

OBSERVATION AT HAND DOWN.

Before formally handing down the judgment I shall say a few words about it for the benefit of the press and public.

The Claimants in the case are two Burmese nationals. They are in the middle of being tried for murder in Thailand. They are charged with the murder of the two young tourists David Miller and Hannah Witheridge. The prosecution is seeking the death penalty.

The case attracted coverage in the world's media who also reported the allegations made by the two accused that confessions they had given to the Thai police were, they said, obtained through torture.

Because of misgivings arising as a result of media speculation the Prime Minister asked the Commissioner of Police for the Metropolis (ie Scotland Yard) to send a senior team to Thailand. Because it is UK policy not to assist foreign police authorities in death penalty cases the engagement was limited to observing and recording the investigation into the murders by the Royal Thai Police.

The Thai police cooperated fully. However it was agreed between the Thai authorities and the Metropolitan Police that the final report would be kept confidential. This was in effect a precondition for the Thai police agreeing to cooperate.

A report was in due course produced and it was used to brief the families of the murder victims and to provide reassurance as to the investigation that was being carried out.

The Claimants, the two Burmese accused, now seek access to that report under the Data Protection Act 1998. They wish in particular to see the information which is contained within that report which relates to them. They consider it might be of use in the trial in Thailand. The police have refused access on public interest grounds.

Under the Data Protection Act I have had to balance the interests of the police against those of the accused.

The police say that they are entitled to refuse to give access. They say, in essence that confidentiality is a hallmark of many cases of international cooperation between police forces and is integral to the effective enforcement of the criminal law and indeed to public security generally. If the Courts override confidentiality and order disclosure this could have a very serious adverse effect upon the ability of the police to enter into international cooperative ventures in the future.

For their part the claimants submit that these considerations cannot prevail in a death penalty case.

I have set out full details of the arguments of both sides in the judgment.

The case has had to be dealt with on an exceptionally urgent timetable. The trial in Thailand is ongoing; the prosecution case is nearly complete; and the defence are shortly to open their defence. The hearing was held last Friday.

With that introduction I shall now turn to the formal hand down.

For the reasons set out in the judgment the application for disclosure is refused.

I have made clear in the judgment that the issues of both law and fact arising in this case are highly novel and difficult.

The reasons for my decision are set out in the judgment. Hard copies are now available.

In short I have concluded that there is nothing in the police report which is exculpatory ie would be of material assistance to the Claimants in the trial to their defences. I have also decided that in principle the public interest arguments of the police are strong. On the facts of this case and applying an intense proportionality test the arguments and interests of the police outweigh those of the Claimants.