

10th HART ANNUAL JUDICIAL REVIEW CONFERENCE

9 December 2016, Cavendish Conference Centre

TERRORISM AND SURVEILLANCE

TERRORISM: ENGLAND

R (Miranda) v SSHD [2016] EWCA Civ 6 [2016] 1 WLR 1505

(see D. Anderson, *The Terrorism Acts in 2015*, December 2016, 4.1-4.9)

Beqhal v Director of Public Prosecutions [2015] UKSC 49, [2016] AC 88

(see D. Anderson, *The Terrorism Acts in 2014*, September 2015, 6.34-6.39; *The Terrorism Acts in 2015*, December 2016, 7.21-7.31)

Gill and ors v SSHD (International Sikh Youth Federation, Proscribed Organisations Appeal Commission), appeal withdrawn after deproscription, December 2015

(see D. Anderson, *The Terrorism Acts in 2015*, December 2016, 5.13-5.26)

TERRORISM: NORTHERN IRELAND

Marvin Canning [2016] NIQB 73 (oversight of disclosure regime in terrorist cases)

Elizabeth Morrison [2016] NIQB 72 (On the Runs scheme and discrimination)

Colin Duffy [2016] NIQB 77 (failure to provide assurances re legal consultation)

Dee Fennell [2016] NIQB 78 (DPP's consent to prosecution)

Terence McCafferty [2016] NIQB 47 (revocation of licence; closed material proceedings)

Gerard Flannigan [2016] NIQB 27 (strip search of separated republican prisoner)

Ciaran Cunningham [2016] NIQB 25 (closed material proceedings vs PII)

Conal Corbitt [2016] NIQB 23 (failure to provide assurances re future use of voice recording)

Higgins and Lee [2016] NQB 81 (closed material proceedings)

TERRORISM: STRASBOURG

Application 32968/11 Sabure Malik v UK, struck out of the list 30 June 2016

Application 52101/11 Sher v UK, Fourth Section 20 October 2015

Application 62498/11 RE v UK, Fourth Section 27 October 2015

Applications 61474 &c McKevitt v Campbell 6 September 2016 (First Section)

Applications 50541/08 &c Ibrahim v UK, Grand Chamber 13 September 2016

(see D. Anderson, *The Terrorism Acts in 2015*, December 2016, 8.38-8.47)

SURVEILLANCE

SSHD v [David Davis and] Tom Watson [2015] EWCA 1185
Case C-698/15, judgment scheduled for 21 December 2016

Investigatory Powers Act 2016 (Royal Assent 29 November 2016): judicial approval of warrants on

Greennet UKIPTrib/2016/14 85-CH
R (Privacy International) v IPT, FCO and GCHQ (heard 2 Nov 2016, Leveson P and Leggatt J)

Human Rights Watch UKIPTrib/2016/15 165-CH
Privacy International UKIPTrib/2016/15 110-CH

(see D. Anderson, *Report of the Bulk Powers Review* (August 2016) 3.39-3.42)

EXTREMISM / PREVENT

Shakeel Begg v BBC [2016] EWHC 2688 (QB)

R (Salman Butt) v SSHD, heard 6-8 December 2016

DAVID ANDERSON Q.C.
Brick Court Chambers

2 December 2016

INVESTIGATORY POWERS ACT 2016 s 24

Approval of warrants by Judicial Commissioners

24 Approval of warrants by Judicial Commissioners

(1) In deciding whether to approve a person's decision to issue a warrant under this Chapter, a Judicial Commissioner **must review the person's conclusions** as to the following matters—

(a) whether the warrant is **necessary** on relevant grounds (see subsection (3)), and

(b) whether the conduct that would be authorised by the warrant is **proportionate** to what is sought to be achieved by that conduct.

(2) In doing so, the Judicial Commissioner must—

(a) **apply the same principles as would be applied by a court on an application for judicial review**, and

(b) consider the matters referred to in subsection (1) **with a sufficient degree of care as to ensure that the Judicial Commissioner complies with the duties imposed by section 2** (general duties in relation to privacy).

...

(4) Where a Judicial Commissioner refuses to approve a person's decision to issue a warrant under this Chapter, the Judicial Commissioner must give the person **written reasons for the refusal**.

(5) Where a Judicial Commissioner, other than the Investigatory Powers Commissioner, refuses to approve a person's decision to issue a warrant under this Chapter, the person **may ask the Investigatory Powers Commissioner** to decide whether to approve the decision to issue the warrant.

2 General duties in relation to privacy

...

(2) The public authority must have regard to—

- (a) **whether what is sought to be achieved by the warrant, authorisation or notice could reasonably be achieved by other less intrusive means,**
- (b) whether the level of protection to be applied in relation to any obtaining of information by virtue of the warrant, authorisation or notice is higher because of the **particular sensitivity of that information,**
- (c) the public interest in the **integrity and security of telecommunication systems** and postal services, and
- (d) any other aspects of the **public interest in the protection of privacy.**

(3) The duties under subsection (2)—

- (a) apply so far as they are relevant in the particular context, and
- (b) are subject to the need to have regard to other considerations that are also relevant in that context.

(4) The other considerations may, in particular, include—

- (a) the interests of national security or of the economic well-being of the United Kingdom,
- (b) the public interest in preventing or detecting serious crime,
- (c) other considerations which are relevant to—
 - (i) whether the conduct authorised or required by the warrant, authorisation or notice is proportionate, or
 - (ii) whether it is necessary to act for a purpose provided for by this Act,
- (d) the requirements of the Human Rights Act 1998, and
- (e) other requirements of public law.

(5) For the purposes of subsection (2)(b), examples of sensitive information include—

- (a) items subject to legal privilege,
- (b) any information identifying or confirming a source of journalistic information, and
- (c) relevant confidential information within the meaning given by paragraph 2(4) of Schedule 7 (certain information held in confidence and consisting of personal records, journalistic material or communications between Members of Parliament and their constituents).

(6) In this section “public authority” includes the relevant judicial authority (within the meaning of section 75) where the relevant judicial authority is deciding whether to approve under that section an authorisation under Part 3.