IN THE HIGH COURT OF JUSTICE

KING'S BENCH DIVISION

ADMINISTRATIVE COURT

In the matter of an application for judicial review **CP/3262&3/2022**

THE KING

on the application of

DIRECTOR OF PUBLIC PROSECUTIONS

Claimant

-and-

(1) THE CROWN COURT AT BRISTOL

(2) THE CROWN COURT AT MANCHESTER

Defendant

-and-

(1) WILLIAM DURSLEY

(2) BENJAMIN SMEDLEY

(3) ADAM MAYALL

Interested Parties

DETAILED GROUNDS OF DEFENCE
ON BEHALF OF ADAM MAYALL
(3rd INTERESTED PARTY)

INTRODUCTION

1. This Defence for Adam Mayall is divided as follows:
    a. The correct history as to how Adam Mayall came to be without trial counsel for the original trial date - and procedural matters that flowed from that.
    b. The assertions made about the decision of HER HONOUR JUDGE LANDALE (dated 5th September 2022) and about other non-litigated first instance rulings

c. The Claimant's ground that irrelevant matters were considered in HHJ Landale's refusal ruling is incorrect in fact and in law.
d. Additional Human Rights Act 1998/Convention considerations on proportionality.
e. The Claimant's ground that HHJ Landale failed to consider relevant factors in making her ruling is flawed in fact and in law.
f. There is no retroactive power to extend an expired Custody Time Limit in the Crown Court, whether by operation of an order of the High Court or otherwise.
g. Submission that HHJ Landale did fall into error in her ruling in that she failed to give due consideration or sufficient scrutiny to the Crown's lack of diligence/trial-readiness (as it was not simply related to witness summonses).

The correct history as to how Adam Mayall came to be without trial counsel for the original trial date

1. Mr Knight's unavailability for trial for Mr Mayall was less to do with any action in which he was participating - rather, it was because nobody was available or willing to accept a return for trial on 5th September 2022. The Bar is under no obligation whatsoever to accept such instructions. They are only ever undertaken as a pragmatic gesture by the Bar. Mr Knight supports the CBA action and said as much in his letter to Cuttle and Co. but the 'No Returns' approach of the Bar – and the lack of capacity at the PDS - was why nobody was available to represent Mr Mayall. "No returns" had been in place since April 2022 and had been foreshadowed very publicly by the CBA for months by the time it began.
2. Defence counsel was first instructed to defend Mr Mayall in mid-April 2022. He was due to commence a very lengthy VHCC matter in the following week at Manchester Crown Square. That matter had been adjourned and relisted many times and so the fixture was, through necessity, treated as "susceptible to further last-minute changes". Indeed, it is a retrial and Mr Knight's lay client was not on the indictment on the first attempt but is now fourth.
3. Given that the Manchester case was originally a s.28 procedure trial (until the witness refused to cooperate), Mr Knight had two conferences with Mr Mayall and advised at that stage that there was a risk that he would not be available for trial. Mr Mayall was happy to proceed. He was also advised about the CBA action (as it was at the time). That was on 18th May 2022.

4. The failed s.28 hearing was due to occur on 14th June 2022. It was vacated on the day prior because the police had struggled to locate the witnesses and, when they located the Complainant's partner, she made very clear that the Complainant and his son (to whom the s.28 attached) had no intention of cooperating with the police or courts and had moved. The Prosecution were asked to consider the realistic prospect of conviction at this point. They would later confirm their intention to proceed but no further information was ever disclosed about what steps, if any, had been taken by the Prosecution.
5. The solicitors acting for Mr Mayall were reminded that Mr Knight would very likely not be available on 5th September 2022 (because of the ongoing VHCC matter). This was communicated to Mr Mayall along with the developments in the CBA's action (most importantly, the "no returns" policy being maintained). That caused the following sequence of events:

   16th August 2022 - Mr Mayall (via his girlfriend) instructed Mr Hughes of Cuttle and Co. Solicitors that he no longer required the services of Mr Knight and that he wanted to instruct counsel from the Public Defender Service "as they aren't on strike". Mr Hughes spoke directly to Mr Mayall to confirm that this was his instruction and it was.
   Mr Mayall made it perfectly clear that his only concern was the loss of the trial date as a result of the industrial action by members of the criminal Bar. There was no suggestion whatsoever of any dissatisfaction with Mr Knight's advice or his approach generally.

   There was a little confusion at that stage because of the week-on/week-off nature of the action, the news that had just broken that full-time action was likely to start on 5th September, and that Dominic Raab had indicated that he had no intention of engaging with the Bar over the action.

   It is also worth noting that Mr Knight did, at this point, take the communication as meaning that he was no longer instructed in this matter.

   23rd August 2022 (at 09:54) - Following final confirmation and direct communication with Mr Mayall, Cuttle and Co Solicitors made the application to the PDS for a trial advocate to be found for 5th September 2022. That application was communicated to the "clerk" of the PDS but was later forwarded to a colleague as they were on annual leave.

At some later point during this date, Cuttle and Co contacted Mr Knight and confirmed that his VHCC matter was underway and that he remained unavailable.

29th August 2022 (at 11:59) - The PDS finally replied to Cuttle and Co Solicitors saying, "*Thank you for your inquiry. We regret that we are unable to provide assistance at this time…*"

29th August 2022 (at 17:51) - Cuttle and Co sent an email to the Listings Department of Minshull Street Crown Court for the urgent attention of HHJ Greene. There was, by this stage, limited chance to find a replacement trial advocate. Cuttle and Co advised the Judge, inter alia, that they had taken all the steps that they could in the time available to find trial counsel but that they had not been able to do so. The PDS emails were attached. It was already understood by Cuttle and Co that there are three (approx.) PDS counsel working in the North West area, and that very few counsel were accepting returns in the North West - those who were are understandably busy. Moreover, it had been the PDS in particular that Mr Mayall had wanted to instruct, for the reasons stated above.

6. Cuttle and Co are also keen to remind the Honourable Court that they are contractually bound by the Legal Aid Agency only to use counsel on their approved list. That list can be amended based upon performance and assessment but cannot simply be amended for want of their being "anybody available". The counsel known to be covering work in the North West are not on that list for Cuttle and Co, with one exception, and he was known to be engaged in another matter before Manchester Crown Court at the material time.
7. "No returns" has been a coordinated and repeated action taken by members of the criminal Bar when protesting its treatment by the State - but it is also something that some criminal counsel will do "in peacetime". A trial brief for a Wounding with Intent to Cause Grievous Bodily Harm trial with absconding witnesses, a failed s.28 procedure, and with an imminent trial date is not something that many busy criminal counsel will rush to accept (especially for the remuneration on offer).

The assertions made about the ruling of HER HONOUR JUDGE LANDALE (dated 5th September 2022) and the other non-litigated first instance rulings

8. In the Claimant's Detailed Grounds, the Claimant repeatedly and variously asserts that Her Honour Judge Landale adopts, relies upon, or places importance upon the ruling of the Recorder of Bristol in her ruling in the Manchester case.
9. At no point does HHJ Landale expressly refer to that decision in her ruling. She does utilise certain phrases that are clearly similar. The same can be said of the various other non-litigated first instance rulings within the Claimant's bundle.
10. It is regrettable that the Interested Parties in the other cited first instance proceedings are not represented in these proceedings - as their liberty may well be affected by the decision of this Court. Nevertheless, it is clear that all of the Circuit Judges involved had seen the publicised wording of the ruling in the Bristol case, but that all had undertaken an assessment of the case before *them*. The strongest example is arguably found in the ruling of His Honour Judge Gilbart (the Bolton case), but all share similarities. [1]
11. HHJ Landale provides the procedural history of the "Manchester case". She gives an indication that she has considered the observations about due diligence by the prosecution. She sets out the test for CTL extension. She has referred to the appropriate authorities. She very briefly summarises the nature of the CBA action and clearly does so to apply the scrutiny as to whether the Manchester case is a "routine case" and whether it falls within the cited scenario considered in those authorities.
12. It is submitted that there was no other way in which HHJ Landale could have approached the question of sufficiency of cause to extend CTLs. The same may be said of the other first instance judges. The alternative, de facto proffered by the Claimant, is to consider the case before them in a vacuum.
13. Most importantly, it is stretching the words of HHJ Landale to breaking point to suggest that her borrowing the words of Turner J, "*The unavailability of representation for Mr Mayall today has arisen because of a persistent and predictable background feature of publicly funded criminal litigation*"[2] is entering into the merits of the CBA's action. It is a factual observation that "No Returns" has been a feature of the criminal Bar for many years. It is deployed with announcement and predictability when the Bar wishes to protest its treatment. It had been in place for nearly half a year before this trial date.

[1] It does not follow that those judges have descended into the arena on the CBA action, merely that they are assessing the situation before them in context, not in a vacuum. To do otherwise would be absurd, it is submitted. It would also run counter to the authorities cited with approval by the Claimant. They were all clearly aware of the same body of authorities, too.

[2] Turner J in obiter in the first instance ruling in *R v Bennett and Feeney (2014)* which is, respectfully, useful and thorough but is not an authority.

It is incumbent on the State to comply with its duties. She does not enter into whether the State has done so or even taken steps to do so. She simply exercises her discretion to find that, in the case before her, when balancing all of the relevant factors, the CTLs ought not to be extended as the reason for the application is not sufficient.

14. If one were to accept the Claimant's argument in relation to the exercise of this discretion, Circuit Judges would be required to apply a test in a manner clearly not intended by Parliament. CTLs exist for a reason and their extension is discretionary for a reason. "Good *and sufficient*" are the words used, for a reason and they are cumulative in effect. There is a balancing exercise to be undertaken in each case, on its merits and in all of the circumstances. This protects against bad faith by the State and police. It also protects the public to a proportionate level but is not intended to trespass upon matters which are, in reality, Bail Act 1976 concerns.
15. If the Claimant's argument were correct, after due diligence is considered, the test would be reduced to something akin to "*does the State wish to keep the defendant in custody and, if so, does the State say its reasons are adequate?*" If a judge seeks to scrutinise any practical cause for a trial not being able to take place, and that reason involves a question of resourcing of the CJS in any way (including advocates), then it becomes "political" territory, as the Claimant would have it. That contention amounts to a usurping of power from the independent judiciary into the hands of the Director of Public Prosecutions and it is, of itself, an overtly political act.

The Claimant's ground that irrelevant matters were considered in HHJ Landale's refusal ruling is incorrect in fact and in law

16. The Manchester case is properly described as "routine". That appears universally accepted. It is important that the Claimant does not challenge this characterisation because, in R (Raeside) v Crown Court at Luton [2012] EWHC 1064 (Admin), Sir John Thomas PQBD (as he then was) observed the relevance of the term. He observed that, "*...it has been made clear that the purpose of a CTL would be undermined, if the courts granted extensions in anything other than unusual circumstances. The word routine was used in the cases, starting with Bannister, to make clear that in the overwhelming majority of cases in the Crown Court the unavailability of a judge or court room would not generally in itself provide good and sufficient cause, absent other circumstances.*"
17. The Claimant's submission may be distilled to the assertion that the merits and circumstances leading to the CBA's action are irrelevant to the test to be applied by a

judge at first instance in a CTL extension application, and that HHJ Landale in considering those circumstances, considered irrelevant factors in her ruling.

18. It is not accepted that HHJ Landale placed much weight at all upon the merits or otherwise of the action. It is, however, accepted that she considered the *effects* of the action and the actions or inactions of those responsible for overcoming the consequences. She was not only entitled to do so; she was obliged to do so.
19. Per Woolf LCJ at para.28 in R (Gibson) v Crown Court at Winchester [2004] 1 WLR 1623: "*...I do not accept that...the availability of resources, whether courtrooms, judges or other resources, are an irrelevant consideration. The courts cannot ignore the fact that available resources are limited. They cannot ignore the fact that occasions will occur when pressures on the court will be more intense than they usually are. In such a situation it is important that the courts and the parties strive to overcome any difficulties that occur. If they do not do so, that may debar the court from extending custody time limits. It may well be that in Bannister further action could have been taken (or action could have been taken earlier) than was taken by the court to ensure that in that case the custody time limit was complied with. However, it is not correct, as has been submitted before us, that judges are entitled to ignore questions of the non-availability of resources*" (Woolf LCJ para 28)
20. In many of the authorities properly included in the Claimant's bundle, the resources in question are courtrooms and judges. The State is responsible for these. The State is also responsible for provision of representation and has devised systems for that provision.
21. The State took steps, following the previous sustained action by CBA members[3], to augment the PDS. It recruited aggressively but the growth was negligible. The criminal Bar did not flock to the PDS in droves, despite generous remuneration offers and benefits.
22. The efforts of the State to fulfil its role was inadequate and so, the independent criminal Bar continued to dwindle. The long-awaited review into legal aid provision[4] was delayed repeatedly but did conclude that *immediate* steps were needed, simply to prevent further depletion. The State did not act. The CBA proposed what its members felt to be the essentials to prevent the collapse and to begin to attract lawyers into this specialised and peculiar area of work once more. The State refused to discuss those proposals.

[3] The previous "no returns" action in 2014.
[4] The CLAR, eventually published in November 2021.

23. The result of the above is that there is a lack of resources (i.e. barristers) that cannot be ignored by any court considering the consequences.
24. The observation by HHJ Landale that the action was "predictable" and that the State could have resolved it is simply a matter of fact. The Government's own review concluded as much. The Government was also free to legislate to extend CTLs due to the action, as it had with the pandemic. The Government could have legislated to alter the nature of the AGFS so as to make "no returns" an unlawful type of action. In short, there are many things that the State could have done to discharge its obligations pursuant to Article 6, paragraph 3 of the ECHR.
25. The question of predictability is also a thread that runs through the authorities cited by the Claimant. In R (DPP) v Crown Court at Woolwich; Lucima v Central Criminal Court [2020] EWHC 3243 (Admin), the Divisional Court was concerned with the unpredictable and unprecedented increase in the already staggering backlog of cases before the criminal courts. In that instance, HMCTS had provided evidence that their recovery plan had been well-considered, enacted as fast as it could be, but had been limited in its effectiveness because of practical issues (such as suitable venues for so-called Nightingale Courts etc) and *not* because of a lack of funding from the Treasury. The provisioning of additional courtrooms, PSE, screening, AV equipment, jury accommodation that was covid-19 appropriate were all massively complex operations that could only be serviced at a certain pace, whatever the money involved.
26. It was in *that* context (paras 38-39) that the Court expressly tackled the intrinsic separation of powers issue, in saying, "*...courts are very slow to intrude upon funding decisions which form part of a large and complex picture and where difficult choices are made by Government...That position could change if extensions to CTLs were sought in circumstances where there was capacity to hear the case in the sense that a suitable courtroom was available, a judge could be found and the other necessary participants were ready, but financial constraints prevented a trial, the position might be different. That was made clear by Sir John Thomas P in* McAuley*. The underlying premise of the CTL regime is that Government is obliged to fund the courts with an expectation that shortage of money itself will not place defendants in jeopardy of spending longer in custody than the periods prescribed by Parliament pending trial.*"
27. It may be noted that the Divisional Court recognised that funding and governmental decisions were *not* outside of its remit, where relevant. Whether that "resourcing" extends to adequate numbers of counsel was expressly considered by the Court, inter alia, thusly (at para 41):

"*...there may be a "good" cause which is not "sufficient". A lack of capacity which results from too little space (or indeed a lack of judges or available lawyers, for*

example) would constitute a "good" cause for needing an extension for a CTL because on that hypothesis there would be no possibility of the trial in question proceeding whatever was done. Such a good cause may not necessarily be a sufficient one. That might be because of systemic failures or circumstances attaching to the case or defendant."

28. At the core of the CTL regime is the recognition that the power to extend or not to extend CTLs is within the discretion of the judge at first instance. They are best placed to assess the merits in the matter before them. In the case of a Recorder of a city, they have an additional obligation to assess provisioning and CJS management within the CJS area[5].
29. It is correct to observe that the facts of the two cases before the Court are distinguishable from the authorities cited by all parties. However, the nature of the discretion afforded is no different than in the cited authorities.
30. HHJ Landale expressly found that there was "good" reason but not "sufficient" reason to extend the CTLs in the Manchester case. No evidence was adduced by the Prosecution as to *when* the PDS may have an advocate available, or whether the LAA's list of advocates who are not participating in the CBA's action resulted in advocates being available - that list being accompanied by an instruction from the LAA that solicitors must not disclose or make public the list of advocates/firms declaring themselves available.
31. There was and still has been no indication that the Government is meaningfully engaging with the CBA or its members. Indeed, the Government has been in disarray since the collapse of the Johnson administration. The Secretary of State for Justice (formerly the 4th Interested Party in these proceedings) has stated that there will be no movement from the Government's stated position on funding. He has declined to participate in these proceedings, despite the issues arising falling within his sphere of influence. The Government has not attempted even secondary legislation to "fix" the CTL regime.
32. The State has absolved itself of responsibility and has left the problem to the first instance judiciary and, ultimately, to the Claimant and to the Divisional Court. Precisely the scenario envisaged by this Court in multiple authorities has now crystallised and the Claimant's only option is to ask this Court to interfere with the ostensibly lawful exercise of judicial discretion and to depart from the rationale of its own body of authority.

[5] It is presumed that argument is being pursued by counsel for Mr Smedley and for Mr Dursley but, insofar as the principle engaged applies to Mr Mayall, the submissions are adopted.

33. It is troubling, perhaps, that to do so the Claimant has been bound to ask this Court to infer reasoning into the decisions of first instance that is clearly not present.

Additional Human Rights Act 1998/Convention considerations on proportionality

34. In addition to the rights referenced in the cited authorities, it is submitted that Article 5 is offended where the State fails to ensure a trial within a reasonable time. The qualification to Article 5[6] does not extend to disproportionate and lengthy pre-trial detention but *does* expressly require a defendant to be released on bail pending trial where a timely trial cannot take place[7].
35. Whilst Article 8[8] is a qualified right, it may be infringed where the interference with it is disproportionate to the utilised qualification. In the instant circumstance, remanding a person into custody before trial is, obviously, lawful. But remanding somebody into custody and then failing properly to resource a functioning and speedy CJS may reach a tipping-point where the interference in the right of a person to live at home, with family, in the community, is no longer justified to prevent crime or disorder, or to protect public safety.
36. Thusly, the submission that the first instance judges were descending into the arena on the merits or otherwise of the CBA action is a submission that the lack of available/willing counsel to whom to return a trial brief must be considered in a vacuum and a submission that the State is absolved of responsibility for the CJS.
37. The Claimant reminds the Court in its Detailed Grounds that the defendants in the Manchester case have previous convictions for relevant offences. Whilst that is certainly a factor that the first instance judge *may* take into consideration, it is already established that it is not, of itself, automatically a reason to extend CTLs. This was established nearly a quarter of a century ago in another case relating to a decision of the Crown Court at Manchester.
38. In R v Manchester Crown Court, ex parte McDonald [1999] 1 WLR 841, Lord Bingham said, at p847H-848A that it was not possible or desirable to attempt to define a test applicable to all CTL "reasons" decisions and he went on to observe that, "*...I am satisfied that the purported risk posed by the defendant of committing further offences*

[6] Respectfully, rendered trite law through the obiter of Lord Bingham in A and others v Secretary of State for the Home Department [2004] UKHL 56 (the 'Belmarsh' case) and so not included in the authorities bundle.

[7] Art. 5 - Right to liberty and security. At 3). Everyone arrested or detained in accordance with the provisions of paragraph 1(c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.

[8] Art. 8 - Respect for private and family life.

is not capable, on its own, of establishing a good and sufficient cause to extend the custody time limits. The defendant is alleged to have committed serious offences and he has previous convictions for offences of violence and arson. However, the fact that he poses a risk of committing further offences cannot, alone, amount to good and sufficient cause to extend the custody time limits. It would defeat the purpose of the rules which exist for fundamentally important reasons."

39. Lord Bingham went on to support his assertion by reference to R v Governor of Winchester Prison ex parte Roddie [1991] WLR 303 and R v Criminal Court ex parte Abu-Wardeh [1998] 1 WLR 1083[9].

The Claimant's ground that HHJ Landale failed to consider relevant factors in making her ruling is flawed in fact and in law

40. Respectfully, the Claimant's second ground insofar as it relates to the Manchester case, is ill-founded. HHJ Landale did consider why there was no advocate present for Mr Mayall.
41. If there had been any doubt as to the accuracy of the assertion that the PDS was not able to assist (although their written confirmation of this was already on the Court's file), the Prosecution failed to place any evidence before the Court to that effect.
42. The letter from counsel was placed on to CCDCS as the hearing had been listed at very short notice, was seen in the Crown Court Daily List by a clerk to Mr Knight, and then Mr Knight, who was occupied in another matter, wrote to his Instructing Solicitor to provide the synopsis of his position, the fact that his own chambers certainly had no available advocate for the trial (due to No Returns or being engaged elsewhere or annual leave), and that there were obvious submissions that might be made to the Learned Judge.
43. The reference to the ruling of the Recorder of Bristol was not "relied upon in submissions" as there were none. It was included in the letter because the rationale of that decision (as widely circulated on Crimeline and on Twitter) appeared applicable and sensible to Mr Knight - accordingly, he suggested to Mr Hughes that he may wish to advance a similar argument.
44. In the event, Mr Hughes relied upon the letter itself (rather than duplicating its content).
45. Again, if the Prosecution had any doubt about the availability of alternative counsel who would accept a return, it was on the Prosecution to adduce evidence of the same. That would have been entirely possible as the LAA maintains a list of individuals and

[9] Cited inter alia and so not included within the authorities bundle.

firms who are prepared to undertake such cases - though one firm has since publicly denied that they gave such an assurance.

46. Alternatively, the Prosecution could have asked the Learned Judge to stand the matter down or adjourn it for 24 hours so that checks could be made with as many chambers and firms as are routinely asked at present. The Learned Judge could have done this of her own volition, too.
47. However, given the experience of HHJ Landale (and other judges of first instance in the non-litigated but included rulings in the Claimant's bundle), she concluded at page 5 [at F] that "*the overwhelming majority of barristers undertaking legally aided criminal defence work in England and Wales have refused to take returns of cases from other instructed barristers and have also since then refused to take on new legally aided cases*". In short, she accepted that it was unlikely that such a replacement advocate could/would be found and that the solicitors had resorted to the PDS with no success either. Of course, the trial had *already* been vacated in the previous week, in any event.
48. The Prosecution advocate (sensibly, it is submitted) did not challenge HHJ Landale's observation or assert that an advocate was likely available. More importantly, the Prosecution made no representations regarding the need to vacate the trial when the case was before HHJ Greene. It was open to the Prosecution, before HHJ Greene vacated the trial listing, to submit that the matter ought to be stood down/adjourned for further requests to be made. The experience of the judges, of co-defendant counsel, and of the Prosecution advocate (all of whom have excellent knowledge of their local CJS area) did not lead to any suggestion that the defence solicitors "had not tried hard enough".
49. The problem really crystallised when HHJ Greene received the communication from Cuttle and Co. stating that the PDS could not assist and that no other advocate could be identified. That letter did not request a vacation of the trial date, but the Judge took a case management decision to do so, thus raising the CTL problem dealt with by HHJ Landale shortly thereafter.
50. Had the matter been left in the trial list, further checks would no doubt have been made for advocates who may have become available but, on 5th September 2022, the Prosecution would almost certainly have been faced with a lack of witnesses and been compelled to consider whether it could continue with the prosecution. The Prosecution would have likely had to make an application to adjourn the trial and, if that had failed, no evidence would have had to be offered. The CTL issue would not have arisen.
51. Instead, the State (the CPS) benefits from State's (the Government's) inaction over the predictable No Returns action, despite having had an opportunity to deal with the matter expeditiously in resisting the State's (the Crown Court's) decision to vacate a

trial simply because the State (the PDS) had no advocates available. The Defendant is prejudiced entirely by the (in)actions of the State - the lack of counsel prepared to accept returns is symptomatic of the State's actions, not causative of the prejudice.

There is no retroactive power to extend an expired Custody Time Limit in the Crown Court, whether by operation of an order of the High Court or otherwise

52. In its pleadings, the Claimant initially asserted that there was no power for CTLs to be extended after they have expired, irrespective of the decision of the High Court following judicial review of the refusal ruling.[10]
53. Following Mr Justice Chamberlain querying this assertion at an early stage, the Claimant amended its pleadings to the effect that such a power *did* exist.
54. The Claimant now asserts that the powers afforded to the High Court by s.35 of the Senior Courts Act 1981 have the effect of allowing the practical relief it seeks - i.e., for the High Court to extend the CTLs in each case, as if it that extension had occurred on the day of the decision at first instance.
55. Whilst this is an attractive proposition at first glance, it is submitted that it is either a) incorrect in law, or b) unjust in all of the circumstances.

a. incorrect in law

56. Whilst section 5 provides the High Court with a *discretionary* power to substitute its own decision for that of first instance(section 5(b)), it is not mandatory.
57. Moreover, the power to substitute its own decision is only available to the High Court if the initial order was due to an error of law (as opposed to mere lawful exercise of the first instance discretion), *and* if [s.5A(c)] "*without the error, there would have been only one decision which the court of tribunal could have reached*."
58. It is submitted that s.5A(c) is not satisfied in the instant matter. Even if the decision had been taken per either of the first two grounds claimed, the court of first instance had other decisions that it could have reached. Specifically, HHJ Landale could have concluded that the prosecution had not discharged its evidential burden. Alternatively, she may have decided that, completely irrespective of the "politics" of the action, the

[10] R v Croydon Crown Court ex parte Commissioner for Customs & Excise CO\1986\97 was the basis for the Claimant's original argument. I have seen the argument on behalf of Mr Smedley and, respectfully, I adopt and agree with Mr Grennan's argument and observations about that authority. In particular, I underline his observation at his paragraph 30 that "It is of note that Parliament provided the power in appeals from Magistrates but made no similar provision in relation to the Crown Court - a factor which was referred to in the Croydon decision.

Defendants need not be remanded any longer than they already had been because the witnesses had actively confirmed that they no longer supported the prosecution and had moved - thus concluding that release on bail was now more appropriate and proportionate.

59. Alternatively, she could have concluded that an adjournment of her final decision was appropriate, in order to establish whether there was an available date at a court centre in the North West region on a date when the PDS (or any other advocate) was available, sooner than 31st January 2023 (the new trial date). She may have decided, though she never reached this stage in her considerations as she had no need to, that the new trial date was simply too far away (i.e. in excess of three months) to justify the interference with the Defendants' article 5,6 and 8 rights, especially when that period covered Christmas, and when the Defendants were already aware that the witnesses were no longer cooperating (i.e. there could be no reason at all for the Defendants to wish to interfere with witnesses).
60. In short, the requirements of s.5A(c) are not met for the remedy sought by the Claimant in the revised pleadings.

b. unjust in all of the circumstances

61. The interference with a person's liberty and convention rights is serious and must always be proportionate. Where there is a remedy in law that does not offend that proportionality and/or meets the same objectives, it is submitted that it is a matter of natural justice to use it.
62. In relation to Mr Mayall[11], he will be released on 21st September 2022. He will be subject to bail conditions. Those bail conditions are present to address the concerns cited by the Prosecution, pursuant to the Bail Act 1976.
63. If Mr Mayall interferes with witnesses or commits a further offence, no doubt he will be arrested, promptly charged, and a strong opposition to bail will be made before the court. That begins a "new CTL clock". Ignoring for a moment that the arrest-to-charge delay is at an all-time high for most alleged offences (due to the State's inaction), the monitoring and management of Mr Mayall is well within the powers afforded by the 1976 Act. His future will largely be in his own hands in that regard.

[11] Mr Mayall would not have been affected by this aspect of the proceedings had the Legal Aid Agency acted promptly in granting representation to those who represent the three defendants as the matter would likely have been heard before the High Court before his CTLs expired. As it stands, Mr Mayall's CTL expires on 21st September 2022 and he will have been released on bail by the time of the hearing before this Court.

64. The cause of the witnesses refusing to cooperate has never been disclosed to the defence in this matter but the nature of the defence in this matter is that the Complainant used a weapon and attacked both Mr Mayall and Mr Smedley in retribution for the accidental damage to his car. Whether this is true or not is a matter for a jury, should the case ever reach one. The absconding of witnesses and their refusal even to participate in the s.28 procedure occurred whilst Mr Mayall and Mr Smedley were in custody. There is no suggestion (unlike the untested one in Mr Dursley's case) that Mr Mayall or Mr Smedley had anything to do with that decision - directly or indirectly.
65. For those reasons, returning them to pre-trial custody for more than 4 months (by the date of the High Court hearing) would be oppressive, unnecessary, disproportionate, and unjust, it is submitted.

Submission that HHJ Landale did fall into error in her ruling in that she failed to give due consideration or sufficient scrutiny to the Crown's lack of diligence/trial-readiness (as it was not simply related to witness summonses)

66. On 9th August 2022, the Prosecution filed a Certificate of Trial Readiness via CCDCS. John Ledger of the CPS signed the document confirming that the Crown was *not* ready for trial.[12]
67. The document indicated:
    a. That the edited 999 calls and BWV footage had not been served.
    b. That there was outstanding disclosure in relation to Mr Smedley.
    c. That summonses for three witnesses had yet to be served (though no mention was made of their strongly indicated intention not to cooperate).
    d. That two other witnesses had yet to acknowledge their warning letters. This included one police officer and one civilian.
    e. That edits to interviews had not been agreed (though this was later confirmed to have been done on behalf of Mr Mayall, at least).
68. On 2nd September 2022, the CPS filed its applications to extend the CTLs. That document indicated that "The Prosecution would have been trial ready by 05/09/22" despite there having been no further update or resolution of the identified issues from the Certificate of Readiness. The CTL application was signed by Richard Holliday and "Approved by Caroline Wilbraham", for the CPS.

[12] It is contained within the letter from Mr Knight to Cuttle and Co. Solicitors, already within the Claimant's original bundle.

69. In the letter from Mr Knight to his Instructing Solicitors (added to CCDCS and taken as "submissions" by the Crown Court), this issue is raised but was not considered, explored, elaborated upon, or answered by the Prosecution at the CTL extension application hearing.
70. In failing to consider the issue and simply reducing the preparedness question to the whereabouts of the witnesses, HHJ Landale fell into error. It is submitted that she ought to have asked the Prosecution to provide evidence that it was actually ready for trial and what the change had been in circumstances.
71. Following enquiries with Prosecution counsel on the date HHJ Landale's ruling, it was established that there appeared to have been no progress in relation to the outstanding issues affecting trial readiness.
72. It is conceded that R (Gibson) v Winchester Crown Court [2004] EWHC 361 (Admin) and R v Leeds Crown Court ex parte Bagoutie TLR 31 May 1999 (cited within the CTL extension application) provide support for the contention that lack of due diligence is not, of itself, cause for refusal to extend CTLs. However, the actual preparedness of the Prosecution - not to mention the seemingly incompatible assertions by the CPS staff - is a matter that ought to have some bearing upon the balancing of factors amounting to "good and sufficient cause".

Conclusion

73. For the reasons above, it is submitted that:
    a. HHJ Landale was entitled to reach the decision that she did, namely not to extend the CTLs in the case of Mr Mayall in the Manchester case.
    b. In reaching her decision, HHJ Landale was entitled (if not obliged) to consider all of the matters to which she alluded within her ruling.
    c. It is clear that HHJ Landale complied with the letter and spirit of cited authorities in examining the circumstances that led to there being no counsel to whom to return the trial brief.
    d. It is also clear that HHJ Landale did not stray into assessing the merits of the CBA action - rather, she noted that it was foreseen and foreseeable (as had been observed by the High Court and by Turner J on previous occasions) that such a problem would arise and now had done so.
    e. HHJ Landale was clearly aware of the decision in the Bristol case but there is no support for the contention that she placed reliance upon it other than borrowing a turn of phrase. There is nothing objectionable about this. Indeed, it is an indication that both Circuit Judges were clearly giving consideration to

the same issues and both deemed them to be relevant. It demonstrates no deficit of scrutiny or reasoning.

f. Whilst the level of detail in HHJ Landale's ruling is not as great as some of the other rulings included in the Claimant's bundle of other first instance rulings, all of the relevant factors are included, and no irrelevant factors appear to have been part of the reason for the ruling.

g. Whilst the Claimant may not agree with the decision of HHJ Landale, it is plainly lawful and within her discretion. There is no apparent error of law that might allow the High Court to quash the decision.

h. The ruling of HHJ Landale summarily dismissed the issue of readiness for trial and it is submitted that this required examination both in relation to due diligence *and* to "good and sufficient cause". Such an examination may have further undermined the sufficiency of cause claimed by the Claimant.

i. There is no power for the High Court to extend the CTLs in the Crown Court proceedings where the CTLs have now expired. Even if such a power did exist, it would be unjust in all of the circumstances to utilise it here.

Benjamin James Knight
Counsel for Adam Mayall

Central Chambers
Manchester
20th September 2022