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Research Note

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RECOMMENDATIONS OF THE INDEPENDENT INQUIRIES INTO THE SURJIT SINGH CHHOKAR MURDER CASE

On 24 October 2001 two reports were laid before the Scottish Parliament which were the result of two independent inquiries into the handling of the Surjit Singh Chhokar murder case. The report by the Rt. Hon. Sir Anthony Campbell, Justice of the Supreme Court of Northern Ireland, looked into Crown decision-making in the case. The report by Dr Raj Jandoo, Advocate, concentrated on the liaison arrangements between the police, the procurator fiscal service and the Crown Office and the family of Surjit Singh Chhokar. This research note provides a brief history of the case and highlights the key recommendations which have been put forward in both reports.

Brief history of the case

Surjit Singh Chhokar was killed on 4 November 1998 in Wishaw. By 10 November three men – Ronnie Coulter, Andrew Coulter and David Montgomery – had been charged with his murder. In early November 1998 Andrew Coulter and David Montgomery were released on Crown Counsel's instructions because there was insufficient evidence available against them on the murder at that stage.

After investigation by the Crown, a decision was made to indict Ronnie Coulter first and separately from the other two men, but it was alleged in the charge that he murdered Mr Chhokar while acting along with others. His trial proceeded in March 1999. The murder charge was considered by the jury, but he was convicted

of assault only. The Advocate Depute did not move for sentence against him on the assault charge and, accordingly, no penalty was imposed. Following Ronnie Coulter's trial, there was much publicised criticism from the trial judge Lord McCluskey, of the Crown's decision to indict Ronnie Coulter separately.

*"Ladies and gentlemen, a young man was murdered in a public street by one or more persons whose identities have been freely discussed in this case. For reasons that I cannot begin to understand, one, and only one of those persons was placed in the dock and charged with the crime. That is a matter which, to me, as a judge of considerable experience, passes my understanding altogether. I cannot begin to understand how it happened and I shall be taking steps to see if I can discover what the reason was for the course that was taken."*¹

A precognition on oath was obtained from Ronnie Coulter in April 1999. He denied stabbing Mr Chhokar, a position he maintained at the trial of Andrew Coulter and David Montgomery. They were indicted for the murder of Surjit Singh Chhokar and other related charges in July 1999. They were due to stand trial in August 1999 but an ultimately unsuccessful defence appeal to the Judicial Committee of the Privy Council in relation to pre-trial publicity, prevented the trial from proceeding until the sitting of 6 November at Glasgow High Court. The trial started on 10 November and concluded on 28 November 2000.

The jury found Andrew Coulter guilty of assaulting Surjit Singh Chhokar, whilst acting along with Ronnie Coulter, by repeatedly striking him on the body with a piece of wood and metal. He was also convicted of a charge of housebreaking at Mr Chhokar's house and theft of a cooker and girocheque and a charge of uttering in connection with the girocheque. He received a total sentence of 15 months detention. David Montgomery was acquitted.

Main concerns about the handling of the case

The main concerns which were expressed about the handling of the case relate firstly to the Crown's decision-making, in particular the decision to indict Ronnie Coulter separately from the other two men, and secondly, to the way in which the police and Crown dealt with the deceased's next-of-kin and in particular his parents during the investigation and first trial. The Chhokar family have consistently campaigned for a full public inquiry to be held into the handling of the case.

The Report of an Inquiry into Crown Decision-Making

Sir Anthony Campbell's report into the Crown's decision-making states:

"The fact that no one has been convicted of the murder of Mr Chhokar continues to cause widespread public concern. His parents and immediate family feel that the criminal justice system in Scotland has failed them and many others agree

¹ Transcript of the trial 9 March 1999.

*with them. Some have voiced their views through the Chhokar Family justice Campaign with Mr Aamer Anwar as its spokesman. The failure to obtain a conviction for murder has been attributed to the fact that all three men did not stand trial together. At each trial the accused before the court blamed another not before the court for stabbing Mr Chhokar to death. This apparent mishandling of the case has led some to ask the further question was the decision to prosecute in this way influenced by the fact that Mr Chhokar was a Sikh and those accused of his murder were white”?*²

At the beginning of his inquiry into the decision-making process at the Crown Office, Sir Anthony sought confirmation that, within his remit, any reference to racist behaviour or attitude was confined to the decision-making process and that Dr Jandoo’s inquiry would examine the issue of racism in the Crown Office in the broader sense. This interpretation of the remit was confirmed to be correct by the Solicitor General. Sir Anthony concluded that;

*“In the course of my investigation I have not found any evidence to suggest that racist behaviour or attitude influenced the decisions that were made. The system failed but this was not due to the fact that the victim belonged to a different ethnic group to his attackers.”*³

Summary of Recommendations

Sir Anthony makes a number of recommendations in the report which are summarised below.⁴

1. *A general review* He states that although there has been an increase in the numbers of staff across the service, that further increases in numbers cannot provide an answer to all of the deficiencies which the Chhokar case has exposed. He points out that at the beginning of 1999 there were 14 advocate deutes and in April of that year this was increased to 16. In April 2001, there were 17 advocate deutes. The number of principal deutes in the High Court unit has been increased from 4 to 5. Legal staff in the Procurator Fiscal Service increased from 293 in 1999 to 307 in 2000 with plans to recruit a further 20 to 30. Sir Anthony comments;

*“If the preparation of cases by fiscals and advocate deutes is to be as careful as the interest of justice requires there must be a sufficient number of experienced staff at all levels to do the work and to supervise. Despite the increases to date I have gained the firm impression from many of those that I met that they have not noticed any reduction in their workload and that the prosecution system is currently under stress. One witness described it as a system in perpetual crisis.”*⁵

² Report of an Inquiry into Crown Decision-Making; SP Paper 425, page 9.

³ *ibid*, page 84.

⁴ *Ibid*, page 89.

⁵ *Ibid*, page 87.

2. *The involvement of the trial advocate in marking.* The report states that this is sufficiently important to recommend that an early change be considered. At present, the High Court unit and the Advocate Deputes' room are located in Edinburgh. This is because the Law Officers are based in the same building and can be consulted there if necessary and it is felt that by having decisions made in Crown Office it encourages consistency in decision making throughout Scotland. However, Sir Anthony points out that as 60% of solemn cases are tried before the High Court in Glasgow, consideration should be given to setting up a satellite office in Glasgow in close proximity to the High Court to service cases being heard there. He argues that if cases for hearing in the High Court sitting in Glasgow were prepared by a section of the Crown Office High Court unit based there they could be marked in Glasgow by advocate deutes. This would allow the many advocate deutes who are engaged in trials there (some of whom are based in Glasgow) to mark cases, outside court hours, without having to travel to Edinburgh to do so.

The report adds that additional benefits of such a change would be that the precognoscer, who will have an office in the general area, could be consulted and in death cases the pathologists who are based close to the High Court in Glasgow could also be consulted.

3. *Marking no proceedings in murder.* In every case of murder, whether or not the accused has been fully committed, the report recommends that if an advocate deute intends to mark no proceedings or to defer proceeding against any of a number of joint offenders pending the result of the trial of one, this should be referred to a Law Officer or, in an emergency, to the Home Advocate deute before an instruction is issued.

4. *Where an advocate deute disagrees with the counter signer.* The report suggests that if time permits where an advocate deute disagrees with the advice of the counter signer or the marking principal fiscal in a case such as murder, a conference should be held at which the issues are discussed. If this is not possible the fiscal whose views are not accepted by the advocate deute should be given reasons if only in summary form.

5. *The form in which instructions are given.* All instructions should be recorded in writing by the advocate deute giving them. The instructions should be issued in sufficient detail to allow the person who has to comply with them to understand clearly what is required of them.

6. *Supervision of precognoscers.* The Crown Office and Procurator Fiscal Service Book of Regulations provides for close supervision by senior members of the legally qualified staff in the precognition of serious and difficult cases. The regulations also state that in serious cases where the opinion evidence of medical or other experts is particularly significant precognition should be carried out by an experienced member of the legal staff. These regulations should be followed and there should be sufficient staff to allow for this.

7. *Training of precognoscers.* A member of legal staff who has not received appropriate training should not be used to precognosce a serious case.

8. *The counter signing fiscal.* The fiscal depute who counter signs a precognition should be allowed time to read the entire precognition and to ensure that the precognitions are of a reasonable standard and that all lines of inquiry have been followed. The counter signer should be expected to make a significant contribution to the decision making process.

9. *Review by the High Court unit.* When the Precognition is being submitted to Crown Office to be passed to the trial advocate depute the precognoscer should bring to the attention of the indicter any new evidence that has come to light. The indicter should then decide if a review is necessary.

Report of the Inquiry into liaison arrangements between the police, Procurator Fiscal Service and the Crown Office and the Family of Surjit Singh Chhokar

Dr Raj Jandoo's report states that:

"This Inquiry was set up in the shadow of Sir William Macpherson's Report on the Stephen Lawrence case: inevitably parallels will be drawn between the murder of Stephen Lawrence and the murder of Surjit Singh Chhokar. It will be apparent to any reader of this Report that the parallels are not there. Surjit Singh Chhokar was not picked on at random by a gang who did not know him: at least one of his assailants was a regular associate of his, and had a motive for attacking him which had nothing to do with his race. His girlfriend, who was an eye-witness, did not see it as a racist attack; neither did his wife. The police response was quite different too: their first concern was with the man himself, to save his life if possible. I found no trace whatever of personal racism in any police officer whom I interviewed, and those officers who attended the scene or had dealings with the family seemed to me exemplary in their attitude to their various tasks".⁶

Dr Jandoo goes on to explain that the inquiry was also set up to pass judgement in respect of institutional racism and sets out what his criterion for institutional racism is, namely:

"Institutional racism occurs wherever the service provided by an organisation fails - whether deliberately or not - to meet equally the needs of all the people whom it serves, having regard to their racial, ethnic or cultural backgrounds.' I have also stressed that institutional racism is a disorder in an organisation, which is likely to occur from time to time, in greater or less degree, and has to be tackled whenever it occurs or recurs. There is a great difference between saying 'this organisation is institutionally racist' and 'there is institutional racism in this organisation'. The former statement condemns the entire organisation; the latter says only that there is something wrong with it. If I say - as I do - that there is institutional racism in Strathclyde Police and in the Crown Office and the Procurator Fiscal Service, I do

⁶ Report of the Inquiry into Liaison arrangements....page283.

*not mean that these bodies are totally corrupted by it, but that it is present in some measure, and to the extent it is present it weakens the services they provide to the community as a whole. I say this, not to mitigate the faults of these bodies, but to signify that the faults are remediable”.*⁷

Dr Jandoo goes on to make 40 recommendations and states that in developing these recommendations he has taken two principles ‘as cardinal’;

- Public confidence in the police and prosecution authorities is an essential feature of a criminal justice system that values justice and liberty in a democratic society;
- The processes of the criminal justice system should treat all victims and witnesses with courtesy, compassion and respect for their personal dignity; and should be responsive to their needs.

The following are the key recommendations for the prosecution authorities and the police respectively, and for both jointly which Dr Jandoo regards as crucial. He states that if these recommendations are followed then the detail of the others should follow naturally. The full list of recommendations can be viewed at:

http://www.scottish.parliament.uk/docs/chhokar-vol01-03.htm#P3322_836865

Key Recommendations

The Crown Office and Procurator Fiscal Society

Recommendation (1) An Inspectorate of the Crown Office and Procurator Fiscal Service should be established, headed by an independent Inspector. The Crown Office Quality and Practice Review Unit should be reinforced and reconstituted as a support unit to the Inspectorate. The Inspectorate's reports, like those of other Inspectorates, should be made public. The Crown Office has for too long been perceived as a faceless organisation, arrogant, secretive and accountable to no-one. The Inspectorate would be a means to introduce a measure of accountability, which is essential for public confidence - without however prejudicing the necessary independence of the Lord Advocate in prosecution decisions. Its remit should include regular auditing and monitoring of the quality of professional practice throughout the Service. This will identify policy practice ‘gaps’ in individual offices and provide a useful mechanism for developing best practice and disseminating that to the Service as a whole. Findings should serve to inform the Training and Policy Unit as to best practice.

Recommendation (2) The Crown Office Inspectorate should conduct a thematic inspection of the Service's response on race matters, reporting to Ministers through the Race Strategy Group, within the next two to three years. The inspection methodology should be thorough: it should not be limited to a paper exercise and should include input from external sources.

⁷ *ibid*, page 283.

The Police

Recommendation (3) The police should give priority to translating policies into guidance documents for the Force which are operationally based and above all give practical advice and instructions to police officers.

Recommendation (4) In the process of translating policy into action the police should rely on and develop partnership links with other bodies, both statutory and voluntary, through organisations such as the MARIM groups and Racial Equality Councils. The police have shown in the past that they are willing to tap into advice and expertise in local communities; and they should continue to do so.

Recommendation (5) HM Inspectorate of Constabulary should make it an early priority to conduct a thematic inspection of family liaison, and Justice Ministers should give special attention to the report of that inspection.

Procurator Fiscal Service and Police jointly

Recommendation (6) There should be a more structured system of communication and liaison between the Procurator Fiscal and the police, from the earliest stages of an investigation right through to trial, and in particular with police Family Liaison Officers.

Recommendation (7) There should also be systematic communication, co-operation and exchange of ideas between Crown Office and the police at the most senior levels. Chief Inspectors, Sergeants and Constables cannot be expected to work easily together with Procurator Fiscal Deputes and Precognition Officers if Chief Constables and the top management of the Crown Office are not also working together. In terms of this Report, they have to engage on a common enterprise - in respect of race relations and the eradication of institutional racism their objectives are the same - and they can only gain from working together on these things. They should learn from each other.

Dr Jandoo stated that he was heartened to be told by witnesses that there is now a joint Crown Office/ACPOS liaison group. In his view, that will be a key body to take forward the recommendations from this Report, and it will have a substantial agenda.

Latest Developments

The Chhokar Family Justice campaign has consistently demanded that a public inquiry be held into the case and on 4 October 2001 an appeal was launched to raise money in order to fund such an inquiry. The appeal campaign is being spearheaded by the Scottish Trades Union Congress and it is hoped that £40,000 can be raised by the end of the year. Scottish TUC General Secretary Bill Spiers stated:

“Should the Scottish Executive, even at this late stage, want to establish a properly constituted public inquiry, that will be welcome. But in the absence of that, we are today as the STUC launching this appeal.”⁸

The STUC stated that if the Scottish Executive continues to refuse to hold a public inquiry, the money raised will be used to assist black and ethnic minority law students through their courses.

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⁸ http://news.bbc.co.uk/1/hi/english/uk/scotland/newsid_1633000/1633362.stm
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