

Criminal Law News

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Contents -

Issue 35 September 2011

Raoul Moat's inquest

Sexual assault and breach of trust

Financing of terrorism and the non-profit sector

Right to protest: two sides to every story

Solicitors Regulatory Authority is not a government agency

**Gleason coal pit in South Wales - site of recent four deaths:
health and safety compliance**

The 1981 riots

Raoul Moat's Inquest

Sally Ramage

Raoul Moat's inquest will be heard on Monday 6 September 2011. It will be an inquest consisting of a coroner and a jury. The jury will decide whether police taser gun rounds fired from experimental weapons may have caused the former nightclub doorman's death. Mr Raoul Moat, aged 37 years old at time of death, died in 2010 after shooting and killing his estranged partner's boyfriend and severely injuring an innocent policeman, PC David Rathband sitting in his police car on a roadside. He had also fired at his estranged partner, Ms Samantha Stobbart, aged just 22 years old, and injured her in Newcastle-upon-Tyne, England, UK. The inquest is being held at Newcastle Crown Court. A taser gun had been used on him.

Sexual assault and breach of trust

Sally Ramage

In South Carolina, United States, the local Dale Richardson of Free Will Baptist Church was arrested and charged in August 2011 with kidnapping and first-degree criminal sexual assault. He was suspected of kidnapping four women and raping three of them. However, Pastor Richardson is well-liked by church members and the community who were surprised when the prosecution asked that he be denied bond and held in custody until trial. It is alleged that the pastor raped the women at gunpoint after he had offered them a lift in his car. The penalty on conviction of such serious charges is very severe and can be a maximum of 30 years for each rape if convicted. The charges against him are of rape, kidnapping and first-degree criminal sexual assault. In South Carolina the definition of sexual assault in criminal law originally encompassed crimes that fell short of rape but nonetheless involved non-consensual sexual contact but the modern charge of sexual assault now includes non-consensual sexual contact between people of all ages and all genders, and includes assaults within a marriage.

Financing of terrorism and the non-profit sector

Sally Ramage

Since December 2004, Member States must ensure that appropriate national structures are in place to allow the necessary co-ordination and exchange of information between intelligence/security services, and competent government bodies, public prosecutors and other law enforcement bodies, financial supervisors and private sector financial institutions. The Financial Action Task Force (FATF) had been established in Paris in 1989. Since 2001, the FATF has implemented international standards to combat terrorist financing. The 2004 EU Counter Terrorist Financing Strategy highlighted the importance of effective coordination and information exchange among Ministries, law enforcement services and other agencies engaged at national level in the fight against the financing of terrorism.

Right to protest: two sides to every story

Sally Ramage

Security planning for the Group of 20 economic summit on 1st April 2009, in London, at the Excel Centre, was a massive drain on the Metropolitan Police's finances¹. The Commander of the Met had to make an educated guess at how many police officers would be needed² for thousands of protesters³ and perhaps, how many arrests can be safely and fairly processed in courts? The

¹ Operation Glencoe, estimated to have cost over £7.5 million.

² In fact, 5,500 Metropolitan police officers were deployed on 1st April and 2,800 on the 2nd April 2009.

³ There were 10 separate protests over 7 sites in London, including the Financial Fools demonstration; the Fossil Fools demonstration; Climate Camp; and the Stop the War march and rally.

police plans were highly secretive and in flux - as intelligence and other factors
....

Solicitors Regulatory Authority is not a government agency

Sally Ramage

The Solicitors Regulatory Authority is not a government agency. Therefore caution is required in the bestowing of ABS on the SRA and consideration of the potential motive of generating money is necessary. It is amazing that the lawyers of the land representing the Law Society, having been consulted by the government during and before the passing of the Legal Services Act 2007, did not foresee that the SRA would need to have government authority (much like Group 4 –....

The UK Legal Aid reform cannot ‘*deter people from doing business in the UK*’

Sally Ramage

Some have said that the UK Legal Aid reform will ‘*deter people from doing business in the UK*’. ⁴ This is a red herring. The Coroners and Justice Act 2009 contains provisions in relation to Legal Aid. Part 6 contains provisions about civil and criminal legal aid, including provision for pilot schemes in relation to civil legal aid, and provisions about the enforcement of contribution orders made in cases where criminal legal aid is granted. Part 7 introduces a new civil recovery scheme through which courts can order offenders to pay amounts in respect of assets or other benefits derived by them from the exploitation of accounts about their crimes, for example, by selling their memoirs, or receiving payments for public speaking or media interviews.

⁴ Catherine Baski, ‘Warning over business deterrent’, Law Society Gazette, 8 September 2011, page2.

In December 2009 three major fraud trials in Northern Ireland had to be adjourned after barristers in the cases handed back their files in protest over payments. The three cases involved 12 defendants. All three cases had been set for trial at Belfast and Newry Crown Courts but lawyers withdrew from the cases when barristers involved in very high-cost cases (it is said that they received £900.00 per hour) were told by the Legal Services Commission (LSC) they would not receive payment for at least two years. It is a fact that a huge portion of the UK's total Legal Aid budget went to defending just a few serious fraud cases. It was a gold mine for fraud lawyers until changes were implemented.

Surely every British lawyer knows that a foreign person or business is not eligible for UK Legal Aid for civil or criminal matters.⁵

Gleision coal pit in South Wales - site of recent four deaths: health and safety compliance

Sally Ramage

Today's coal production companies in Britain are UK Coal; E.ON; RWE; Scottish Power and Scottish and Southern Energy. Coal makes up a quarter of total energy consumption and generates 40% of the world's electricity and despite modern fears about carbon pollution, coal in the UK is 'flavour of the month' in choice of energy production, being produced at a lower cost than gas. Also, the UK still has coal reserves, as does the United States, Australia and South Africa, among other countries such as China and India where new carbon-heavy power stations are being rapidly built to generate electricity. Nuclear power is controversial. Coal production does cause carbon emissions, although Britain trades its way out of the problem at present.

⁵ http://www.legalservices.gov.uk/criminal/getting_legal_aid/full_means_test.asp, accessed 30 June 2010. A defendant qualifies for legal aid if they have an annual income of less than £3,398.

New coal mines planned

Britain's coal industry plans to use carbon capture and storage (CCS) – a technology which would allow 90% of emissions or more to be captured and stored underground, although CCS is an expensive and unproven process. E.ON plans to replace one of its old, coal-fired power stations with a modern one using the latest available coal combustion technology. The new power station will be 20% more efficient than the current power station. Living in a democracy has its disadvantages as activists clamour for coal pits to be closed and lobby for new coal pits to be rejected. Care must be taken that the accidental deaths of these four miners are not hijacked by activists to rally for the pit closure. Of course there will be a proper inquest at which a coroner will pronounce whether the deaths were accidental, negligent or natural.

Britain's heavy import of coal continues

British coal production has traditionally been a cheap power source; a fuel for electricity generation with a constancy of supply, unlike solar or wind power or nuclear plants which have to be kept running continuously. Nevertheless, Britain currently imports 73% of the coal it burns, almost half of it from Russia. This puts Britain in a vulnerable position and competitively disadvantaged.

The future of coal production

An important study published by the Massachusetts Institute of Technology, *The Future of Coal* recommended the continuation of coal production for usable energy at a cost of between £0.52 to 1.04 per million British thermal units (MMBTU) compared to gas production which cost twelve times this. The study estimates global coal reserves to be 909 billion tonnes (quoting the *BP Statistical 2007 Review of World Energy* and estimates that there is enough coal in the world to last for 150 more years. Police had named the four dead miners as Phillip Hill, aged 45; Charles Breslin, aged 62; David Powell, aged 50; and Garry Jenkins, aged 39, all from the Swansea valley in South Wales. It is with great regret that news that, of the seven men who were working this particular coal ledge, these four coal miners died at Gleision coal pit in South Wales, Care is to be taken that no knee-jerk reaction to the tragedy in 2011 will cause Gleision coal pit to be closed because Britain's electricity generators invested in renewable energy sources such as wind, wave and tidal or biomass, generated a mere 5% of Britain's electricity consumption from alternative sources and expects to generate 15% of energy and around 30% of electricity from alternate sources by 2020, thirteen years into the future.

British small collieries: health and safety non-compliance

Small collieries such as the Gleision pit where the four miners died on 15 September 2011 may not be operating under strict health and safety compliance procedures because their location is remote. The National Union of Mineworkers had harboured fears that small, privately-controlled coal mines, employing less than 10 persons at a time, operate largely by breaching health and safety rules in contrast to the five large mines which employ hundreds of workers.

Corporate manslaughter

Although the deaths of the four miners at the Gleision pit is to be deeply regretted, it is very fortunate that one miner has survived because, after he recovers, he will be able to give evidence of the circumstances that led to his colleagues' deaths on 15 September 2011. The owners of Gleision pit may be guilty of the offence of corporate manslaughter if the way in which the pit was managed caused these four men's deaths and amounted to a gross breach of a relevant duty of care owed by the Gleision pit owners to the miners. It is usually small companies which have been caught committing homicide offences (as in *HM Coroner for East Kent, ex parte Spooner* [1989] 88 Cr App Rep 10, DC; *P & O European Ferries (Dover) Ltd* [1991] 93 Cr App Rep 71, Crown Court; *Attorney-General's Reference (No. 2 of 1999)* [2000] QB 796; *Tamlin v Hannaford* [1950] 1 KB 18, CA; and *Lord Advocate v Dumbarton District Council* [1990] 2 AC 580, HL).

Employees/directors of Gleision colliery in South Wales

However, it appears that the miners who worked in Gleision Colliery owned the pit since 1993, before which time it had lain derelict for many years. It has been reported that the miners' bodies were found close together, one on the exit side of the blockage and the other three in the area where they had been working. There are numerous tunnels and old workings which all potentially have air pockets. They are alleged to be familiar with the mine layout and would know where to go and wait in a situation such as this. The four miners became trapped 300ft underground after thousands of gallons of water cascaded into the tunnel early on the morning of the 16 September 2011.

The Inner City Riots of 1981

Leonard Jason-Lloyd

No study of civil disorder in modern times would be complete without reference to the inner city disturbances of 1981. During the spring and summer of that year, many towns and cities were subjected to serious disorder which stretched police resources to the limit, and sometimes beyond. This spate of mass violence began in Brixton, south London, in April 1981, and then spread to several other parts of the capital. These included Peckham and additional places in south east London, as well as other London boroughs in varying degrees. This was accompanied by a wave of rioting in many other parts of England, including the West Midlands, Manchester, Merseyside, Leeds, and several places in the East Midlands.

The Bristol Riots

Although the year 1981 constitutes the main focus of this work, the events of the previous year could usefully be mentioned at this stage within the context of serious disorder. The riot that erupted in the St. Pauls district of Bristol in April 1980 could be regarded as a warning shot, especially when examined in the light of further disturbances that swiftly followed elsewhere in Bristol. The causes of the riot in St. Pauls had a number of characteristics in common with the serious disorder that followed a year later in other places. These included a build-up of resentment and discontent, ignited by a single incident. Another part of Bristol that experienced serious disorder was Southmead, described as a white working-class council estate, that erupted very quickly after the St. Pauls riot. Compared to the latter, the violence at Southmead received less media attention even though it was believed to have been more problematic. There are conflicting opinions as to whether the disturbances on that estate were copy cat incidents or a general reaction to social problems associated with that area.

The 1981 Disturbances

The Brixton riots that occurred in April 1981 were the first of several that flared up in that same London borough. In the weeks preceding this, the police had carried out a strategy of saturation policing in that area in response to many complaints regarding its high level of street crime. This police strategy was called "Operation Swamp". One consequence of this strategy was that large numbers of particularly black youths were being stopped and searched in the

street, sometimes on more than one occasion in the same night. This led to significant tension between certain sections of the local community and the police. Brixton itself is an inner-city area with many of the problems and tensions associated with such places. In effect, the situation prior to the riots was a powder keg waiting to explode. The spark which caused the explosion was an incident outside a club where the police endeavoured to assist an injured man in the street. There are various accounts as to exactly what happened, but the most common explanation is that a number of persons objected to this police intervention and an altercation followed. This escalated to the point that police reinforcements were called, and eventually the numbers on both sides grew larger. A full-scale riot ensued where missiles of different kinds were aimed at the police, including petrol bombs. The police were ill prepared for this onslaught – their only real protection consisted of riot shields. Buildings and motor vehicles were set alight, and looting occurred on a widespread level as well as attacks on members of the public. Police casualties were high but there were accusations that they were ineffective in controlling the disorder. At the same time, others accused the police of being heavy handed. Similar events occurred in several other places in London as well as other parts of this country as stated above. For many weeks there was near panic due to the widespread nature of these disturbances. The police managed to contain much of the disorder in some areas, but there were serious concerns as to how long this could be maintained. According to some media headlines, the public were increasingly demanding the deployment of troops to reinforce the police. Those who followed the news reports covering the disturbances in London and other places between August 6 to 10 this year, may feel a sense of *deja vu* at this stage!

The Scarman Report

A matter of days after the end of the first riots in Brixton, the government commissioned Lord Scarman to carry out an enquiry into the causes of these disturbances. His findings, which were published in November 1981, identified strong resentment by certain members of the local community on a number of issues. The first was “Operation Swamp” where the police were empowered to stop, search and arrest anyone suspected of frequenting or loitering in a public place with intent to commit an arrestable offence. This power stemmed from the Vagrancy Act 1824, ss.4 and 6. There was also great resentment over the way that this power was often exercised. This included accusations of heavy-handed and generally rude treatment by officers conducting these searches. Another cause of resentment was attributable to high unemployment, poor housing and other tensions associated with this area. It has been subscribed that these were problems associated with racial disadvantage and inner-city decline. It is

believed that the Scarman Report endeavoured to establish ways in which policing could be enforced without provoking further outbreaks of disorder. It recommended the recruitment of more black police officers and greater emphasis on community policing, as well as better police training and more effective methods of riot control where necessary. Certain aspects of this report had a significant impact on the Police and Criminal Evidence Act 1984 ('PACE'). Among other things, this included the application of procedures under the Codes of Practice with regard to police stop and search powers.

The Toxteth Riots

Some of the most ferocious disturbances in 1981 took place in the Toxteth area of Liverpool. This followed a similar pattern to other incidents that sparked-off full scale rioting. On this occasion the police attempted to arrest a youth suspected of stealing a motorcycle. Several nights of rioting ensued during which missiles, including petrol bombs, were used to attack the police. Looting, arson and other acts of criminal damage occurred over several nights; there were also continued attacks on the police, and roads were set afire when oil was spread over them and ignited with petrol. The police endeavoured to cordon off the Toxteth area but were met with extreme violence when the rioters used stolen vehicles to smash through police lines. These included mechanical diggers and a bulldozer! The police could not match such ferocity, and by the evening of July 6, the disorder reached its peak. Examples of the danger caused during these disturbances included widespread arson, exacerbated by the fire service being prevented from attending the fires, and nearly 100 elderly residents of a nearby care home, having to be evacuated. The chief constable of Merseyside was therefore compelled to use CS gas to control the disorder. Although CS gas is widely issued to police officers for use against violent individuals, this is in the form of a spray. CS gas as used in riot control is delivered in such a way as to cover a fairly wide area and thus disperse the rioters. This strategy worked on this occasion as the rioters dispersed quickly. No other stand-off riot control device was available to British police forces at the time, and so far this was the only occasion that CS gas was used to control a riot on the British mainland. The recent debates on the riots that occurred between 6th to the 10th August 2011, have often referred to the need for plastic bullets to control such disorder and even water cannon. But little or no mention seems to have been made regarding the use of CS gas. This may be due to the disadvantages associated with its use, such as the inability to completely control its direction under certain wind conditions. Another problem is that the gas is liable to enter the homes of local residents who may be taking refuge from the riotous activity.

Conclusion

A brief examination of modern history regarding serious disorder in Britain, discloses a disturbing picture of a gradual escalation of mass violence which the police have often had great difficulty in controlling. If this trend persists, the future direction of public order strategies may have to change significantly. Precisely what direction this will take is a matter for speculation, although one wonders how long it will be before we see for ourselves.

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