice system and being sentenced to custody. Those that remain in the custodial estate have become more challenging to manage in several respects. Following some poor prison inspection reports the previous Government consulted on how best to manage young adults in prison and deferred taking decisions on this until after the publication of Lord Harris of Haringey's independent review examining the circumstances in which a number of young adults had died in custody. The lessons learned from this Review are broad-ranging. Lord Harris made recommendations to encourage the diversion of more young people from custody as well as to improve the custody system for those young people who remain in it, and concluded that action on these should be an urgent priority.

The Committee considers that it is timely to hold an inquiry to: assess the implications of the findings of the Harris Review and selected recommendations for current policy and practice; examine the evidence on what might constitute more effective or appropriate treatment of young adults throughout the criminal justice process; and review the impact of guidance to sentencers and prosecutors which advises that they consider the maturity of the offender in their decisions. The Committee's remit does not extend to the police: for the purposes of this inquiry the criminal justice system is taken to include the Crown Prosecution Service, the courts, the sentencing framework, youth offending teams, probation services and prisons. The Committee welcomes submissions by 30 September 2015 addressing this subject, with particular reference to the following points: 1. The nature and effectiveness of the Ministry of Justice's strategy and governance structures for dealing with young adult offenders. 2. The suitability of current provision for young adult offenders i) in the community and ii) in custody, including the extent to which there is distinct provision currently, and addressing the following questions: What is the evidence on how outcomes across a range of measures for young adult offenders compare with other offenders? Taking into account the findings of the Harris Review, what measures should be prioritised in addressing levels of suicide, self-harm, and violence amongst young adult offenders currently held in custody? What impact have the Transforming Rehabilitation reforms had on the transition between youth offending teams and probation services?

3. The Harris Review advocated a distinct approach to young adult offenders. Is this desirable? If so, what would this entail i) in the community and ii) in custody? If not, why not? Please also address the following questions: Should sentence to detention in a young offender institution for 18-20 year old offenders be abolished? If so, what should replace it? The Harris Review concluded that all young adults in prison are vulnerable and that the experience of being in prison is particularly damaging to them as they are developing. Do you agree?

the defendants, with the exception of Zazai, made submission of 'no case to answer'. In short, their barristers were arguing that the prosecution had not produced enough evidence for a jury to be sure ('certain so as to be sure' being the standard of criminal conviction, having replaced the older form of words, 'beyond all reasonable doubt') that they were 'present and participating'.

The judge gave all six submissions short shrift. He ruled that there was evidence, against each of the six defendants, on which a jury could fairly find them guilty of murder. For those uninitiated into just how draconian the law of joint enterprise is, you may wish to pause for a moment to consider the import of that. The sort of evidence against these defendants is enough, in the eyes of the law, to support a conviction for murder; and all that comes with such a conviction. The jury do not have to be sure that a defendant played a major role in a murder to convict them, they do not have to be sure that they intended for anyone to die either: it is enough that they were at the scene of a murder (even that not being necessary in some cases) in support of a person they knew to be armed with a deadly weapon. At that point, without more, they are guilty of murder and face a mandatory life sentence. That is the state of our law. Returning to the case. The judge having decided not to dismiss the case against any of the defendants, the defence case began. As is usual, the judge asks each defendant's barrister if his client intends to give evidence or not. A defendant is never obliged to testify in his own defence, but most defendants do; and those who choose not to run the risk of a jury deciding to hold their decision to remain silent against them. Their barristers, one by one, confirmed that each defendant would give evidence.

Sardar Khattak told the jury he knew none of the other defendants, this was accepted as being true; that he had never been convicted of a crime, also true; that he was at least 100 yards away from where the murder took place, also true. Next was Naweed Bashardost. Still visibly damaged by the terrible injuries he had sustained in the events of 2 July, he gave evidence to the effect that he had been in Birmingham city centre, had spoken briefly to Zazai by phone, who had asked him to take a parcel to a relative of his when in Afghanistan, and that he was walking home to Alum Rock (another south Birmingham suburb, lying just past Sparkbrook). He denied being on the Aldi car park, he denied being on Grantham Road, where the murder took place, and he had noticed that there were cars stopped in the middle of the road he was on, Farm Road (adjacent to Grantham Road), and told the court that he was simply in the wrong place at the wrong time. He was shot in the face at close range from the window of a passing car. The cross-examination he faced was relentless. The prosecution put it to him that he was a liar thirty separate times. They put it to him that he had been shot on Grantham Road, and that he had most likely been picked up and taken to the scene of the violence by car deliberately. The evidence itself was inconclusive. Bashardost's blood was found on Grantham Road, but other ballistics evidence (namely 300 pellets lodged in the front door of a house) supported his statement that he was shot on Farm Road; as did a transcript of a 999 call made by a neutral bystander. The defence suggested that his blood, only two or three droplets, could have ended up on Grantham Road by means of 'secondary transfer' (i.e. where they had landed on say a baseball bat in one location and dripped off in another location).

Over the next couple of weeks, the Chambili brothers and Khalid Jan gave evidence. They all accepted being present on the Aldi car park, but denied that telephone contact between them related to a grudge Zazai had. The prosecution scored some victories at this point, namely by putting the CCTV evidence of Khalid Jan carrying a baseball bat to him, and by trying to portray Mujahid Chambili's decision to leave the UK for Afghanistan as being sinister. All in all, at this point in the trial it was still impossible to say who was 'winning' as it were.

Then events took a very disturbing turn: A juror sent a note to the judge, a very concerning note, detailing misdoings by the jury of an epic proportion. The note's contents were read out in court only once, but their importance was lost on no-one. The juror stated that some of his fellow jurors, though how many he/she did not say, were 'making racist comments' about the defendants and had even gone so far as to say, 'deliberation will only take five minutes'. All of the defendants' barristers supported an application for the jury to be discharged in light of these revelations of, it would seem, irretrievable prejudice by the jury. Given the seriousness of the charges it seemed to be a foregone conclusion that the judge would discharge the jury and swear a new jury to start afresh. It was, some of the barristers involved remarked, not a difficult decision to make. Yes, there are cost implications to starting again, but they would not overcome the real risk of prejudice presented. In a very similar case in the 1990s, also at Birmingham Crown Court, a judge's refusal to discharge a jury reported to be making racist remarks about a defendant led to a stinging rebuke from the European Court, which held that the defendant's human rights had been violated and that he had not received a fair trial.

After retiring to think about the matter, the judge came to his ruling. He would not discharge the jury, but would give a very generic warning to them that they had sworn a solemn oath to return a verdict upon the evidence. He was not even going to mention the letter. This decision sent shockwaves through the community of people associated with the case; the barristers, solicitors, interpreters, defendants and the families. Outside court twelve the air was abuzz with talk of appeals if the defendants were found guilty after this monumental judicial misstep. But talk of an appeal to those in the middle of a murder trial is talk of a distant, rocky cove to seafarers navigating a stormy ocean; it provides no real succour. So, the focus for everyone involved was on trying to carry on fighting the case as best they could, aware that they may be pleading with a brick wall; addressing a jury which had made up its mind. The judge gave the jury a warning which was roundly criticised, out of his earshot, as insipid, purposeless and unhelpful. He did not mention the letter that one of their number had penned, he did not mention that specific information had come to the court's attention about inappropriate comments being made, he simply reminded the jury of their duties.

The defendants were livid. And for a period of time they refused to come up from the cells to the dock, effectively, going on strike. This left the trial in a very odd state, with curious solicitors and barristers from other cases coming to sit in and watch. The judge reminded himself of the state of the law, and concluded that he had no power to force the defendants to come up to the dock. This left the trial in limbo. Two of the defendants, Zazai and Ahmadzai, had not given their evidence. In the end a compromise was reached. The judge gave a more strongly worded warning. However, it didn't mention the note and it was still less than the defence felt was needed to secure a fair trial. The final skirmishes of the trial played out in a remarkably sedate fashion, at least to begin with, having regard to the fact that the man the prosecution accused of stabbing Ikram Khan was giving evidence. The prosecution called him a liar, put the evidence to him repeatedly and he stuck to his guns; probably a draw in tactical terms. However, there was to be a final, or penultimate at least, turn up for the books.

Then came another note … from the same juror as before. It related to comments made about an individual defendant. Jurors had remarked that, 'by the time [this defendant] gets out, his wife will have divorced him'. The defendant in question exploded in anger, understandably, and again the question of a discharge was brought up. But, this time, in spite of there being more reason for a discharge, the consensus was that there was less chance of one. The reality was that

suspending its disapplication until 31 March 2016, thus enabling Parliament to come up with a compliant law. It derived help from the coercive order made against Defra in the ClientEarth air pollution case in respect of EU breaches (see my post here). 120. The ClientEarth case is a significant and recent case on remedies in the UK courts for breaches of EU law. It does not lay down a rule that disapplication or mandatory relief, even with a reasonable time for compliance, must always be the appropriate remedy, but it gives a steer which in our view cannot be ignored. It was persuaded to give that length of time because of the complexity of the task, adding wryly that 'legislation enacted in haste is more prone to error, and it would be highly desirable to allow the opportunity of thorough scrutiny in both houses.'

DRIPA got from introduction in the Commons to Royal Assent in 48 hours – and the Government has now been granted 7 months to do it properly. In passing, it was a bit of a giveaway when an Act has a "sunset" clause in it, namely s.8 which automatically repeals it at the end of 2016; a signal that it was a temporary job. We have been promised a new DRIPA anyway, in the Queen's Speech on 27 May 2015.

One other topic of interest in the judgment. There has been a debate for some years about the scope of the Charter, given Article 52(3), and Protocol 30 negotiated by the UK and Poland, and whether in some ways this limits the applicability of the Charter to those countries. Protocol 30 provides: - The Charter does not extend the ability of the Court of Justice, or any court or tribunal of Poland or of the UK, to find that the laws, regulations or administrative provisions or action of Poland or of the UK are inconsistent with the fundamental rights, freedoms and principles that it reaffirms. To which the Divisional Court added: 'The precise scope of Protocol 30 is far from clear, since it only precludes the extension by the CJEU or domestic courts of their existing powers to find that UK laws are not in accordance with the Charter. It cannot be used to prevent the court from defining the extent of rights contained in the Charter which set out provisions within the material scope of EU law.' So once you are in EU territory (and data protection has been EU territory for 20 years), then you can rely on a right conferred by the Charter.

Conclusion: Part of the problem in this has been timing. The EU did not exactly help its member states here, by coming up with such an unbalanced DRD in the first place: the usual reasons, being an insufficiently reflective response to the atrocities in Madrid (2004) and London (2005). Given (a) that imbalance, (b) the automatic and instantaneous effect of the CJEU ruling, and (c) the difficulty of coming up with a swift DRD replacement at EU level, plainly member states had to have their own go at balancing the rights and derogations. But member states might have spent a little more time considering the reasons advanced by the CJEU (which had been trailed in the Advocate-General's opinion in December 2013 here) as to why the DRD was inconsistent with the Charter. Failing that, it was hardly surprising that constitutional courts all around the EU have been busy quashing those efforts.

Early Day Motion 342: Prisons Annual Report

That this House is gravely concerned by the findings within the Chief Inspector of Prisons recently published annual report for 2014-15; notes the sharp decline across the prison estate in several areas including safety, respect, resettlement and purposeful activity; is aware that prisoners are now more likely to be murdered, assaulted or fall victim to self-harm or suicide than they were five years ago; is shocked that assaults on prison staff have risen by 28 per cent since 2010 and serious assaults have risen by 58 per cent; further notes that since 2010 staff numbers have continued to decline from 45,080 to 32,100 while the prison population has risen to

Now to the Charter (here) which invalidated it, and the DRD. Many of the Charter rights are closely modelled on the ECHR. So the Charter's Article 7 is effectively the same as Article 8(1) ECHR (private and family life). But Article 8 of the Charter (here) has no ECHR equivalent. It gives everyone the right to the protection of personal data concerning them; the data must be processed fairly, on the basis of consent or "some other legitimate basis laid down by law". There is a right of access to data, and a right to rectification of data. Compliance is to be subject to control by an independent authority. The right is drawn from EU Treaty provisions (including Article 16 TFEU).

It is all very well to declare such a right in ringing terms, but there are obvious interests (as the right acknowledges) in having some system for retaining data to assist the investigation and prosecution of crime. The problem lies in balancing the right against the derogations. The DRD was all derogation, in a blanket form. Hence the CJEU in Digital Rights Ireland said that it did not introduce the safeguards necessary for it to be compliant with the Charter. The DRD ' does not lay down clear and precise rules governing the extent of the interference with the fundamental rights enshrined in Articles 7 and 8 of the Charter. It must therefore be held that Directive 2006/24 entails a wide-ranging and particularly serious interference with those fundamental rights in the legal order of the EU, without such an interference being precisely circumscribed by provisions to ensure that it is actually limited to what is strictly necessary.'

The CJEU came to this decision on 8 April 2014. There followed a mad scramble around the EU to seek to legitimise data retention via domestic laws, whilst the EU institutions came up with something better. Unfortunately, in the scramble, most countries seem to have repeated the mistake made in the underlying Directive, of not introducing sufficient protections. So the claimants' task in the present case was, in the end, not too difficult. It simply compared the minimum requirements set out in the CJEU decision with the Act, and said that the Act was as deficient as the DRD struck down by the CJEU. The Divisional Court accepted these arguments, and did not feel it necessary to refer the matter to the CJEU which it would do if there were real doubt. Courts in Slovenia, Romania, the Netherlands, and Belgium had struck down similar laws, and only the Swedes felt it necessary to ask the CJEU for more guidance.

The Government lawyers took an interesting tack. They said there was Strasbourg case law (Kennedy) which had decided that the UK Regulation of Investigation Powers Act 2000 legislation was not in breach of Article 8 ECHR (even when it concerned interception of content, rather than data). They added that this case law should be applied when determining what EU law is – the corpus of EU case law contains ECHR case law. The Court at [81] did not find too much difficulty distinguishing Kennedy from the task in hand. 81…..But on the other hand a case about the interception of material relating to one individual, pursuant to a case-specific warrant signed personally by a Secretary of State, does not in our view assist much in interpreting the judgment of the CJEU in Digital Rights Ireland relating to a general retention regime on a potentially massive scale.

Ultimately, the court decided, in line with Digital Rights Ireland, that 89. The solution to the conundrum, in our view, and the ratio of Digital Rights Ireland, is that legislation establishing a general retention regime for communications data infringes rights under Articles 7 and 8 of the EU Charter unless it is accompanied by an access regime (laid down at national level) which provides adequate safeguards for those rights. And that, DRIPA does not have. See also [91] of the judgment for the minimum content of any compliant law.

The next question was, what to do now? It was easy enough to decide that there should be a declaration that DRIPA was inconsistent with EU law in specific regards laid down in [114] of the judgment. But the Court was also persuaded to make an order disapplying the Act, but

if the judge discharged the jury for the second note he would, almost, be admitting that he was wrong not to do so before. So, in spite of impassioned submission to discharge the jury, the judge declined to do so. The note sent a shot across the bow of the defendant who was named: it made it clear that there were jurors raring to convict him. Again, talk turned to appeals.

Disclosure: Very late into the trial, after the defendants had given their evidence, after most of the barrister's closing addresses to the jury were over and just as the judge was about to sum the case up the prosecution announced that they had had found new evidence to disclose. The rules on disclosure of evidence are quite complicated, but, in short, if the prosecution find evidence which supports the defence case or which undermines their own case then they must disclose it to the defence; if they fail to do so, and they are found out, then the Court of Appeal will likely overturn the convictions. Accordingly, the evidence was made available before the close of the trial … but only just. The evidence was CCTV footage of Ikram Khan, the dead man, wielding a samurai sword minutes before his death. It was crucial to the outcome of the trial, because it put the possibility of self-defence on the table in a very real way. Even if the jury were sure that Zazai was lying and that he did stab his victim, they would still have to find him not guilty if they thought it was possible (not probable, not definite) that he did so in reasonable self-defence.

The judge's summing up of the case was, according to my very unscientific vox populi of barristers involved and other observers, straight down the line. He did not sum up for an acquittal and he did not sum up for a conviction in the cases of any of the defendants. He simply laid the evidence out and gave the jury the law.

The jurors were left, as they often are in joint enterprise trials, with a lengthy route to verdict: a spider diagram style document leading them to verdicts for each defendant. They were told that they must first consider the case against Umar Zazai. They could only find him 'guilty of murder' if they were: sure that he stabbed Ikram Khan; sure that he intended to kill or seriously injure him; and, finally, that he did not act in reasonable self-defence when he did so. Juries are permitted to decide for themselves what constitutes 'reasonable self-defence', but are warned that a defendant need not 'weigh to a nicety' the force used (i.e. in the agony of the moment a terrified person may do more than is strictly necessary to defend themselves). If they found Zazai guilty then they had to consider each and every defendant individually: had they done anything to encourage or assist him in the act of murder? Did they know that he had a weapon? It is here that the reality of joint enterprise was laid bare, not one of the defendants was conclusively proven to have done anything to support Zazai. Being present at the scene of the murder did not constitute supporting him, hundreds of people were present, nor did merely knowing Zazai as a friend; but in the world of joint enterprise, either might be enough.

The jury went out to consider their verdict, and a painful week long wait was in store for those involved in the case. The end: Days came and went. The jurors betrayed little of their feelings when one caught their eye. No indication of the verdict was, nor should have been, given. On the penultimate day of deliberation I, who had come to be a very common sight in the courtroom over the previous seventeen weeks, received a ray of hope. As I left the court a juror, rather than averting her gaze or looking on stony faced as jurors had every other time we had accidentally met eyes, gave me a brief smile. I returned it and left, pondering the likely result on my way home. Did the jury understand the gravity of what they were going to decide? Did they know they could be sending these men away for 25 or 30 years? Did they know that they might never be released? I still held little hope: a polite smile is cheap, and the notes sent by the concerned juror a few weeks earlier told a disturbing tale of the inner workings of

this jury. The next day my questions were to be answered. After five days of intensive deliberation the jury had reached unanimous verdicts. The gallery was packed to the gunwales as friends, relatives and curious observers filled the twenty or so seats assigned to the public.

The jury foreman, a serious looking man in his forties, rose. The clerk asked for their verdicts on count one for the defendant Umar Zazai. On the next word, or two words, rested the fate of seven men. 'Not guilty' was the reply. On the charge of manslaughter Zazai was also 'Not guilty'. There were a total of twenty-one verdicts to be read. Seven defendants and three charges (murder, manslaughter and conspiracy to commit GBH). However, the sense of relief in the room was palpable after it became apparent that, whatever else, all of them had been cleared of murder. The prosecution had not convinced the jury that there had been a sinister plot to kill Zazai in which all seven men had been entangled. The plan had failed, this time. Often, however, it succeeds. The jury found four of the seven defendants: Umar Zazai, Mujahid Chambili, Khalid Jan and Ezatullah Ahmadzai 'guilty' of conspiracy to commit GBH. And sentenced them to to 24 years, 22 years, 19 years and 17 years,The other three; Naweed Bashardost, Mirwais Chambili and Sardar Khattak, were acquitted of that charge as well and were free to go.

It was perhaps at this point that I saw most clearly the human toll of joint enterprise. On the murder charge everyone had been acquitted, but it was clear that nobody was happy with the result. The defendants, in spite of having no violent convictions between them, had all been held on remand. Some had lost ten months of their lives; ten months with their families; ten months of income; ten months of liberty in all its forms. And they will receive not a penny of compensation for that. Their relations with their loved ones strained to breaking point. Throughout the trial, knowing what I knew of the jury's behaviour, it was easy to see them as the baddies: but after the verdicts had been given, and I watched the misery these prosecutions had wrought, the real baddy was clear to see.

Theresa May Unlawfully Detained Potential Trafficking Victims *Diane Taylor, Guardian*

Home Secretary, Theresa May, failed to protect three potential victims of trafficking who were locked up in an immigration detention centre, a high court judge has ruled. The three test cases on trafficking are linked to a series of other legal challenges which have successfully argued that the detention of asylum seekers while their claims are being decided is unlawful because it has failed to protect vulnerable people. The three victims who challenged the home secretary were a 22-year-old Albanian woman forced into marriage with a man who wanted to traffic her, a 49-year-old Nigerian woman forced to have sex with her husband's friends, and a Nigerian boy who was brought to the UK on a sports visa through the John Fashanu Foundation programme and claimed to have been tortured, raped and trafficked. May has admitted that she failed to correctly identify victims of trafficking, failed to make appropriate referrals to police and trafficking authorities, and allowed the detained fast track (DFT) procedure to operate in a discriminatory way. Under the procedure, people seeking asylum in the UK who are considered suitable for fast-tracking, often on the basis of their country of origin, are detained while their claim is determined.

Justice Blake ruled on Monday 20th July 2015, that all three claimants had been detained unlawfully by May. Stephanie Harrison QC, who acted for two of the claimants, said: "It isn't without some irony that only a few months ago the modern slavery act came into force heralded by the home secretary as offering protection to victims of trafficking being criminalised. "The Home Office now needs to adhere to the law and its own commitments on trafficking and urgently review the asylum system so victims of trafficking are no longer detained and denied vital protections."

had been aware of Begg's concerns for about 12 years and, whilst policies had been introduced to conform to the Prison Rules and the 2012 Direction, the SPS had failed to implement those policies. Prison officers were told that correspondence from the Information Commissioners was not to be opened because it was privileged but were not told what this correspondence would look like. The Information Commissioner had sent out correspondence with his address on the front of the envelope but it was not until 2015 that the authorities included the address in their directions to staff. Prison staff had therefore opened privileged correspondence as they were unable to identify it as being from the Information Commissioner. The judges held that if a policy decision is made to treat certain correspondence as privileged then "it is necessary to implement that decision by telling those who handle the mail how to recognise it." The failure of the SPS to do so was a failure to implement its own policy.

The prison authorities had also failed to make staff aware of the potential use of double envelopes and provide a system of marking the internal envelope as privileged. On one occasion a prison officer had thought that a handwritten envelope marked 'privilege' was suspicious, which was not surprising as he had not been told that some double envelopes might be so marked. The SPS had since put in place a system whereby mail would be marked as privileged with a stamp when it was taken from the outer envelope but this could have been introduced sooner.

The judge emphasised that it was not for a court to decide the detail of how a prison was run. That is a matter for the SPS and in light of its ability and experience its decisions were entitled to a degree of deference. However, the judge concluded that the failures of implementation in relation to Beggs' privileged correspondence showed that the system in place at the time was "insufficient in its actual working to enable the petitioner's right to respect for his correspondence to be upheld." The judge decided to hear arguments about a suitable remedy at a later date.

The crucial issue in this case was the way in which policies relating to privileged prisoner correspondence were implemented. There was no challenge to the prison rules or TO the 2012 Direction, nor was there any suggestion from the court that they were problematic from an Article 8 perspective. However, the SPS had not taken sufficient steps to ensure that the rules and the Direction were complied with in practice. A violation of Article 8 can therefore arise when the authorities fail to ensure that an otherwise sound policy is actually implemented on the ground. *Thomas Raine, UK Human Rights Blog,24/07/2015*

Divisional Court Strikes Down DRIPA Communications Data Law

R (ota Davis et al) v. Secretary of State for Home Department: When a domestic Act of Parliament is in conflict with EU law, EU law wins. And when a bit of the EU Charter (given effect by the Lisbon Treaty) conflicts with an EU Directive, the EU Charter wins. Which is why the Divisional Court found itself quashing an Act of Parliament on Friday – at the behest of four claimants, including two MPs, the Tories' David Davis and Labour's Tom Watson.

The doomed Act is the Data Retention and Investigatory Powers Act 2014 or DRIPA. It was in conformity with an underlying EU Directive (the Data Retention Directive 2006/24/EC or DRD – here). However, and prior to DRIPA, the DRD had been invalidated by the EU Court (in the Digital Rights Ireland case here) because it was in breach of the EU Charter. All this concerns communications data, which tell us who was sending an email, to whom, from where, and when – but not the content of the email. DRIPA in effect compels telecoms providers to keep communications data for 12 months, and to make it available to public bodies such as intelligence and law enforcement agencies.

Interference With Prisoners Mail - Breach of Article 8

Scotlands Court of Session's first instance chamber – the Outer House – in 'Beggs v Scottish Ministers [2015] CSOH 98, 21st July 2015' has held that the way in which the Scottish Prison Service (SPS) handled a prisoner's correspondence breached Article 8 ECHR.

The petitioner, William Beggs, was a prisoner at HMP Glenochil until March 2013 and thereafter at HMP Edinburgh. In 2001 he was sentenced to life imprisonment for the 1999 murder of 18 year-old Barry Wallace, whose dismembered body parts Beggs disposed of in Loch Lomond.Since at least 2003, Beggs had made complaints about the way in which his mail had been handled by the prison authorities. The complaints made in this case related to incidents which took place between January 2013 and January 2015. Beggs complained about delays in receiving mail from the prison authorities and about prison staff opening privileged correspondence from the UK and Scottish Information Commissioners. The Scottish Prison Rules (Correspondence) Direction 2012 identified correspondence from the Information Commissioners as privileged under section 59 of the Prisons and Young Offenders Institutions (Scotland) Rules 2011. Those Rules stated that prison officers could not open privileged correspondence unless there was cause to believe that the mail contained a prohibited article, the reason for that belief had been explained to the prisoner, and the prisoner was present (rule 59 (3)). The contents of privileged mail could not be read by an officer except where there was a reasonable belief that the contents may endanger security in the prison or relate to criminal activity (rule 59 (4) and (5)). The SPS accepted that there had been delays in delivering some mail to Beggs and that some privileged correspondence had been incorrectly opened by prison staff.

The Arguments: Beggs argued that the way in which the SPS had handled his mail breached Article 8. Article 8 (1) included a right to the protection of correspondence, any interference with which must be proportionate. Though the prison authorities were entitled to implement some controls of prisoners' correspondence to prevent disorder or crime, special considerations applied to lawyer-client correspondence and, by extension, communications with the bodies listed in the 2012 Direction. It was for the prison authorities to devise a suitable system and implement it efficiently. As privileged correspondence had been wrongly opened by prison staff the system put in place by the SPS was not effective. This was a breach of Article 8 as there were insufficient safeguards against disproportionate interferences with the right to respect for correspondence. Delays in receiving some mail also breached Article 8. It was foreseeable that some privileged correspondence would relate to imminent court or other proceedings making it necessary for the correspondence to be delivered without undue delay.

The respondents argued that there were no systemic failures which amounted to a breach of Article 8. There were only three complaints about delay one of which was caused by an incident within the prison which had diverted the relevant staff. Following official complaints the prison authorities had apologised for the other two delays. In relation to the opening of privileged correspondence, four items of mail over a two-year period were opened because the envelope did not adequately identify the mail as privileged. This was simply inadvertence and not a failure of the system. Even if these events should have been avoided, mail was always opened in front of Beggs and was not read by prison staff. The events were not sufficiently serious to engage Article 8.

The Court's Decision: The judge found that Beggs' complaint about delays in receiving mail had not been made out. A prisoner could not expect a perfect mail delivery system. The SPS accepted that they had to provide a system of delivering mail on the day it arrived at the prison but there were operational requirements which occasionally caused delay. All systems were vulnerable to occasional human error.

However, the opening of privileged correspondence did breach Article 8. The authorities

Norman Burton Serving 14 Years - Conviction Unsafe, Quashed

1) On 4 November 2013 in the Crown Court at Winchester Norman Burton upon a second retrial was convicted of conspiracy fraudulently to evade the prohibition on the importation of a Class A drug, namely cocaine. He was subsequently sentenced to 14 years imprisonment. A Serious Crime Prevention Order for a period of 5 years was imposed to commence on the date of the appellant's release from custody.

2) The main ground of appeal on which leave was granted by the full court relates to the fact that the trial judge refused an application to stay the proceedings. The trial at which the appellant was convicted was a second retrial. In short it was argued that the judge should not have permitted a third trial upon the same allegation to be conducted. There is a second ground of appeal which relates to the adequacy of the summing up in certain respects. The full court did not give leave for that ground to be argued, but referred the matter to this court, and it has been renewed before us today. We grant leave in relation to that ground.

3) The facts show that between October 2009 and November 2010 the co-accused Wilson and Heibner along with others were involved in a conspiracy to import cocaine by ship from Colombia through Portsmouth Docks. This conspiracy has been referred to as the "dry conspiracy" because no drugs were ever imported. Wilson worked as an accounts manger for Portsmouth Docks and was the inside man. In the event, although no drugs were ever imported in the course of this conspiracy, significant planning took place. A particular problem was getting the cocaine into containers of bananas. The appellant's role in the conspiracy was alleged to be as the financier of the importation. The evidence showed that he had attended several meetings principally with Wilson and Heibner from January 2010 onwards. For example, on 14 April 2010 Wilson was observed holding a multicoloured spreadsheet with the appellant holding a pen and paper. The appellant gave cash to Wilson. At another meeting on 6 May 2010, which was video and audio recorded, documents were shown and money exchanged. There was reference to an importation of drugs on ships travelling from South America. In addition there was frequent telephone contact between the appellant, Wilson and Heibner.

4) At the end of June 2010 the appellant was arrested for an unrelated conspiracy to import over 400 kilograms of cannabis through Tilbury Docks. From that point his involvement in the dry conspiracy ceased. The appellant pleaded guilty to this separate conspiracy and received a sentence of 6 years imprisonment in October 2010. The jury in the present matter was informed of this.

5) The appellant had several meetings with an undercover police officer between April and June 2010 in relation to the Tilbury conspiracy. However it is right to say that in those meetings he only ever mentioned cannabis.

6) In November 2010 Wilson was arrested following the seizure of 26 kilograms of cocaine at the Portsmouth Docks. This importation arose from another unrelated conspiracy to import cocaine (the "MV Emerald Conspiracy") in which the appellant was not involved. This event brought to an end the dry conspiracy. Wilson subsequently pleaded guilty and a co-accused, Godber was convicted by a jury of the MV Emerald Conspiracy and received 20 years. He was originally indicted on the present matter, but after conviction and sentence on the MV Emerald Conspiracy, the Crown decided not to proceed against him.

7) On 22 March 2011 the appellant was arrested in relation to the dry conspiracy. He made no comment to all questions put in interview. At the retrials he did not give evidence, although he did at the initial trial. The Crown's case was that the appellant was party to the dry conspiracy and that he was a significant financier of the proposed importation. The defence case was to deny involvement. All the appellant had ever had an interest in was importation of cannabis

not cocaine. All of the observed meetings related to importing cannabis; cocaine had not been mentioned. Moreover the appellant claimed not to have the financial resources to fund the dry conspiracy, and indeed had been in debt so that he required a bank loan at the end of April 2010.

8) At the outset of the third trial counsel for the appellant objected to there being a third trial. The judge ruled against the submission. In brief he said that the offending was extremely serious and that this could properly be described as a crime of extreme gravity. A stay of proceedings was an exception rather than a rule provided that the appellant could receive a fair trial and that it would not be unfair to try him again. The judge held that it was not an abuse for the matter to be tried a third time so that he refused the application for a stay.

9) The chronology of the trials was as follows. At the end of the first trial in late August 2012 Heibner was convicted but the jury could not agree in relation to the appellant so that it was discharged from returning a verdict. The co-accused Wilson had previously pleaded guilty to the indictment. The first retrial came to an end at the end of March 2013. The jury could not reach verdicts on the appellant and a co-accused Chambers who had previously been too ill to be tried. It was discharged from returning verdicts. The second retrial, as already stated, concluded on 1 November 2013 with the convictions of both this appellant and Chambers.

Second retrial - 10) The first issue in the case is concerned with whether it was proper to have a second retrial after two successive hung juries. This appellant was convicted after the third trial, two previous juries having been unable to reach a verdict. The first point to be noted is that the first two trials went the full distance without, for example, the jury having been discharged part of the way through either of them as a result of some problem or irregularity. Secondly, this is not a case where after a full trial a conviction has been quashed by this court which has then ordered the matter to be retried. In either of those circumstances, different considerations would arise.

11) The appellant's essential submission was that no second retrial should have been permitted because second retrials after two hung juries are permissible only in exceptional circumstances. Strong reliance was made on the decision of this court in the case of Bell [2010] 1 Cr App R 27 where at paragraphs 45 and 46, Lord Judge CJ identified two characteristics which would have to be satisfied prior to a second retrial taking place. Those characteristics were: a) that the alleged offence was one of extreme gravity; and b) that the evidence against the defendant was very powerful. It was submitted that in the present case neither of those tests was satisfied and that the judge's ruling on the matter was flawed in a number of respects. In the alternative, if some test going beyond the two characteristics identified at paragraph 46 of Bell was to be applied, the Crown had still failed to satisfy it in the circumstances of this case.

Conclusion - 55) It will be seen that the judge's direction was framed in terms designed to protect the appellant from unfairly adverse conclusions being drawn from the fact that he had been convicted of that other matter. However, what the judge did not go on to say, or at least with any clarity, was that that conviction was relied on by the appellant positively in the sense that it tended to support his account of having an interest not in cocaine but in cannabis. The judge's direction, particularly in the first part of the extract, is couched in negative terms rather than the positive way in which the appellant relied upon it. The appellant argues that this is a significant misdirection. It seems to us that there is some force in this. Even if it were possible to view the concluding words of the direction as implicitly referring to the appellant's positive case it did not do so with any clarity or force.

56) Complaint is also madethe judge failed to mention important evidence which was favourable to the appellant. We have already observed the Crown's case was based on circumstantial evidence. There was no direction given as to the jury's approach to circumstantial evidence and in addition the

judge failed to mention that at no stage of any meeting at which this appellant was present was there any mention of cocaine. Indeed there appears to have been no mention of any specific type of drug either by the appellant himself or by others in his presence. That is in contrast to other evidence in the case involving other co-accused. It seems to us that this was an important omission in this appellant's case. Although those involved in illicit conversations might be circumspect, the fact remained that it was a feature of the case potentially telling in this appellant's favour, which was not referred to. We consider that where the Crown's case required the jury to draw inferences, this was a significant omission.

57) There is additionally a complaint about the overall nature of the summing up. In short it was submitted that this was not a well-organised summing up which attempted to marshal the facts for the jury's benefit on an issue by issue basis assisting them to see the respective arguments in a concise but methodical way. Much of the evidence in the case which involved observations had been reduced to documentary form. We are told that there was a schedule of events running to 81 pages, detailing some 714 events. There were 210 pages of transcripts of police recordings. The judge took the jury through those documents touching relatively briefly on them over the course of 7 or 8 pages where the judge largely dealt with matters allusively rather than clearly spelling out issues between prosecution and defence. A flavour of his approach may be gleaned from the following passages: "Again you will want to look and please do not look now, but you know as we go through the evidence, various dates are mentioned, various dates appear and it is interesting, you may think, to look at that to see whether it does marry up with what the prosecution say was going on. "

58) Then a little later: "So the relevant, members of the jury you may think, matter for you, is that sets the scene with regard to the schedules, the various documentation that has appeared in this case which again look at at your leisure. We will not look at it now. You know what I mean. The timetables where a particular ship was on what particular date. Does it or does it not mesh in with what the prosecution say was happening? The overheard conversations and the like. "

59) Those comments were made by way of preface a little before the judge came to refer to the documents. At the end of the process the judge said: "The last transcript is 28th October. You will recall the Crown remind you that there is a reference there, towards the end of it of him working on Tuesday. Back to work on Tuesday. That may or may not mesh in with Mr Wilson's timetable. Again look at that. But as far as the defence are concerned, they remind you that there is reference to ganja, reference to Jamaica. So those are the transcripts. I am afraid at fairly high speed members of the jury, but you have them. You must look at them. You will look at them in due course."

60) The evidence in the trial had taken a little over three weeks. It had largely been concerned with the content of the documentary material which had been summarised in the way we have described. We consider that in this appellant's case there is considerable force in the complaint that the summing up failed properly to adopt a structure which would assist the jury in resolving the issues and that by reason of the paucity of analysis or assistance given to the jury with the documentary evidence they were not given the help to which they were entitled and thus the summing up was defective.

61) In this context we have had regard to the decision of this court in R v Singh-Mann and Others [2014] EWCA Crim 717 and in particular paragraphs 84 to 92 and 118 to 120.

62) As we have identified above, in the case of this appellant there are a number of unsatisfactory features of the summing up. We have come to the conclusion that taken together quite apart from our conclusion on ground 1, they would have led us to conclude that the conviction recorded in this case was unsafe.

63) For the reasons given in this judgment, we hold that the conviction was unsafe. The appeal is allowed and conviction is quashed. Burton v R [2015] EWCA Crim 1307 (23/07/ 2015)