

DPP UNDER SCRUTINY ON UNLAWFUL KILLING OF BLACK PRISONER

On Wednesday 17 May 2000 the Lord Chief Justice Lord Bingham will give judgement on an application for judicial review of the decision of the Director of Public Prosecutions (DPP) not to commence any criminal proceedings against any of the prison officers involved in the restraint-related death of Alton Manning at Blakenhurst Prison on 8 December 1995.

The scrutiny of the court at the hearing of the application – which took place on 3-4 May 2000 – focused upon the quality and adequacy of the explanation which the DPP was compelled to provide in respect of the decision following the grant of permission to Mr Manning's family to proceed with their application for judicial review of the decision in October 1999. This was the first opportunity for the court to examine the DPP's handling of a death in custody since the quality and management of his decision making process in such cases attracted severe criticism in the Butler Report published in August 1999 and the Report of the European Committee for the Prevention of Torture (CPT) published in January 2000.

Alton Manning was a black remand prisoner at the privately run Blakenhurst Prison when he died while being carried away from a cell following a struggle involving six to seven prison officers. His death was the subject of an inquest held in Kidderminster before a jury which returned a unanimous verdict of unlawful killing in March 1998. On the evidence they had heard, and on the directions they had received from the Coroner, such a verdict required the jury to be satisfied beyond reasonable doubt that Mr Manning had died of asphyxia as a result of a neckhold applied by prison officers in the course of an unlawful and dangerous restraint, and that the officers involved in the restraint lied on oath in denying the application of any such neckhold in order to avoid responsibility. The Coroner referred the case to the DPP, having concluded that 'the death was likely to be due to an offence' and that the prison officer or officers concerned might be charged with that offence'.

In February 1999 the DPP announced his decision that none of the officers was to be prosecuted for any offence. The only explanation he was willing to offer to Mr Manning's family was that the available evidence was insufficient in his view to justify any charges. He declined to elaborate, other than to suggest that the medical evidence was too imprecise as to the cause of death, and the factual evidence disclosed too many inconsistencies, 'to say by what act or acts or by whom the asphyxiation was caused'.

Mr Manning's family queried the DPP's decision, through correspondence and then through their application for judicial review. They sought an adequate and intelligible explanation that might enable them to make some sense of the decision, pointing out it did not appear to sit comfortably with their understanding of the evidence that emerged in the course of the inquest, the verdict of the inquest jury upon that evidence, or the assessment of that evidence by the Coroner in his referral to the DPP.

The DPP was reluctant to provide any meaningful elaboration upon his initial explanation until the preliminary hearing of the application for judicial review in September 1999, when he suggested

that the words of that initial explanation were ‘badly drafted’. In fact, he had not meant to suggest any real difficulty with the medical evidence at all. He was prepared to accept after all that there was sufficient evidence to establish pressure on the neck as at least a contributory cause of death and to identify the officer responsible for that pressure. His difficulty, he now claims, lies in the identification of the precise act of that officer which resulted in the fatal pressure to the neck, and the possibility, he suggests, that such pressure could have been applied accidentally or even in self defence.

Mr Manning’s family have pointed out that the thesis of an accidental or defensive application of the fatal pressure to the neck – on which the DPP’s decision is now said to be premised – is simply untenable on the available factual evidence. According to the account given by the prison officers themselves at the inquest, one held Mr Manning’s head carefully in a Home Office approved protective hold designed to avoid injury to the head or face while four others held his limbs in painful but secure control and restraint holds as he was carried away from the cell, precluding any application of pressure to the neck. Their accounts were contradicted by five unconnected prisoners who described seeing the application of a neckhold by a prison officer on Mr Manning after he had been brought under control and restraint by four other officers at his limbs. The neckhold described by the prisoners is consistent with the medical findings on the uncontested pathological evidence. The prison officers themselves accepted they would not have approved of the application of such a neckhold in the circumstances they described, because they knew its use would have been potentially lethal, improper and not permissible under prison regulations and training.

Mr Manning’s family have also pointed to the background against which this challenge takes place – the conduct of the initial West Mercia Police investigation into the death, involving investigating officers who clearly did not consider themselves to be engaged in a criminal investigation into a potential homicide at all, which is the subject of a formal complaint currently under investigation by Staffordshire Police and the Police Complaints Authority; the DPP’s poor record on the handling of deaths in custody, as highlighted by previous successful challenges to decisions not to prosecute in such cases; and the resulting inquiry chaired by HH Gerald Butler QC which culminated in his severely critical report published in August 1999 exposing serious and significant failings within the DPP’s decision making process at an individual and management level.

Mr Manning’s family have pointed, finally, to the advice of the European Committee for the Prevention of Torture (CPT), applying the principles recognised in the case law of the European Convention of Human Rights, whereby the state has a particular responsibility to ensure that the right to life of those in its custody is respected by its functionaries, and that, when there is sufficient evidence, the vindication of the right to life requires prosecution of those responsible for a violation of that right or a cogent explanation for a decision not to prosecute.

It is trite, of course, to say that when members of the public die or make serious allegations of ill treatment in custody, the reaction of the authorities raises very serious questions about the protection of human rights. The right to life, like the right not to be subjected to ill treatment, cannot be adequately protected by the mere existence of criminal sanctions, particularly when the alleged wrong is at the hands of those in authority such as prison officers. These rights demand practical and effective safeguards against abuse, requiring fair and impartial investigation of deaths and allegations of ill treatment in custody, leading to criminal prosecution where there is sufficient evidence to justify such proceedings, and effective access to the investigatory and prosecutorial procedure, involving greater openness and transparency whereby justice may be seen to be done.

In Mr Manning's case, the extent to which the High Court proves willing to test the explanation provided by the DPP for his decision will provide a measure, not only of the extent to which it is willing to encourage transparency within the criminal justice system in the interests of public confidence, but also the extent to which the right to life of a black prisoner in the custody of the state is seen to be vindicated in this country today.