



Neutral Citation Number: [2024] EWCA Crim 34

Case No: 202304270 B1; 202304281 B1; 202304316 B1; 202304282 B1

**IN THE COURT OF APPEAL (CRIMINAL DIVISION)**  
**ON APPEAL FROM BIRMINGHAM CROWN COURT**  
**His Honour Judge Andrew Smith KC**  
**T20217469**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 24/01/2024

**Before:**

**THE LADY CARR OF WALTON-ON-THE-HILL**  
**THE LADY CHIEF JUSTICE OF ENGLAND AND WALES**  
**LORD JUSTICE EDIS**  
and  
**MR JUSTICE GRIFFITHS**

-----  
**Between:**

(1) **SHAHID MOHAMMAD**  
(2) **ZAHID MOHAMMAD**  
(3) **ADNAN SHARIF**  
(4) **USMAN SHARIF**  
- and -  
(1) **PALVAAN ISLAAM**  
(2) **REX**

**Appellants**

**Respondents**

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**Greg Unwin & Greg Wedge** (instructed by **GQS Solicitors**) for the **First Respondent**  
**Luke Blackburn & Andrew Price** (instructed by **the Crown Prosecution Service**) for the  
**Second Respondent**

Hearing date: 24 January 2024

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**Approved Judgment**  
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**Lady Carr of Walton-on-the-Hill, LCJ:**

1. In this judgment we refer to the appellants as ASJ (Shahid Mohammad), BOZ (Zahid Habib Mohammad), ANF (Adnan Sharif), and BSZ (Usman Sharif). Their co-defendants, who have not appealed, we will refer to as MM (Mohammed Maroof), IM (Israr Mahmood), AA (Atiq Ali) and MG (Mohsan Hussain). The other co-defendant, PI (Palvaan Islaam), has also not appealed but is a respondent to the appeal.
2. On Monday 13 November 2023, which was day 39 in week 10 of a trial, the jury retired to consider their verdicts on nine counts of fraud. On the morning of the fourth day of their deliberations (16 November), the jury informed the court of two incidents of jury tampering which had taken place about a fortnight before. There is no challenge to the Judge's finding, after investigation, that jury tampering had indeed taken place. There is no challenge, either, to his decision (on 17 November) that the whole jury should be discharged.
3. This interlocutory appeal concerns the decision of HHJ Andrew Smith KC ("the Judge") (on 30 November) to continue the trial without a jury. That decision is supported by the Crown and by the respondent PI. It is challenged by the appellants, ASJ, BOZ, ANG and BSZ.
4. The Judge's decisions were made under section 46 ("section 46") of the Criminal Justice Act 2003 ("the 2003 Act"). The challenge is made under section 47 of the 2003 Act ("section 47"). The Judge himself gave leave under section 47 and, by virtue of section 47(3) of the 2003 Act, his order that the trial should continue without a jury ("the Order") has not taken effect pending the outcome of this appeal. By section 47(4) it is open to us to confirm or revoke the Order.

**The Legislation**

5. Sections 46 and 47, so far as relevant, provide as follows:

**"46 Discharge of jury because of jury tampering**

- (1) This section applies where —

- (a) a judge is minded during a trial on indictment to discharge the jury, and
- (b) he is so minded because jury tampering appears to have taken place.

(2) Before taking any steps to discharge the jury, the judge must —

- (a) inform the parties that he is minded to discharge the jury,
- (b) inform the parties of the grounds on which he is so minded, and
- (c) allow the parties an opportunity to make representations.

(3) Where the judge, after considering any such representations, discharges the jury, he may make an order that the trial is to continue without a jury if, but only if, he is satisfied —

- (a) that jury tampering has taken place, and
- (b) that to continue the trial without a jury would be fair to the defendant or defendants; but this is subject to subsection (4).

(4) If the judge considers that it is necessary in the interests of justice for the trial to be terminated, he must terminate the trial.

(5) Where the judge terminates the trial under subsection (4), he may make an order that any new trial which is to take place must be conducted without a jury if he is satisfied in respect of the new trial that both of the conditions set out in section 44 are likely to be fulfilled.

(6) Subsection (5) is without prejudice to any other power that the judge may have on terminating the trial.

(7) Subject to subsection (5), nothing in this section affects the application of section 43 or 44 in relation to any new trial which takes place following the termination of the trial.

#### **47 Appeals**

(1) An appeal shall lie to the Court of Appeal from an order under section 46(3) or (5).

(2) Such an appeal may be brought only with the leave of the

judge or the Court of Appeal.

(3) An order from which an appeal under this section lies is not to take effect —

- (a) before the expiration of the period for bringing an appeal under this section, or
- (b) if such an appeal is brought, before the appeal is finally disposed of or abandoned.

(4) On the termination of the hearing of an appeal under this section, the Court of Appeal may confirm or revoke the order.

..."

### **The Issues in the Trial**

6. The prosecution case is that in 2015 and 2016 the appellants and their co-defendants committed fraud against His Majesty's Revenue and Customs ("HMRC") and various car finance companies. The offences are said to have been carried out under the cover of, or to have been assisted by, the use of numerous companies and bank accounts. The total losses are said to amount to just under £700,000.
7. The alleged frauds against HMRC are said to involve false tax declarations that a VAT registered company was entitled to payment on the basis that in a particular period the company had paid more VAT than it had received in sales. In fact, none of the companies in question are said to have been trading at the time. Fraudulent loan applications are alleged to have been made to the car finance companies, using false identities.
8. The indictment originally contained ten counts of fraud and money-laundering covering the period from January 2012 to November 2016. Nine counts were left to the jury. There is little dispute that frauds have been committed. The real issue is as to the identity of the fraudsters.
9. The nine outstanding counts can be broken down as follows:
  - (i) Count 2, against ASJ: cheating HMRC by dishonestly making false claims for VAT repayments. ASJ's defence is that he played no role in making the applications in question. His identity was used without his knowledge.
  - (ii) Count 3, against ASJ, BOZ, BSZ, ANF, MM and IM: conspiring with Faraan Janheeri and others to cheat HMRC by dishonestly making false claims for VAT repayments. In defence it is argued that the evidence does not show that more than one person was required to make the claims. The appellants played no part in any agreement to cheat the public revenue and their identities were used without their knowledge.
  - (iii) Counts 4 to 8, against PI (counts 4 to 8), ASJ (counts 4, 5 and 6),

against MM (count 5): committing frauds against car finance companies. The defence is a denial of any participation in any fraud.

(iv) Counts 9 and 10, against AA (count 9) and MH (count 10): entering into, or becoming concerned in, a money laundering arrangement. AA and MH Hussain deny any involvement in the opening of the relevant bank accounts.

### **The course of the trial until disclosure of the jury tampering**

10. The trial began on 4<sup>th</sup> September 2023. The jury were discharged from returning a verdict on count 1 on 25<sup>th</sup> September 2023. The Judge heard and rejected submissions of no case to answer made on behalf of BSZ, PI, IM and AA.
11. ASJ then gave evidence, which he did over two days. None of the other appellants or co-defendants went into the witness box.
12. The jury began their deliberations on counts 2 to 10 on Monday 13<sup>th</sup> November 2023. On the morning of 16<sup>th</sup> November 2023 the jury sent a note which disclosed that a juror had been approached to influence what was described as "our decision".

### **Investigation of Jury Tampering**

13. The Judge proceeded to investigate the identification of a jury irregularity in line with the stepped process identified in the Criminal Practice Directions. It was discovered that two separate approaches had been made to one juror (Juror 4) by different third parties on two consecutive days approximately a fortnight earlier.
14. Juror 4 said that, in the company of another juror (Juror 2), he had been approached as he left court by someone whom he had seen previously but did not know personally. That person had been in the public gallery of the court on the day of the approach, but not otherwise. He had offered Juror 4 a lift, which Juror 4 had declined. He had asked Juror 4 about his family, and indicated that some of the defendants were his friends. Juror 4 said that he discussed the situation briefly with Juror 2.
15. Juror 2 said that he had walked out of court with Juror 4 and observed Juror 4 being greeted and asked if he wanted a lift. Juror 2 had then walked off. Juror 2 made no mention of any further exchange between himself and Juror 4.
16. Juror 4 described another incident the following day when another person, whom he did know very well, approached him at the end of the court day. That person stated that "the fattest one" was his cousin and that he was concerned about his cousin "going down". The person added that he was not concerned about the other defendants. Juror 4 stated that he was fearful for his family. "The fattest one" appeared to be a reference to PI.
17. Juror 4 did not disclose these approaches at the time that they were made. He did reveal them to a number of other jurors on 13 November 2023 (before the jury were sent out to commence their deliberations on that day). During the course of their deliberations, all jurors learned of the detail of both approaches. The issue was not

raised with the court until 16 November 2023. At this point the appellants and their co-defendants, all of whom had been on bail, were remanded into custody.

### **The Rulings by the Judge**

18. On 17 November 2023, the Judge concluded "unhesitatingly" that Juror 4 had to be discharged. Further, he was satisfied that a fair-minded and informed observer would conclude that there was a real possibility of bias on the part of all jurors as a reaction to the events such as to render any convictions unsafe. There was no available cure by any adaptation of the trial process at that stage. Accordingly, the whole jury would be discharged.
19. On 18 November 2023 the appellants and their co-defendants were released on conditional bail.
20. Following the decision to discharge, prosecuting counsel indicated that the issue of continuing without a jury would be raised, although the Crown would be neutral on the issue. Counsel for MM then indicated that he would be applying for the trial to continue without a jury, pursuant to section 46(3).
21. The Judge had before him written and oral submissions from all parties on the issue. The appellants each resisted continuation of the trial without a jury. By contrast, PI, IM, AA and MH each contended that the trial should continue with the Judge alone. MM and the Crown took an essentially neutral stance, although the Crown submitted that there was a proper basis for the Judge to find that it would be fair to continue with the trial and that the interests of justice favoured that course of action.
22. Prior to the Judge's decision to discharge the jury, no express reference had been made in court to the provisions of section 46, nor was there any mention of the possibility of continuing the trial without a jury (pursuant to section 46(3)). There was, however, reference to Part 8.7 of the Criminal Practice Directions ("CPD"), which in turn referred in terms to section 46. The Judge considered that the absence of any earlier reference to section 46 had not given rise to any material disadvantage to any defendant. There had been consistent overt reference to Part 8.7 of the CPD. The discharge of the jury and the continuation of the trial, he said, were distinct and separate consequential considerations, engaging different tests.
23. In a 14-page ruling on 30<sup>th</sup> November 2023, the Judge gave clear and detailed reasons for his decision to continue with the trial alone. He was satisfied to the criminal standard that it was fair to the appellants and their co-defendants to continue the trial without a jury. No party had suggested that he had exhibited actual or apparent bias. He had not seen any material that could raise such a possibility. He was able to put the knowledge of any material that was not before the jury (which related primarily, if not exclusively, to PI) to one side. No one suggested that the fact that he had determined a submission of no case to answer would introduce potential unfairness. He could fairly discharge the function of returning verdicts. He had paid close attention to the evidence during the trial, and the assessment of witness credibility was an ordinary part of his duty. In any event, counsel would be given the opportunity to address him as a tribunal of fact in written or oral closing submissions. The defence had additional protection in the fact that he would have to provide a reasoned judgment: see section 48(5) of the 2003 Act.

24. The Judge was not satisfied that the case was so unusual on the facts that the "very firm steer" provided in *R v Twomey* [2009] EWCA Crim 1035; [2009] 2 Cr App R 25; [2010] 1 WLR 630 ("*Twomey*") at [20] should be disregarded. The degree of connection between any defendant and the jury tampering made no difference.
25. The Judge further ruled that it was not in the interests of justice to terminate the trial. There was a strong public interest that jury tampering did not find its reward in an otherwise fair trial being stopped. The combination of the age of the alleged offending, the reliance upon the memories of both prosecution and defence witnesses, the point in the trial at which the jury were discharged and the fact that any re-trial was very unlikely to be listed before 2025 all supported it being in the interests of justice for the trial to continue. As it would not be unfair to continue the trial, it would not be desirable to sever one or more of the defendants from the indictment.
26. In conclusion, whilst the Judge recognised the long-established right to a jury trial, and that the court should be very careful in its assessment of whether a trial should continue after jury tampering, he was satisfied to the criminal standard that the relevant statutory tests in section 46 were met, that the trial would remain fair, and that he could continue without a jury.
27. The Judge then exercised his power to continue the trial without a jury, and made an order under section 46(3) to that effect. He then gave leave under section 47(2) to appeal.

### **The Arguments on Appeal**

#### **Submissions for the appellants**

28. In overview the submissions for the appellants are as follows:
  - (i) The appellants are entitled to a fair hearing before an independent tribunal. They want a trial by jury. They had faith in the jury and faith in the jury's collective reasoning. The right to a fair trial before a jury should only be removed exceptionally.
  - (ii) It was unfair to continue the trial without a jury given the very late stage at which the jury tampering came to light, when there had been significant witnesses of fact and large quantities of material put in evidence. There was also a delay in the reporting of the jury tampering, which significantly diminished the right to a jury trial. The factual situation was thus different to that in *R v McManaman* [2016] EWCA Crim 3; [2016] 1 Cr App R 24; [2016] 1 WLR 1096 ("*McManaman*") and *R v Guthrie* [2011] EWCA Crim 1338; [2011] 2 Cr App R 20 ("*Guthrie*").
  - (iii) The appellants might have adopted a different strategy (for example by not calling ASJ to give evidence or by calling ANF to give evidence), had it been known that they would be tried by the Judge alone.
  - (iv) The Judge's focus before discharge of the jury would have been on trial management, not witness demeanour and weighing of the evidence. This was a significant concern, given the length of the trial.

(v) There are distinctive material features on the facts of this case:

(a) Some of the appellants and their co-defendants were not involved in the jury tampering, which is said to be a relevant matter. Reference is made to *Guthrie* at [29] and *Twomey* at [4]. The only defendant directly implicated, namely PI, was the defendant leading the submission that the trial should continue. The court should guard against rewarding jury tampering. Here, PI was getting what he wanted as a result of the jury tampering in which he was implicated.

(b) The prosecution was neutral on the issue of trial by judge alone.

(c) There were inconsistencies in the accounts of Jurors 2 and 4, which raised question marks over the reliability and completeness of the information received. This is said to go to the question of overall fairness.

(vi) The Judge should have raised the prospect of trial by judge alone when submissions on discharge were being made. The failure to do so had led to unfairness.

(vii) Finally, reliance is placed on the fact that the statement in *Twomey* (at [20]) to the effect that a judge should continue the trial "save in unusual circumstances" was *obiter*. The legislation should be interpreted with the importance of the right to trial in mind. The caveat, by reference to "unusual circumstances", unnecessarily restricts the right to jury trial. It imposes an unjustified, separate principle.

#### The Submissions for the Crown and PI

29. In overview the submissions for the Crown and PI are:

(i) There was no unfairness in the procedure adopted.

(ii) Deficiencies in the information from Jurors 2 and 4 would only be relevant to the question of whether the judge was entitled to find that there had been jury tampering (a matter not under appeal).

(iii) The lack of link between the appellants and the jury tampering is irrelevant (as confirmed in *McManaman*).

(iv) The possibility of alternative defence strategies is speculative and insufficient to impugn the overall fairness of the trial procedure.

30. In short, it is said that the Judge was right to make the decision that he did for the reasons that he gave.



## **Discussion and Analysis**

31. *Twomey* rightly described trial by jury as "a hallowed principle of the administration of justice", but also recognised that the right to trial by jury can be amended or circumscribed by legislation, as it is by the 2003 Act: see [10]. A trial by judge alone will not necessarily be "unfair or improperly prejudicial to the defendant": see *Twomey* at [18]; and see also *R v Twomey and others (No 2)* [2011] EWCA Crim 8 at [4]. It is compatible with Article 6 of the European Convention on Human Rights: see *Twomey v UK* (2013) 57 EHRR SE15.
32. Parliament has enacted a statutory scheme allowing a trial to be conducted without a jury where there is a danger of jury tampering (sections 44 and 45) and for a trial to be continued without a jury when jury tampering appears actually to have taken place (sections 46 and 47). Such cases are unusual but, when they occur, both principle and statute ensure that the subsequent trial, whether with or without a jury, is conducted in accordance with the interests of justice. That is embedded in section 44(5) (when there is a danger of jury tampering) and in section 46(4) (when jury tampering appears to have taken place).
33. The conditions for trial without a jury under section 44 (danger of jury tampering) are:
  - (i) The judge is satisfied that there is evidence of a "real and present danger" that jury tampering would take place (section 44(3)).
  - (ii) The judge is also satisfied that, notwithstanding any steps (including the provision of police protection) which might reasonably be taken to prevent jury tampering, the likelihood that it would take place is so substantial as to make it necessary in the interests of justice for the trial to be conducted without a jury (section 44(5)).

When both these conditions are satisfied, the judge "must" make an order that the trial is to be conducted without a jury (section 44(3)). This decision is made at a preparatory hearing (section 45(2)). However, following the preparatory hearing, it is not necessarily the case that the same judge will conduct the trial: see *Twomey* at [29] - [31].

34. The conditions for trial without a jury under section 46 (jury tampering has taken place) are:
  - (i) The judge is minded during a trial on indictment to discharge the jury because jury tampering appears to have taken place (section 46(1)).
  - (ii) The judge has informed the parties of his grounds and allowed them an opportunity to make representations (section 46(2)).
  - (iii) The judge decides to discharge the jury after consideration of any such representations (section 46(3)).
  - (iv) The judge is satisfied that jury tampering has actually taken place (section 46(3)).

(v) The judge is satisfied that to continue the trial without a jury would be fair to the defendants (section 46(3)). If, and only if, satisfied of (iv) and (v), and subject to subsection (4), the judge "may" then order the trial to continue (section 46(3)).

(vi) If the judge considers that it is necessary in the interests of justice for the trial to be terminated, he "must" terminate the trial (section 46(4)). He may then order that any new trial which is to take place may be conducted without a jury if he is satisfied that the two conditions in section 44 are "likely" to be fulfilled (section 46(5)).

35. In summary, therefore, the judge must be satisfied that jury tampering has taken place, and that to continue the trial without a jury would be fair, and that it is not necessary in the interests of justice for the trial to be terminated. He may then order the trial to continue without a jury.

36. These provisions have been considered by this court in a number of cases. We summarise the following principles:

(i) The judge must be satisfied of the relevant conditions to the criminal standard of proof: see *Twomey* at [16].

(ii) The power to discharge the whole jury under section 46 is in addition to, and not in place of, the other powers of the court, including the power to discharge an individual juror (see *Guthrie* at [5]), or to put in place arrangements to protect the jury (see *R v J, S and M* [2010] EWCA Crim 1755; [2011] 1 Cr App R 5, at [8] ("*J, S, & M*").

(iii) When jury tampering has actually taken place, and the relevant conditions of section 46 are satisfied, "save in unusual circumstances, the judge faced with this problem should order not only the discharge of the jury but that he should continue the trial": see *Twomey* at [20]. This point was made *obiter* in *Twomey*, but it was expressly affirmed by this court in *R v S(K)* [2009] EWCA Crim 2377; [2010] 1 Cr App R 20; [2010] 1 WLR 2511 ("*S(K)*") at [41] and in *McManaman* at [27] and [28] (and see also *Guthrie* at [25]). We too accept it as representing the legislative intention. The normal approach is that, assuming that the necessary conditions are established, the case should continue. This is because of the need to discourage jury tampering, the huge inconvenience and expense for everyone involved in a re-trial, and to ensure that trials should proceed to verdict rather than end abruptly upon the discharge of the jury: see *Twomey* at [20].

(iv) It is neither necessary nor appropriate to be prescriptive about "unusual circumstances". In *S(K)*, for example, the trial judge had been involved in previous trials, and had made relevant sentencing remarks, to an extent which made the suggestion of a disqualifying perception of bias unusually cogent: see [43]. However, the fact that a case turns particularly on the evaluation of credibility does not make the circumstances unusual. The assessment of credibility of witnesses is an

ordinary part of a judge's duty. Indeed, defendants have the additional protection, when the findings of fact, including credibility, are made by a judge, that there must be a reasoned judgment to support them: see *McManaman* at [30].

(v) General assertions of unfairness (of the type referred to in *Guthrie* at [25]) are unlikely to be persuasive. The court should focus on matters of potential unfairness specific to the case.

(vi) When jury tampering has taken place, it is not relevant to decide whether the defendant, or any particular defendant among several, has been in any way responsible for it. Proof of tampering is all that the 2003 Act requires, and the courts should not qualify the provisions in question. The concern is the protection of the integrity of the jury; the objective of the legislation is to prevent the tampering, it matters not whether the defendant is involved: see *McManaman* at [21] - [25].

(vii) It is never too late for the trial judge to continue the trial without a jury, and they may do so even when the jury is already in retirement: see *Guthrie* at [2]; and *S(K)* at [23]. Indeed, the lateness of the event may itself be a strong legitimate reason for continuing the trial without a jury.

(viii) The judge who has decided that there has been jury tampering is not thereby precluded from being the judge who decides the case; on the contrary, it is expected that they will continue as the judge: see *Guthrie* at [25].

(ix) Nothing in section 46 suggests that the judge is prohibited from discharging the jury on the basis of jury tampering and, on a separate occasion, addressing the question whether to terminate the trial or order that it should continue without a jury: see *Guthrie* at [5]. The latter decision should however be made as soon as reasonably practicable: see *McManaman* at [32].

(x) If the evidence and closing speeches have concluded, and subject to the question of further oral or written submissions, the judge should not hesitate to prepare draft reasons while matters are fresh in their mind. This is so although no judgment can yet be delivered, and by section 47(3) the trial cannot proceed at all, pending the disposal of any appeal: see *Guthrie* at [31].

(xi) It will often be the case that the trial judge, when exercising their powers under section 46 in the course of a trial, is particularly well placed to assess the issues both of fairness and of the interests of justice, and this will be given appropriate weight when any appeal is being considered. For example, a judge's own assessment that they will be able to reach a true verdict which has regard only to the admissible evidence, although they may have seen other evidence which is not admissible, will normally be accepted: see *S(K)* at [38].

### Alleged Procedural Unfairness

37. We are not persuaded by the suggestion of procedural unfairness on the facts of this case. There is nothing in section 46 to suggest the need to address the question of trial without a jury before or in tandem with the question of discharge of the jury. The questions of discharge and continuation are separate and distinct; they engage different considerations. Indeed it is preferable to keep them apart, so that at the discharge stage, the judge focusses wholly on the question of whether discharge of the whole jury is really mandated.
38. In any event, the possibility of continuation without a jury must always have been obvious, not least given the repeated references to Part 8.7 of the CPD. It is difficult to see realistically on the facts how there could ever have been any different outcome on the question of jury discharge.

### Alleged Substantive Unfairness and the Interests of Justice

39. The Judge was entitled to conclude to the criminal standard of proof that jury tampering had taken place and there is no challenge to his finding to this effect. Any concerns about the reliability of Jurors 2 and 4 might have gone to this issue but are not otherwise relevant.
40. The Judge was also in our judgment right to conclude that the trial could continue fairly without a jury:
- (i) There was no question of actual or apparent bias – a question which the Judge considered carefully.
  - (ii) Whether or not the appellants themselves were responsible for the jury tampering was immaterial.
  - (iii) As for the length of the trial and timing so close to the end of the trial, the Judge was well placed to assess his ability to try the issues fairly. We see no reason not to accept his assessment. As set out above, if the judge decides that the trial should continue, they must take it over at the point it has reached, however late that may be.
  - (iv) The suggestion of unfairness because of potential alternative defence strategies is unconvincing. It is unclear why a different approach to the appellants' advantage might have been taken. The Judge would be deciding exactly the same issues, on exactly the same evidence, as the jury.
  - (v) The Judge would give detailed reasons for his verdicts after affording the opportunity for all counsel to make further written or oral closing submissions.
41. In short, we have no concerns about the Judge's careful assessment that he can provide the appellants with a fair trial although proceeding alone and without a jury.

42. Finally, there has been no challenge to the Judge's conclusion that it was not necessary in the interests of justice to terminate the trial. The reasons that he gave for continuation are indeed compelling: the strong public interest that jury tampering should not find its reward in an otherwise fair trial being stopped; the age of the alleged offending; the reliance upon the memories of both prosecution and defence witnesses; the point in the trial at which the jury were discharged; and the fact that any re-trial was very unlikely to be listed before 2025.

### **Leave to Appeal**

43. The Judge granted leave to appeal, not because he considered the ruling that he had made to be wrong in principle or unjustified in any way, but because he understood from the authorities that trial judges in similar situations to the instant case have invariably granted leave.
44. Parliament chose to grant a right of appeal from orders under section 46(3) or (5), but not an automatic right. That should be respected. By section 47(2), such appeals may be brought only with the leave of the judge or the Court of Appeal. Leave to appeal should only be given on a principled basis, namely where it is considered that there is a real prospect of success. There is no need for every case to come to this court simply because the event is rare or the consequence serious. There is now a body of caselaw and we have set out the principles. The judge need be no more willing to grant leave to appeal in these than in any other cases. If leave is refused by the judge, it can be sought from the Court of Appeal in the usual way.

### **Conclusion**

45. For these reasons, we dismiss the appeals. We confirm the Order. The trial will continue before the Judge and without a jury.
46. In the circumstances, we also lift the reporting restriction imposed previously under section 4(2) of the Contempt of Court Act 1981.

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