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Update on key developments in criminal law in the UK

1. Riots

The Criminal Justice System in England has been put under a huge amount of pressure as a result of the four nights of riots, looting, burglaries and violence in London and other cities in August. This required a rapid response from the police and the court system to arrest, charge and process the suspects. As at 1 September it was reported that over 3,000 individuals were arrested and over 1,500 suspects charged in connection with the riots. Defendants have been charged with a wide range of offences including burglary, Public Order Act 1986 offences, assault on police, robbery, arson, possession of offensive weapon, handling stolen goods and criminal damage. By the end of the third night of violence it was reported that every police cell in London was full and all police annual leave had been cancelled with the police suspending routine policing operations. By the fourth night 16,000 police officers were deployed on the streets of London in an attempt to contain any further incidents, with a significant police presence in other cities including Manchester and Birmingham.

Magistrates Courts in London, Manchester and Solihull sat through the nights and during the weekends following the violence in order to process the unprecedented number of suspects. Many courts operated on a 24 hour rolling basis with Magistrates, lawyers and court staff working in shifts. For those cases funded by legal aid the Legal Services Commission agreed an enhanced rate for representation during anti-social hours.

The Courts have taken a strict approach to sentencing with many cases being committed from the Magistrates Court to the Crown Court in circumstances where the Magistrates considered their powers of sentencing (up to 6 months imprisonment per offence, with a cumulative total of 12 months) were insufficient. Lay Magistrates were advised to consider if cases should be sent to the Crown Court where tougher sentences may be imposed. In addition many defendants have been remanded into custody.

In light of the expedient manner in which cases were heard before the courts and disposed of, and the potentially disproportionate and reactive sentences being imposed, it is anticipated that there will be a significant number of appeals to the Crown Court. For example one offender, a student of good character, was sentenced to 6 months imprisonment for stealing a bottle of water worth £3.50.

In addition it is interesting to note that there has been a relatively high percentage of not guilty pleas entered by those charged, which could be indicative of the evidence being weak in some cases. This is perhaps unsurprising given the evidential difficulties that could arise, with potential identification issues and the higher risk of administrative errors as a result of the large number of suspects involved. Furthermore there is a danger that as a result of the high volume of cases and time constraints, the Crown Prosecution Service (CPS) lawyers were hurried into making charge decisions in the absence of sufficient evidence, rather than bailing suspects for further enquiries.

2. New legislation

i. Bribery Act 2010

The much anticipated Bribery Act 2010 was brought into force in England and Wales on 1 July 2011. Whilst the new offences under this Act are very widely drawn, any prosecution under this Act requires the consent of either the Director of Public Prosecutions (the DPP) or the Director of the Serious Fraud Office (the SFO).

The offences can be summarised as follows:

Active bribery: Section 1, Bribery Act 2010
Section 1 creates the offence of bribery when a person offers, gives or promises to give a "financial or other advantage" to another individual in exchange for "improperly" performing a "relevant function or activity". The person must intend that the advantage induces a person to improperly perform the relevant function or activity, or that the acceptance itself constitutes an improper performance.

Passive bribery: Section 2, Bribery Act 2010
This section creates the offence of 'being bribed.' This is defined as requesting, accepting or agreeing to accept such an advantage, in exchange for improperly performing such a function or activity.

Bribing public officials: Section 6, Bribery Act 2010
Section 6 creates a specific offence of bribing public officials.

The 'corporate offence': Section 7, Bribery Act 2010
Section 7 creates a vicarious criminal liability on a commercial organisation for the acts of associated persons unless they can show that they had in place adequate procedures designed to prevent those persons (or legal persons) breaching the statute. The Ministry of Justice, the DPP and the Director of the SFO have all produced detailed guidance on such procedures. The offences apply to any body incorporated in the UK or which carries on a business in any part of the UK. The offences do not have to have been committed in the UK in order for this Act to take effect.

Sections 1, 2 and 6 create either way offences carrying a maximum sentence of 10 years imprisonment on indictment. The section 7 offence is indictable only with a maximum sentence of an unlimited fine.

It has recently been reported that the first person to be charged under this Act will be a Magistrates Court Clerk who allegedly accepted £500 for fixing a motoring offence. The Defendant, who has already been charged with perverting the course of justice and misconduct in a public office relating to other alleged misconduct, is due to appear before a Crown Court on 14 October in connection with an allegation under section 2 of the Bribery Act. It is alleged by the Crown that on 1 August 2011 the Defendant promised an individual summonsed for a motoring offence that he could influence the course of criminal proceedings in exchange for £500.

ii. Police (Detention and Bail) Act 2011

This Act received Royal Assent on 12 July 2011. The Bill was rushed through Parliament in response to a High Court judgement in the case of *R. (Chief Constable of Greater Manchester Police) v. City of Salford Magistrates' Court and Hookway*. This decision had

effectively overruled 25 years of policing practice in England and Wales, and caused chaos and confusion amongst police officers.

In Hookway the Court had found that in refusing to authorise an extension of the detention period of a suspect who had been arrested for murder and later released on bail, any period of detention (to include any time on police bail) must be limited to a period of 96 hours following the time of arrival at the police station. The Court held that there was no section in the Police and Criminal Evidence Act 1984 ('PACE'), the Act which governs the powers of police in England and Wales, to allow the clock to stop running if the suspect is released on bail. The Court interpreted the 'detention period' to mean a continuous period of time which cannot be interrupted when a suspect is released on bail. In Mr Hookway's case he had been on police bail for five months after which time the police had sought to extend his detention period even further.

This judgment resulted in chaos amongst the police, particularly in respect of the 80,000 suspects on police bail at the time. It had previously been the case that following arrest the detention time could be paused when the suspect was released and police investigation ongoing. Often suspects were bailed for months or years before a decision on charge was made. Following the Hookway decision officers were faced with a situation where in order to detain and question a suspect at a later date they would need to re-arrest them. Fresh guidance issued to police officers deemed that suspects could only be re-arrested in the event that 'new evidence' was present.

The Government tabled emergency legislation on 5 July 2011 in response to the High Court's decision, and the Police (Detention and Bail) Act 2011 received Royal Assent on 12 July. The Act, which purports to be retrospective, provides statutory authority for the practice adopted by the police prior to the High Court decision. Under this Act any periods of time spent by an arrested person on police bail shall not be considered when calculating the total period of time spent in police detention prior to charge.

From a European law perspective the Act raises issues in respect of Article 5(5) and Article 1, Protocol 1 of the ECHR. The retrospective effect of the Act expunges any claim for unlawful detention that could have otherwise been brought up to the time of commencement of this legislation. This retrospective effect could itself be the subject of legal challenge on the basis that it deprives individuals of their rights under the ECHR, and therefore is arguably incompatible with Article 5 and/or Article 1 Protocol 1. Such claims would need to rely on the High Court's interpretation of Part IV of PACE in the Hookway decision.

3. Extradition

i. Extradition Review

On 8 September 2010 the UK Government announced plans to review the UK's extradition arrangements. The review will focus on a number of issues in an attempt to ensure that the UK's extradition arrangements work both efficiently and in the interests of justice. The review will include consideration of the operation of the EAW, the way in which optional safeguards have been transposed into UK law, and whether Requesting States should be required to provide prima facie evidence. The Government sought responses to the consultation which were submitted on or before 31 January 2011. The Government is due to respond to this consultation in summer 2011 although as of yet there has been no indication as to when we can expect to receive this response.

ii. Extradition: recent cases

Rosiak v Poland [2011] EWHC 2127 (Admin)

This case concerned the extradition of a Polish national to Poland. He had been arrested under an EAW seeking his extradition to serve outstanding terms of imprisonment for robbery, racketeering and extortion. The appellant argued that he was a hard working man who had caused no trouble whilst in the UK, that he had already been punished for these matters. He also argued that he had suffered mental stress due to the proceedings and as a result of the recent death of his brother. He contended that he needed to wind up his financial affairs in the UK prior to returning to Poland and that, should he be extradited, he would lose touch with his family in the UK. His appeal was dismissed on the grounds that the appellant's submissions neither collectively nor individually met the high threshold for cases argued under Article 8 of the European Convention on Human Rights. Taken at their highest his arguments were found not to amount to grounds on which his extradition could be refused.

Margita Strakacova v Germany (2011) (unreported)

This appeal concerned the extradition of a Czech national to Germany to face charges of obtaining property by deception and making threats. The appellant lived in the UK with her father who was in very poor health, and she was her father's principal carer. On appeal the Appellant sought to adduce fresh evidence regarding her father's ill health and the necessity for her to care for him. She argued both their rights under Article 8 would be infringed if she were to be extradited. The Court held that whilst there was no doubt that the effect of extraditing a person on his or her family members could engage Article 8, the interference with her rights would need to be exceptionally serious in order to prevent her extradition. Although it was held that the fresh evidence could not be considered in the instant appeal (as she could have adduced it before the District Judge but had failed to do so), it was nonetheless recognised that even if it had been considered this evidence would not have been enough to prevent her extradition – her father would be able to obtain alternative care and his local authority could provide assistance. On this basis the appeal was dismissed.

Rimas v Lithuania [2011] EWHC 2084 (Admin)

This recent case concerned the certification of an EAW by the Serious Organised Crime Agency (SOCA). An EAW had been issued in connection with the appellants' earlier conviction for murder in Lithuania. The EAW was sent to SOCA and authority was given for the warrant to be signed and a SOCA certificate issued. Although the certificate was signed, as a result of an oversight it was not dated. The appellant argued against his extradition on the basis that the certificate was undated and therefore not valid. The District Judge found that although certificates were invariably supported by a date, he was satisfied that the certificate was duly authorised because it was signed, and that while the absence of a date was unfortunate it did not render the certificate invalid. On appeal, the appellant raised a new argument to the effect that, since it was not dated, it was possible that the certificate might not have been signed before his arrest was effected. The respondent produced a case file and a witness who provided evidence that the certificate had been signed prior to the appellant's arrest. It was held that the copy of the case file demonstrated that the warrant had been certified prior to arrest and therefore the only possible ground of challenge was rebutted. The appeal was duly dismissed.