Miscarriages of JusticeUK (MOJUK)
22 Berners St, Birmingham B19 2DR
Tele: 0121- 507 0844 Email: mojuk@mojuk.org.uk Web: www.mojuk.org.uk

MOJUK: Newsletter 'Inside Out' No 801 (08/07/2020) - Cost £1

Black Man Paralysed After Being Tasered by Police Vows to Get Justice

Diane Taylor, Guardian: A young black man from north London who has been left paralysed from the chest down after being shot by police with a Taser weapon as he jumped over a wall, has spoken out for the first time about his injuries and determination to hold officers to account. Jordan Walker-Brown, who turned 24 on Monday, said he had his back to police and was running away when he was shot with a stun gun on 4 May. He said he was running because he was carrying a small amount of cannabis. Walker-Brown, who before the incident enjoyed playing football and was in good health and active, is now paraplegic. He believes he would not have been stopped had he not been black. He said: "I have been told that I will not be able to walk again because of what the police did to me. But I am determined to prove them wrong. Just as I am determined to prove the police are not above the law."

He said he was stopped by Metropolitan police officers from the Territorial Support Group (TSG) on two consecutive days last month, 3 and 4 May. Both times he was carrying a small amount of cannabis for personal use. He knew officers had the right to stop him if they believed him to be in possession of drugs. "However, I also know that I would not have been the subject of any police attention – on either day – if I had not been a young black man," he said. "I ran from police because I had a small amount of cannabis in my possession for personal use … and I had fresh in my mind the memory of a similar encounter with TSG officers only the previous day when I was arrested, mistreated and charged for possession of a similar amount of cannabis. "I know from my own personal experience as a young black man that I always have to be very careful and very fearful of being alone with police officers in a police van."

On 3 May, Walker-Brown had been put into a TSG van, where he says he was mistreated, then held in a police cell for several hours and charged with possession of cannabis, before being released. He said the following day he was in Burgoyne Road, Harringay, close to Tottenham in north London, when TSG police again spotted and followed him. He said two officers got out of their van and he started to run away. He was jumping over a wall, which was approximately 1.2 metres (4ft) high on one side but had a 1.8 metre (6ft) drop on the other, when it is thought two officers drew their Tasers and one discharged his. Walker-Brown fell over the wall. The cause of his injuries is being investigated. He was arrested for possession of cannabis with intent to supply and taken to hospital.

The incident is under investigation by the Independent Office for Police Conduct, and the officer who discharged his Taser is subject to a criminal investigation for the alleged offence of causing grievous bodily harm. None of the nine officers present at the incident have been suspended; the officer who discharged his Taser has been placed on restricted duties. The IOPC investigation is understood to be examining the officers' use of force, their handling of Jordan-Brown after the stun gun was discharged, including consideration of a possible spinal injury, and whether his ethnicity influenced the decision to stop, pursue and fire the stun gun.

Walker-Brown's sister Sharn Brown, 28, told the Guardian: "The police appear to be trigger-happy with Tasers when it comes to black people. My brother is in hospital paralysed. Jordan has a family and I can promise the police his family will do whatever is necessary to ensure that he receives justice." Walker Brown's lawyer, Raju Bhatt of Bhatt Murphy Solicitors, said: "Jordan says he was slipping in and out of consciousness as he lay on the ground after his fall. He recalls that he felt a knee in his back, and his arms were then handcuffed behind his back before he was dragged to his feet, even though he was saying repeatedly that he couldn't move his legs."

According to Home Office figures police officers are almost eight times more likely to draw their Tasers against black people in England and Wales. Their general use rose by 39% last year. Nearly 7,000 Met officers carry Taser stun guns. This is expected to rise to 10,000 by 2022, representing just under a third of the force. A Metropolitan Police spokesperson said: "The IOPC are conducting an independent investigation into the full circumstances of the incident and, as we have said from the outset, we fully support this investigation. We continue to co-operate with the IOPC's investigation team to ensure that all the facts are established". Detective Chief Superintendent Treena Fleming, Commander of the Met's north area command unit said: "My thoughts remain with the injured man and his family. I have assured them that I am fully committed to supporting the IOPC investigation."

Repeated Remittal of Murder Case Before Conviction Violation of Article 6

In Chamber judgment1 in the case of Tempel v. the Czech Republic (application no. 44151/12) the European Court of Human Rights held, unanimously, that there had been: a violation of Article 6 § 1 (right to a fair trial) of the European Convention on Human Rights owing to a lack of fairness of the applicant's conviction for murder, and a violation of Article 6 § 1 owing to the length of the proceedings. The case concerned repeated first-instance and appeal proceedings over a period of 10 years on a charge of murder. The Court found in particular that the actions of the High Court, which had repeatedly remitted the case to first-instance jurisdictions, had essentially gone against the rules of criminal procedure and Constitutional Court case-law. It had also ultimately imposed its own view on the lower courts of the correct interpretation of the evidence and the applicant's being guilty of murder. The High Court's actions had had the effect of persuading the first-instance court in the fifth set of proceedings that it had to find the applicant guilty.

The applicant, Robert Tempel, is a Czech national who was born in 1973. He is currently serving a sentence of life imprisonment in Valdice Prison (Czech Republic). Between September 2004 and March 2007 the applicant was acquitted four times of charges of murder by two different chambers of the Plzefi Regional Court at first instance. The appeal court, Prague High Court, remitted the case each time, finding fault with the first-instance courts' assessment of the evidence, in particular the way they had questioned the testimony of the main prosecution witness, which was the main evidence against the applicant. In May 2007 the High Court quashed the fourth first-instance judgment in the applicant's favour and remitted the case to another first-instance court within its jurisdiction, the Prague Regional Court. That court in November 2008 found the applicant guilty of murder and sentenced him to life imprisonment.

It found that the witness's testimony had only minor contradictions and was credible as to the key facts. It was also corroborated by other evidence. The High Court upheld the conviction in December 2009. In July 2011 the Supreme Court dismissed an appeal on points of law by the applicant. During the proceedings the Constitutional Court rejected three constitutional complaints by the applicant: over remitting the case to a different chamber of the same first-instance court; over remitting the case to another first-instance court; and of breaches of Article 6 (right to a fair trial) of the Convention. The applicant began proceedings for compensation over the length of the criminal proceedings, which had lasted from March 2002 to April

2012. In 2013 the Prague 2 District Court found a violation of his right to a trial within a reasonable time, but dismissed his claim for compensation. That decision was upheld on appeal and by the superior courts, including the Constitutional Court in April 2016.

Decision of the Court Article 6 § 1 Fairness of the proceedings. The Court reiterated that it was primarily for national courts to interpret domestic law and that it could not question their view unless there had been a flagrant violation of such provisions. It noted that the High Court had twice applied Article 262 of the Code of Criminal Procedure to remit the applicant's case, once to a different chamber of Plzeri Regional Court and once to a different first-instance court, Prague Regional Court, which had ultimately convicted him. However, according to Constitutional Court case-law, a decision under Article 262 should be "entirely exceptional".

Furthermore, when quashing the first-instance judgments, the High Court had mainly criticised the lower court for its assessment of the evidence and of the credibility of the key witness. That approach seemed to be at odds with Article 263 § 7 of the Code of Criminal Procedure, as interpreted by the Constitutional Court, which stated that an appellate court was bound by the assessment of the evidence carried out by the court of first instance, unless it concerned evidence which the appellate court had dealt with itself at a public hearing.

Indeed, when the High Court had remitted the case to a different chamber of Plzeri Regional Court for a second time it had drawn alternative conclusions from the evidence than the first-instance court, without hearing the key witness. Subsequently, when it had transferred the case to a different court of first-instance, the High Court judgment had contained formulations that could be interpreted as suggesting that the first-instance court should reach different conclusions about the credibility of the witness and that the appellate court would only accept a conviction. The Court observed that such conclusions sat uneasily with the Constitutional Court's long-standing case-law that an appellate court could not assess the credibility of a specific witness unless it had heard the witness. Nor, according to that case-law, should it quash a judgment on acquittal unless the first-instance court's doubts about an accused's guilt were without any merit or under any circumstances, instruct a first-instance court on whether or not it should find an accused guilty. The High Court had provided no reason to justify its decision not to hear the key witness directly and assess his credibility itself, although it would have been appropriate to give such reasons as the disagreement between the first-instance and appeal courts had turned on that person's credibility.

Furthermore, the High Court should not have based doubts about the independence and impartiality of the judges of the first-instance court and its conclusion that that court had failed to comply with its binding instructions solely on the fact that the court had made factual findings and conclusions about the applicant's guilt which were different from its own view. The Court considered that the High Court's procedural approach could have led the Prague Regional Court to conclude that the only decision which the High Court would accept and which would bring the proceedings to an end was a guilty verdict. The succession of events strongly indicated a dysfunction in the operation of the judiciary, vitiating the overall fairness of the proceedings in the applicant's case. Accordingly, there had been a violation of Article 6 § 1 of the Convention.

Length of the proceedings.The Court first found that the applicant had not received adequate and sufficient reparation at domestic level for the damage caused to him by the protracted criminal proceedings, rejecting a Government objection and declaring this complaint admissible. It noted that the length of the proceedings - more than 10 years - was attributable mainly to the case being repeatedly remitted to the court of first instance. The applicant had in no way contributed to the delays, it had mostly been the public prosecutor who had

lodged the appeals. The Court thus could not regard the period of time that had elapsed as reasonable, finding a further breach of Article 6 § 1. Just satisfaction (Article 41). The Court held that the Czech Republic was to pay the applicant 12,500 euros (EUR) in respect of non-pecuniary damage and EUR 219 in respect of costs and expenses.

European Court of Human Rights Rules Azerbaijan Violated Right to Life

Gherson Immigration: Last month, the European Court of Human Rights (ECtHR) issued its decision on a right to life case brought against Azerbaijan and Hungary. An Azerbaijani military officer who killed one Armenian citizen and attempted to murder another, was found guilty and sentenced to life imprisonment in Hungary (where the crimes were committed). During the criminal proceedings, the defendant admitted that the main motive behind the crimes was the Armenian ethnic origin of the victims. However, when a few years later the convicted criminal was transferred to Azerbaijan in order to serve the rest of his sentence there, he was pardoned by the president immediately on arrival in the country. He was also promoted, offered an apartment and awarded eight years' salary arrears.

The ECtHR found that Azerbaijan procedurally violated Article 2 of the European Convention of Human Rights (right to life), as the authorities of the country effectively impeded the full enforcement of the sentence for two crimes against life and health. However, the ECtHR decided there had been no substantive violation of the same article, as the criminal acted individually and did not represent the Azeri Government, even though he had served as a military officer at the time. This conclusion was however contested in the dissenting opinion of one of the judges and has already been criticised in the media and by the official representatives of the state of Armenia. Azerbaijan was also found to have violated Article 14 of the Convention (prohibition of discrimination) because it had been proven that the violent attack amounted to an ethnically motivated hate crime and the Azeri Government had later endorsed this act – by treating the criminal "as an innocent or wrongfully convicted person" who was "bestowed with benefits".

The applicants also claimed that Hungary should also be liable, as it executed the request for the criminal's transfer without obtaining the necessary assurances that his prison sentence would be duly completed in Azerbaijan. However, the Court found there were no violations by Hungary, as this state had performed all the obligations imposed by the Transfer Convention. The Head of the Press Service Department of the Ministry of Foreign Affairs of Azerbaijan has commented on the decision, noting "Armenia's intention to use the European Court as a tool in the smear campaign against Azerbaijan and its attempts to politicize this institution". The decision once again shows that a state cannot escape responsibility for arbitrary actions – even if they are duly authorised under its own criminal procedure rules.

Fast-Track Injustice and the 'Racist-Effect' on the Right to Protest

Audrey Cherryl Mogan and Shina Animashaun, Justice Gap: In the wake of the Black Lives Matter protests across the country, Justice Secretary Robert Buckland and Home Secretary Priti Patel announced the Friday before last that courts should be prepared for 'fast-track' prosecutions. What this will mean in practice has not yet been made explicitly clear, but they have suggested that individuals who commit vandalism, criminal damage or assault police officers will be 'jailed within 24-hours' of arrest to defuse disorder. As legal observers and members of Black Protest Legal Support, this knee-jerk reaction came as a surprise. We witnessed first-hand the peaceful nature of the protests, despite overwhelming police presence. We saw

the indiscriminate use of kettling, and intimidation and violence from police not only against protestors but legal observers as well. But as criminal barristers from BAME backgrounds, we are sadly accustomed to the way in which the criminal justice system discriminates on the basis of skin colour.

'Fast track' prosecutions are modelled on the highly problematic procedures put in place during the 2011 riots that sprung from the shooting of Mark Duggan who was shot and killed by the Metropolitan Police. In its previous iteration 'fast track' prosecutions saw children as young as 13 brought before the court, without parents or appropriate adults, in the middle of the night. As those arrested were brought straight to court, there was no consideration of diversion to protect children and young people from being unnecessarily criminalised – the impact of which will last the rest of their lives. Despite the presumption in favour of bail, there was a six-fold increase in remanding people in custody, regardless of the actual nature of their offending or whether they had ever been in trouble before. Such stark statistics certainly call into question whether the law and procedure for bail was properly considered on a case-by-case basis, or whether these decisions were the product of political pressure and panic.

Many of those convicted were sent straight to prison, with many judges and magistrates sentencing outside the Sentencing Council Guidelines. President of the Prison Governors Association, Eoin McLennan Murray, commented: 'There's a sentencing frenzy and we seem to have lost all sense of proportionality.' Take the case of Ursula Nevin, a mother of two from Manchester, who was jailed for five months for receiving a stolen pair of shorts. Or the 23-year-old student who was jailed for six months for stealing £3.50 worth of water bottles from a supermarket. There were many clear examples of injustice created by the 'fast track' process, and yet in the midst of peaceful protests we are told it will rear its ugly head again. But how does today's Black Lives Matter protests even compare to the 2011 riots? More than 3,000 people were arrested during the 2011 riots. At the time of the announcement from Buckland and Patel, from the around 137,500 people that had taken part in Black Lives Matter protests across the country, figures suggest a mere 135 had been arrested.

Priti Patel herself seemed clear on the 8 June in her address to the House of Commons that there was a 'criminal minority' amongst the mostly 'peaceful' protestors. So then why, now, is the government planning to implement procedures last put in place during riots, to be used against protestors? Compare these tactics to those used during the Extinction Rebellion protests where more than 30,000 people took part in protests over the course of weeks and months. Thousands of people were arrested, the courts were overflowing, but not once did we hear the same rhetoric.

The glaring difference? A significant majority of the Extinction Rebellion protestors were white. The Lammy Review commissioned by the government in 2017 to look at the treatment of BAME individuals in the criminal justice system and more recent government statistics paint a clear picture: Black people are more than nine times as likely to be stopped and searched when compared to white people; Black people are three times as likely to be arrested; Young black people are nine times more likely to be given an immediate prison sentence than their white peers. None of David Lammy's recommendations to address this disparity have been implemented. The Black Lives Matter protests are an absolutely vital response to racist policing, police brutality and a justice system heavily weighted against Black people – in the UK.

So for our Government to propose implementing a flawed 'fast-track' process, that will only exacerbate this disparity, during the most significant black civil rights protests this country has seen in decades, reeks of racist policy-making. Combine this with evidence that people who

have simply shown support online for the Black Lives Matter movement have been recalled on licence – it is more than what Lord Mance referred to as the 'chilling effect' on the right to engage in peaceful protest – it is the racist effect.

High Court Quashes Culpable Homicide Verdict Replaces it With Assault

Scottish Legal News: The Appeal Court of the High Court of Justiciary has quashed a verdict of guilty of culpable homicide returned against a co-accused in a murder case, replacing it with a verdict of guilty of assault. Weir MacKay was originally tried for murder along with co-accused Alan Doherty, who was convicted as libelled. The appellant contended that the verdict reached was in contradiction of the directions given by the trial judge. He also appealed against his sentence of 14 years' imprisonment. The appeal was heard by the Lord Justice Clerk, Lady Dorrian, sitting with Lord Turnbull and Lord Pentland.

Contributing Factor: The original charge each accused faced was of assaulting the victim, Karen Young, by restricting her breathing and striking her with blunt implements. The charge on which the appellant was convicted was in the terms of assaulting the victim and by means unknown to the prosecutor meantime repeatedly inflicting blunt force injuries to her head and body, killing her. The appellant submitted that there was no evidence upon which the jury could have concluded that any injuries to the victim's head or body made a substantial contribution to her death. The jury deleted all parts of the libel which narrated the acts which had caused the victim's death and the verdict so returned ought to have been recorded as a verdict of assault. The evidence led during the trial suggested that the appellant's co-accused had carried out the attack upon Ms Young from which she died. Forensic examination found that DNA likely to have come from the appellant was found on a swab taken from Ms Young's left hand. Evidence was also led that the appellant had tried to use a credit card belonging to her in a shop in Port Glasgow shortly after the estimated time of death.

The post mortem examination concluded that Ms Young had suffered several blunt injuries to the head and face, which was in keeping with an assault. On the last page of the report, the cause of death was given as compression of the neck and cocaine and methadone intoxication, with blunt force injuries to head as a potential contributing cause. The appellant submitted that the charge was brought against him on the premise that he was acting in concert with Doherty. It was evident from the trial judge's report that there was no direct evidence of the appellant carrying out any assault personally. In his charge to the jury, the trial judge said that in order to prove murder, they would need to be satisfied that the accused did something to the victim that inflicted injury and was one of the causes of death or a substantial contribution. It was submitted for the appellant that based on that charge and the content of the forensic report there was no more than a theoretical possibility that the blunt injuries were a contributing factor.

A More Obvious Cause Of Death: The opinion of the court was delivered by Lord Turnbull. He began: "It is clear from the trial judge's charge that the Crown case against the appellant was presented on the sole basis that he had associated himself with everything that his co-accused had done to the deceased in the course of the whole attack on her. The trial judge summarised the Crown case against the appellant as being that he 'associated himself with whatever was going on'. The jury evidently did not accept this approach to the case." He continued: "There was an obvious link between the conduct which Doherty was responsible for and the victim's death. It was compression of the neck resulting in asphyxiation. Since, as the advocate depute explained, the verdict returned against the appellant was unexpected,

there had been no focus in either the speeches or in the charge on the issue of causation in the context of the limited responsibility which was decided upon."

Accepting that the injuries the appellant was held responsible for were serious, he said: "There was a method by which they could have made an indirect contribution. The anxiety associated with the assault resulting in these injuries had the potential to cause adrenaline to circulate through Ms Young's body. In some circumstances an adrenaline surge of this sort could contribute to a cardiac arrhythmia. On whether this could have happened in this case, he said: "The fact that a pathologist cannot rule out a particular mechanism does not constitute evidence that this was in fact the actual mechanism of death. It could be different in a case in which there were no injuries capable of causing death on their own. In such a situation, in the absence of any other explanation, it may be that a forensic pathologist would be prepared to express the opinion that the stress of an attack had caused the deceased to suffer a cardiac arrhythmia which could not be detected at post-mortem examination."

He continued: "Such opinion evidence could then provide a legitimate basis for a jury to hold that death was in fact caused by a cardiac arrhythmia. In the present case there is a competing and far more obvious cause of death, namely the compression of the neck resulting in asphyxia." Referring to the post mortem report's assessment of the injuries, he concluded: "When the exercise of stripping out the blunt force injures for which Doherty alone was responsible is contemplated it becomes even clearer, in our opinion, that any link between the injuries for which the appellant was held responsible and the death of the victim becomes entirely speculative. In these circumstances we are persuaded that the submissions for the appellant should be given effect to." For these reasons, the verdict of culpable homicide was quashed and substituted with a verdict of assault. The court ordered that the case call again on a subsequent date to hear submissions in respect of the sentence to be imposed in respect of the amended verdict.

Warnings and Lessons for Conspiracy Cases

Richard Moss, Kings Bench Walk: Abstract This article considers the recent case of R v Johnson [2020] EWCA Crim 482 and its implications for practitioners drafting conspiracy indictments and advising clients in relation to them. Introduction: What conspiracy? Not a comment made on arrest, but something that should be at the forefront of every practitioner's mind when considering a conspiracy indictment. What is the precise conspiracy that is being alleged?

Those involved in conspiracy cases cannot say they have not been warned. "We venture to say that far too often…accused persons are joined in a charge of conspiracy without any real evidence from which a jury may infer that their minds went beyond committing with one or more other persons the one or more specific acts alleged against them in the substantive counts, or went beyond a conspiracy to do a particular act or acts."

So said the court in Griffiths [1968] 1 QB 589. This warning was reiterated in R v Shillam [2013] EWCA Crim 160 where the court further emphasised at paragraph 25: "The moral of the case is that the prosecution should always think carefully, before making use of the law of conspiracy, how to formulate the conspiracy charge or charges and whether a substantive offence or offences would be more appropriate."

In R v Johnson [2020] EWCA Crim 482 an appeal against conviction was upheld so far as one defendant was concerned. The case bears a salutary lesson for those drafting conspiracy indictments and those advising their clients in relation to such indictments to give careful consideration to what exactly it is said that the individual defendant is said to have conspired or agreed to do.

General principles: This article will not rehearse the law of conspiracy, but some of the key principles as set out in Johnson at paragraph 25 et seq are worthy of repetition (with emphasis added): " 25. It is of the essence of a conspiracy that there must be an agreement to which the defendant is a party and that each defendant charged with the offence must be proved to have shared a common purpose and design, rather than similar or parallel purposes and designs, see for example, Shillam [2013] EWCA Crim 169 at [19]-[20].

26. However, it is possible for the evidence to show the existence of a conspiracy of narrower scope and involving fewer people than the prosecution originally alleged, in which case it is not intrinsically wrong for the jury to return guilty verdicts accordingly: Shillam at [20].

27. What are referred to as 'chain' conspiracies and 'wheel' conspiracies are different in structure. In a chain conspiracy, A agrees with B, B with C and C with D. In a wheel conspiracy: A at the hub recruits B, C & D. In each it is necessary that the defendants must be shown to be a party to the common design and aware that they are part of a common design to which they are attaching themselves…

28. The need to show a common design and an awareness of the common design highlights the danger to the prosecution of charging a single conspiracy rather than what may be a series of substantive offences or different conspiracies, when the offending involves a group of people over a substantial period. Such offending may, on proper analysis, be the result of a series of transactions or agreements, and a single conspiracy may be impossible to prove, see Mehtab [2015] EWCA Crim 1260."

R v Shillam: Many readers will be familiar with Shillam. That case was said to involve a wheel or chain conspiracy with R at the head of the conspiracy. From the judgment it is unclear whether the Crown nailed its colours to the mast as to whether it was a wheel or a chain.

The jury should have been directed that they first had to consider the guilt of R. If he was not guilty then the other defendants should be acquitted. If he was guilty the jury should then have been directed to consider: "that if they were sure of his guilt, they must then consider whether the prosecution had proved as against each of the other defendants that they shared a common purpose or design (as distinct from separate but similar designs) so as to be a party to the same conspiracy, i.e. a conspiracy wider than the supply of cocaine to that particular defendant"

The court described the Appellant's role as no more than a regular buyer of drugs from R which he would sell to his own customers. There was no evidence of phone contact between him and any other conspirator other than R. He was distinct from being an agent acting for R as part of a single network. To regard him as part of the same wider conspiracy would be, in the court's view, to include every person from the original wholesaler down to the end user.

The decision demonstrates the need to focus upon whether there is a common purpose or design as opposed to separate but similar designs. This obviously begs the question as to where a common purpose ends and a separate design begins? In Shillam the fact that he was selling for his own benefit as opposed to those higher up the chain seems to have been determinative. This was not, however, the case in Johnson. Each case will of course turn on its own facts, but Johnson offers some useful illustrative examples.

R v Johnson - Background: Johnson involved a defendant W prosecuted under an indictment known as Sidra 1. W gave evidence under a SOCPA agreement against a number of defendants who were then prosecuted under an indictment known as Sidra 2.

The utility of the case is that it sets out the distinct roles of each defendant in the conspiracy and why or why not they should be held to be conspirators. The Sidra 2 indictment was

drafted in these terms: “Between the 1 January 2014 and 1 June 2015 conspired together with other persons to supply a controlled drug of Class A, namely cocaine, to another.” A defendant DS pleaded to that indictment thus proving the existence of that conspiracy.

The facts of the case for the purposes of this article can be summarised thus. W ran two cocaine safehouses maintained by three others. They assisted with mixing the drugs, delivering and collecting. When W was out of the country his operation was run by Wi, his right-hand man. Following a police raid on his safehouses W used R to provide a safe house and deliver drugs. During the indictment period W supplied cocaine to Bl, a major supplier in his own right, who also leant money to W. Bl and W had been charged under Sidra 1.

Another important piece of evidence from W was that the terms of business were that the purchaser of cocaine at this level would be given a specified time to pay to allow them to realise the money through their own onward supply. As the court put it “onward supply was a necessary precondition to payment”. It was therefore important as to the interest of a party in onward supply. The various Appellants were said to be involved in the supply of W or the onward sale of the cocaine supplied by W.

The Appellants arguments can be summarised thus. Those that we can term as “wholesalers” argued that there was evidence of supply to W but nothing to suggest they were party to an agreement for onward supply by W. For those further down the chain that we can terms as “dealers” they submitted that there was no evidence of an agreement with W for onward supply by them. In the alternative they argued that if the Crown could demonstrate that there were any such agreements then they were no more than a series of distinct agreements. Fundamentally they argued that there was no evidence of a common purpose or design. A broad intention to supply cocaine was insufficient to establish a common purpose. The prosecution contended that the conspiracy encompassed those involved in the Sidra 1 indictment. It involved the purchase of wholesale cocaine for onward transmission to others whether diluted or undiluted in order that they should supply it within a relatively confined geographical area.

R v Johnson – Individual Appellants: Those held to be part of the conspiracy on appeal A – A supplied W and dealt with Wi in W’s absence. Given the quantity and purity he would have known that it was to be diluted for onward supply. Even if A did not know the specific persons that it was to be supplied to, he would have known, stating the obvious somewhat, that some person(s) would have been in the chain of recipients. The court was satisfied that A was party to a wider agreement involving W’s onward supply of the drugs supplied by A to him.

Be and McB – These were bulk purchasers from W. They introduced W to Bl and were also linked with Wi and R. They supplied to S to whose home they went with W. S paid W for drugs supplied to him by Be and McB. According to the court there was “clear evidence” they shared a common purpose with W. They must have had an appreciation of the scale of the operation and that it went beyond their own supplying with W. J – J was a wholesale supplier to W. He was aware of one of W’s safehouses and that W was cutting cocaine behind the back of Bl. He communicated with Wi whilst W was out of the country. The court stated there was evidence that J knew about and had an interest in W’ s activities with the drugs supplied to him by J.

R v Johnson – The successful Appellant: C – C was a lower level dealer. He received cocaine from W in a quantity beyond personal use. He dealt with Wi when W was out of the country. W supplied C as he was a cash buyer and had a network of customers. There was no evidence to show that C knew where W sourced the drugs from. Though, at the risk of stating the obvious, it was said to be a reasonable assumption that they must have been

sourced from somewhere with the money being paid back up the line to W and onwards.

In allowing the appeal the court said at paragraph 51: “Whilst it may have been open to the jury to conclude that [W] and [C] were parties to an agreement which involved [C’s] onward supply of the drugs, we do not think that the evidence in his case was sufficient to establish that [C] was party to the larger conspiracy. The particular features which have led us to different conclusions for the other appellants are not present for [C].”

Understanding R v Johnson: The notion of common purpose as opposed to distinct but similar purposes is perhaps more clearly demonstrated in Shillam, discussed above, than in Johnson. When one considers the roles of the various Appellants in Johnson at first blush one may consider C to have been somewhat fortunate. C certainly bears similarity to the successful Appellant in Shillam in that they were both regular buyers from the central figure in the conspiracy but then distributed through their own network as opposed to a network controlled by or leading back to the said central figure. The same can be said, however, for the conspirators Be and McB.

Johnson is an interesting case as Wi, though central, was not placed at the top of the chain. He was, however, the key link in the conspiracy with those above him, such as Bl, A and J and those below such as Be and McB. Since this network operated on a basis of buy now pay later one can readily understand that the wholesalers supplying W shared a common purpose with W for the onward supply of that cocaine which would ultimately benefit them all.

The dividing line for the mid-level dealers Be and McB when contrasted with C is much finer. The features of evidence which the court suggested lead to Be and McB being caught by the conspiracy included a connection with the right-hand man Wi, supplying S with S paying W and an appreciation of the scale of the operation. It must also be remembered that they introduced W to Bl.

The court, however, made similar observations regarding C as to money being paid back up the line, which would indicate one may think an appreciation of the scale of the operation. Equally C was connected with Wi. So dealing for your own benefit was not enough to extricate McB and Be from the conspiracy in contrast to Shillam and C for whom it was. Additionally appreciation of the scale of the operation was another factor deemed sufficient to implicate McB and Be, but not C. Furthermore connection with other conspirators, in the cases of McB, Be and C all were connected with Wi, cannot be viewed in and of itself conclusive of involvement in the conspiracy.

Johnson does not therefore provide a clear and unequivocal list of what will ensnare you in a conspiracy and what will allow you to wriggle free. It, as with any case, turns upon its own facts. It does, however, provide a useful application of Shillam in that one can say that onward dealing for one’s own benefit may be insufficient to extricate yourself from a conspiracy. Equally connections with co-conspirators and awareness of the scale of an operation may not be sufficient for a defendant to be found to be part of a conspiracy. Ultimately C seems to have been involved or aware, but not quite as involved or aware as the other Appellants. The court accordingly drew the conclusion that he was therefore not sufficiently involved or aware to be a part of the common purpose. Mutual benefit as opposed to geographical location appears to have been more of a determinative factor for the court in establishing what the common purpose in fact was.

Conclusion: Returning to the title of this article “What conspiracy?” Johnson serves as a useful reminder of the earlier warnings of the courts as far back as Griffiths. When considering conspiracy indictments the central focus must be upon what the precise common purpose that the defendants are said to be agreeing to is. Is it in fact a common purpose as opposed to distinct but similar designs. If the latter then a series of substantive counts or separate conspiracies should be laid. There are no hard and fast rules as to what behaviour and acts will

implicate and those which will extricate in drug conspiracies. Johnson certainly illustrates that onward dealing for your own benefit is insufficient in and of itself. There is nothing wrong with standard drafting practice of conspiracy to supply a drug of a particular class within a defined time period, but prosecutors need to be cognisant of the requirement to properly identify what that conspiracy is said to involve. A general assertion of an intention to supply a drug is not enough to establish a common purpose or design. One must really burrow down to the essence of what the purpose is said to be. Prosecutors drafting such indictments must have this at the forefront of their minds and those advising their clients in such cases must be ready to take the prosecution to task as to what the precise purpose is that they are alleging.

UK - 'Black Lives Matter' - Taking Legal Action to Combat Police Brutality

Duncan Lewis Solicitors: Multiple instances of police misconduct have been brought to the public attention as a result of the recent Black Lives Matter movements. The misconduct highlighted has ranged from discrimination against black, Asian and minority communities to overt, unjustified and unnecessary violence – which might unequivocally carry the title 'brutality'. When police officers behave in this manner, it is likely to constitute a breach of S6 HRA and would therefore constitute a breach of an individual's human rights. Section 6 of the Human Rights Act 1998 (HRA) makes it unlawful for a public authority to act in a way that is incompatible with person's rights under the European Convention on Human Rights ('ECHR'). As a public authority, the police must observe S6 HRA and refrain from behaviour which might contravene ECHR rights. Unfortunately, many people affected by misconduct at the hands from the police may not be aware of the legal options available to them. There is much that can be done to ensure justice is pursued and redress achieved. Claims against the police involve a variety of circumstances and include: Protest related - Wrongful arrests - Assault and battery- False imprisonment / Deprivation of liberty - Unlawful searches

Making a complaint: It is possible to make complaints against the police, against a particular force, an individual officer and any other member of police staff. Complaints can relate to those claims mentioned above but also in some circumstances where police have not followed correct procedures or have otherwise contravened their own Code for Professional Conduct. Complaints made to the police in England and Wales should be made to the relevant police force and can sometimes be investigated, or managed, by the Independent Office for Police Conduct ('the IOPC').

It is possible to make a complaint without legal assistance. It is, however, important to remember that complaints are taken seriously and can form the basis of later litigation. What is said in those complaints is therefore very important. Each year, police forces pay considerable compensation to those who are able to evidence misconduct. With the assistance of specialist solicitors, identifying that evidence and presenting your case increases the likelihood of compensation being awarded and justice being served.

Inquests: In the event of a death occurring as a result of police conduct, a coroner's inquest may be held. Inquests are opened to investigate a number of things, including how the death happened and then recording this as a fact. An inquest is not designed to 'pass judgment' and cannot therefore seek to identify criminal or civil liability, although a coroner may uncover evidence of such liability during the course of proceedings. Inquests can be extremely important in identifying police misconduct and securing an element of closure for a grieving family. Inquests can be extremely stressful and overwhelming but our department has wide experience of handling inquests investigating deaths.

Police forces in England and Wales effectively have a single role, which is to maintain law and order. The majority of officers are committed to that role and act lawfully. With that in mind, it is all the more important to identify and challenge those who act unlawfully, whether those acts are as a result of recklessness and/or incompetency or are instead borne out of malice and intent. By highlighting and challenging misconduct and abuses of power – whether wielded by the police, prison authorities or immigration detention centre staff – justice can be served to those who have suffered. In addition to this, the misconduct can also be 'checked' and stopped. It can be ameliorated through discipline, training or financial penalty, ultimately ensuring the delicate relationship of trust which exists between a police force and the public which it serves, is not allowed to degenerate into an imbalanced and abusive one.

Open Prisons During Corona – Frustration at Continued Suspension of Release To Work

Three men's open prisons were found by HM Inspectorate of Prisons to have taken successful action to protect prisoners from COVID-19 but the continued suspension of release to work in the community was having a negative impact. Inspectors visited HMP/YOI Thorn Cross, HMP Ford and HMP Sudbury, three prisons holding category D prisoners, on 9 June 2020. Peter Clarke, HM Chief Inspector of Prisons, said: "Many of these prisoners will have worked their way down the prison security categories and will be coming to the end of their sentence.

"Release on temporary licence (ROTL) is a key focus of open prisons and is of great importance to effective resettlement back into the community […] ROTL aims to enable prisoners to undertake work, education or training in the community, maintain contact with their family or significant people in their lives and access community services and support." However, ROTL opportunities were suspended at the three prisons on 23 March 2020, except for prisoners with jobs in the community that were designated as key worker roles.

Inspectors noted that the suspension of ROTL was necessary at the start of the restricted regime to minimise the spread of COVID-19. However, Mr Clarke said, "11 weeks later we found a sense among prisoners that the establishments had lost their purpose. "Many prisoners had worked for years to gain the opportunity to move to open conditions, and evidence a reduction in their risk of reoffending and build or re-build ties with family and the community; others had been working out in the community for some time and had begun to build a new life even before release. Prisoners felt the loss of opportunity keenly and levels of frustration were high. Most understood the need for the restrictions, but were anxious to know when they would be relaxed in line with the lifting of some restrictions in the community."

Inspectors also found variations in the way the prisons identified essential workers between the sites. At Ford and Sudbury, a limited number of prisoners had been accepted as essential workers and continued to attend work in the community, but at Thorn Cross no prisoners had been deemed essential workers. There was also a striking variation between the prisons in measures in place to limit the risk of infection. At Thorn Cross the external doors to the house units were locked for much of the day with prisoners only allowed outside at their designated exercise times, "which was at odds with the ethos of an open prison and not defensible." At Ford and Sudbury, prisoners continued to enjoy the freedom of an open prison, as long as they adhered to social distancing rules. Prisoners who were most vulnerable to self-harm, isolation or well-being issues were supported well. Living conditions were reasonable but almost all education had stopped and most workshops were closed, which left prisoners with little to do during the day. Social visits and ROTL aimed at promoting family ties had also been suspended, which deeply affected prisoners.

Legal Limbo For Children: the Risks of Turning 18

Áine Kervick, Kingsley Napley: The impact of Coronavirus is significant and far-reaching for all children and young adults. For a youth justice system creaking under strain with serious delays, the lockdown has only compounded the problems and brings a raft of serious consequences. Timely justice is ever more important. A recent report by the Youth Justice Legal Centre has highlighted the prevalence and consequences of lengthy delays in the youth justice process. The report highlighted the most recent official data which shows that 1,400 offences a year are committed by children who turn 18 prior to conviction. However, this is a significant underestimate and the number is expected to rise, not least due to the current crisis and rising backlog within the police, CPS and courts. Any delay between an offence taking place and a child or young person being processed by the youth justice system is unacceptable but unfortunately all too common. It can take months and often years for a police investigation to conclude or for the CPS to reach a charging decision. Further delays arise due to court availability.

When a child turns 18 prior to appearing in court they lose the protections afforded to children within the youth justice system which include: Anonymity; Out of court disposals available to children (under 18); Specialist Youth Court; Alternatives to custody offered to children; Child sentencing guidelines which consider immaturity and likelihood of reoffending.

Recommendations: The Youth Justice Legal Turning 18 report lists a number of much needed recommendations including fast tracking cases involving children, retaining anonymity where an offence was committed when under 18 and ensuring that there is a maximum time limit for children who are Released Under Investigation by the police. Children's brains and maturity are constantly developing. A child that commits an offence at 13 is an entirely different person when charged at 15. If the youth justice system is to meet its aims of preventing reoffending and operating with a child centred approach the relevance of age at the time of the offence has to be considered.

Research and Case Law:There is a wealth of research around the Age Crime Curve which shows that peak offending occurs during adolescence and young adulthood before it tails off. Recent neuroscience research indicates that brain maturation occurs around 25 years of age and that teenagers and young adults are very susceptible to peer pressure. Recent case law has begun to consider these developments in what has been described as a "modern approach" to sentencing.

Final thoughts:There is a growing body of case law that recognises turning 18 is not a "cliff edge" upon which a child transforms into a fully mature adult. The youth justice sentencing guidelines are also increasingly being referred to as relevant for young adults. These developments are welcome and overdue. However, whilst the police, CPS and judiciary catch up with this modern approach it is vital that children and young adults who come into contact with the youth justice system receive appropriate legal advice and are able to raise these crucial arguments at the earliest stage of an investigation. It is not in any young person's interest to reach the Court of Appeal before someone understands and applies the guidelines to their particular case.

Satybalova and Others v. Russia

The case concerned a family's complaint that their relative, Marat Satybalov, had died as a result of severe ill-treatment by the police. The applicants are Madina Satybalova, Luiza Satybalova and Taisa Nartayeva who were born in 1961, 1968 and 1940. They are respectively the sister, wife and mother of Marat Satybalov, who was born in 1974. The first applicant lives in Khasavyurt and the other applicants in Aksay, the Khasavyurt district, Dagestan. Mr Satybalov and two friends, Mr M.Sh. and Mr M.G., were apprehended by the police on 2 May 2010 after stopping to buy painkillers from a pharmacist. The police dragged the three men out of their car and hit them with the butts of their machine guns. They were then taken to the local district police station where the beatings continued, while they were repeatedly asked why they had long beards.

Four other friends, who had gone to the station looking for Mr Satybalov, Mr M.Sh. and Mr M.G., were also subjected to beatings. They were released when a relative who was a law-enforcement officer intervened on their behalf. Mr Satybalov, Mr M.Sh. and Mr M.G. were held overnight in the police station, and released the next day after being brought before a judge and fined for an administrative offence, namely failing to obey the lawful orders of the police. The applicants noticed that all three men had injuries on their release. Mr Satybalov in particular could not stand up, was covered in scratches and bruises and part of his beard had been pulled out. His state of health worsened and his family took him to hospital where he died on 7 May 2010 after suffering extensive internal bleeding.

Mr Satybalov's mother immediately complained to the Dagestan prosecutor's office, requesting the prosecution of those responsible for her son's ill-treatment and death. Mr Satybalov's friends were interviewed, describing in detail the beatings they had all been subjected to. An internal police inquiry confirmed the use of force against Mr Satybalov and recommended that disciplinary measures be taken against certain officers. It also found that the officers implicated in the incident had given false information when questioned about Mr Satybalov's detention.

However, the investigation, suspended five times between 2010 and 2015 for failure to identify those responsible for the ill-treatment, is currently still ongoing. The supervisory bodies have repeatedly ordered that urgent measures be taken, such as examining the crime scene and identifying those officers on duty on the day of the incident, without success.

Relying in particular on Article 2 (right to life) and Article 3 (prohibition of torture and inhuman or degrading treatment), the applicants alleged that their relative had died as a result of severe ill5 treatment by the police and that the domestic authorities had failed to effectively investigate their allegations. Also relying on Article 5 (right to liberty and security), they alleged that his detention at the police station between 2 and 3 May 2010 had been unlawful and arbitrary. Violation of Article 2 (right to life) – in respect of Marat Satybalov: Violation of Article 2 (investigation): Violation of Article 3 (torture) – in respect of Marat Satybalov Violation of Article 5. Just satisfaction: EUR 10,000 to Luiza Satybalova and EUR 8,000 to Taisa Nartayeva (pecuniary damage), EUR 80,000 to the applicants jointly (non-pecuniary damage) and EUR 2,500 jointly (costs and expenses)

R v Hilton (Respondent) (Northern Ireland)

On 22 September 2015 Bernadette Hilton was convicted of three offences contrary to section 105A of the Social Security Administration (Northern Ireland) Act 1972. Following conviction, Ms Hilton was committed to the Crown Court and that court was asked to make a confiscation order under section 156 of the Proceeds of Crime Act 2002. The application was heard by His Honour Judge Miller QC on 20 October 2016. He made a confiscation order in respect of £10,263.50, which was the equivalent of Ms Hilton's half share of her matrimonial home. Ms Hilton appealed against the order.

The Court of Appeal decided that Section 160A(2) of the Proceeds of Crime Act 2002 required that, at the time of making a confiscation order, the Crown Court must give to anyone who is thought to hold an interest in the property an opportunity to make representations on whether a confiscation order should be made and, if so, in what amount. The failure to give Ms Hilton's estranged partner and the building society the chance to make representations was "fatal to the decision of the judge" and the confiscation order was thus invalid. The Director of Public Prosecution appeals to this Court.

The Court of Appeal certified the following points of law of general public importance: "1. Where property is held by the defendant and another person, in what circumstances is the court making a confiscation order required by section 160A of the Proceeds of Crime Act 2002, in determining the available amount, to give that other person reasonable opportunity to make representations to it at the time the order is made? 2. If section 160A does so require, does a failure to give that other such an opportunity render the confiscation order invalid?"

Judgment: The Supreme Court unanimously allows the appeal. It holds that the questions certified do not arise on the present appeal because a determination under s. 160A was not made. Lord Kerr gives the judgment. The Proceeds of Crime Act 2002 provides for two stages to confiscation proceedings: the first is the making of the confiscation order itself and the second the order securing its enforcement. The first stage is dealt with in sections 156 and 163B and envisages that the making of a confiscation order should be straightforward, indeed quasi-automatic [8]. Section 160A of the Act provides that (1) Where it appears to a court making a confiscation order that (a) there is property held by the defendant that is likely to be realised or otherwise used to satisfy the order, and (b) a person other than the defendant holds, or may hold, an interest in the property, the court may, if it thinks it appropriate to do so, determine the extent (at the time the confiscation order is made) of the defendant's interest in the property. (2) The court must not exercise the power conferred by subsection (1) unless it gives to anyone who the court thinks is or may be a person holding an interest in the property a reasonable opportunity to make representations to it.

A determination under this section is conclusive in relation to any question as to the extent of the defendant's interest in the property that arises in connection with - (a) the realisation of the property, or the transfer of an interest in the property, with a view to satisfying the confiscation order, or (b) any action or proceedings taken for the purposes of any such realisation or transfer.

The critical question is whether, at the stage of making the order, the Crown Court judge made a determination of the extent of Ms Hilton's interest in the jointly owned property under section 160A. If made on foot of such a determination, the confiscation order becomes immutable unless there is an appeal [11-14]. A determination under s. 160A therefore effectively extinguishes the opportunity for third parties to make later representations. On the other hand, the judge can at this stage form a view of the extent of the interest of the person in question, here Ms Hilton, without making a determination under s. 160A.

Parliament intended this to be the case, as is evident from the provisions relating to the second, enforcement stage of a confiscation order [14]. In particular, s. 199(8) provides that a court must not order enforcement unless it gives persons holding interests in the property a reasonable opportunity to make representations. This section is important because it was retained in the legislation despite the introduction of section 160A. Furthermore, subsection 8B to s. 199 proceeds on the premise that s. 160A and s. 199 continue, in relevant circumstances, to co-exist [16-18]. Reading these sections together, it is clear that s. 160A does not purport to occupy the field. The opportunity to make representations at the enforcement stage continues to apply either because a determination under s. 160A has not been made or because the conditions in s. 199(8B) are met. The fundamental point is that, at the enforcement stage, third party rights may continue to be considered [18].

Essentially, therefore, where the court makes a s. 160A determination, third parties must be afforded the chance to make representations at the stage of making the confiscation order, as provided for by s. 160A(2). But where the court does not make a s. 160A determination and rather simply forms a view, at this first stage of the process, of the extent of the interest of the person in question, it will have to give third parties the chance to make representations at the enforcement stage. Where the court does not make a s. 160A determination, therefore, it is not incumbent upon it to give third parties the chance to make representations at the first stage of the process (the making of the order) because they will have the chance to do so at the second stage (enforcement) before the confiscation order is enforced.

The Court of Appeal's judgment is premised on the proposition that on every occasion that third party interests arise, the court must proceed under section 160A. This is contrary to the conclusion reached that the introduction of s. 160A has not modified the opportunity available to the Crown Court to make a confiscation order other than under s. 160A. The consequence of the Court of Appeal's approach would involve a collapse of the traditional two stages – the making of an order and the enforcement of it – into one hearing with all the panoply of investigation of the merits of the rights of third parties, such as a former partner and the building society in the present appeal. This would inevitably introduce a cumbersome procedure to the making of the confiscation order [23]. This was not intended. The making of a confiscation order would no longer be straightforward, much less quasi-automatic (see para [8]) if s. 160A had to be applied in all its rigour in every case where third-party interests arose [24]. The enactment of the section was designed to streamline the system, not to complicate it. S. 160A simply introduces a procedure allowing third parties to make representations at the confiscation stage, but only where the Crown Court makes a determination under s. 160A [27]. No determination under s. 160A was made here [28]. For this reason, the answer to the questions certified is that they do not arise on the present appeal. Appeal is therefore allowed [29]. Refs in square brackets are to paras in the judgment.

Move to Ban the '50 Shades of Grey' Defence

The government has published a new clause to the Domestic Abuse Bill removing the so-called 'rough sex defence' to murder. The amendment rules out that a victim may have consented to 'serious harm for sexual gratification', a defence that has been used by 60 defendants since 1972. Campaigners argue that its use has also increased tenfold in the last 20 years. The earliest known use of the defence was in the case of Carole Califano who was murdered by her abusive partner. Since then at least 45% of defendants who have used this defence have received a lesser charge, a lighter sentence or have been acquitted, with many having a murder charge reduced to voluntary manslaughter. Campaign group We Can't Consent to This have found that in seven of the 17 cases in the last five years where this defence was argued at trial, it was successful, with the defendant being found not guilty or receiving a charge for manslaughter. The group has also collated the stories of 115 people, all but one of whom were women, who attended court having been assaulted and it was claimed by the defence that they had consented to their injuries.

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.