Case No: T20167262 (Walters)
& T20160897 (Ali)

IN THE CROWN COURT AT NEWCASTLE

Date: 6/04/2017

Before :

MR JUSTICE LANGSTAFF

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Between:

R
- and -
GARETH WALTERS

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- and -
ABDIRIZAK ALI

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- -

MR RICHARD WRIGHT QC & MR MICHAEL BUNCH
(instructed by the Crown Prosecution Service) for the Prosecution

Mr ALISTAIR MacDONALD QC and MR ADAMS (for judgment)
(instructed by Lambert Taylor and Gregory, for the Defendant Walters)

Mr ALISTAIR MacDONALD QC, MR COMB and MR HAWKS (for judgment)
(instructed by Crowe, Humble and Wesencraft, for the Defendant Ali);

Hearing date: 17th March 2017

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Judgment Approved by the court subject to editorial amendments

The Honourable Mr Justice Langstaff:

1. The Defendants in two separate cases apply to dismiss or stay the cases against them as an abuse. They say that it would be unfair for them to be put on trial because the evidence which would be relied upon by the Crown to justify a conviction came from covert human intelligence sources ("CHIS"s) which had not been subject to the degree of regulation, designed to protect the public, provided for by the Regulation of Investigatory Powers Act 2000 ("RIPA").

2. Submissions in support of this application were made on behalf of both Defendants by Mr MacDonald QC, with whom Mr Adams appeared for the Defendant Walters, and with whom Mr Comb would have appeared for the Defendant Ali had his presence not been required in another court. These submissions centred on the activities of members of the public who said they belonged to an organisation known as Dark Justice. The prosecution was represented by Mr. Richard Wright QC, with Mr. Michael Bunch.

3. The broad facts of the cases in respect of each Defendant are as follows. Gareth Walters, a man of 37, is charged on an indictment containing two counts. The first alleges that he attempted to meet a child of under 16 ("Amanda") – the prosecution allege that he understood she was 13. Having made contact with her on two previous occasions on 5th September 2015 (wrongly indicted as 2014) it is said that he travelled to Newcastle with the intention of meeting her, for the purpose of unlawful sexual activity with her. The second count alleges that he attempted to incite "Amanda" to engage in

sexual activity involving the licking of her clitoris, believing her to be under 16.

4. Abdirizak Abdirahman Ali is a man of 24. He was charged on one count of attempting to meet a child following grooming, having communicated more than once with a person he believed to be "Jessie" not reasonably believing she was over 16 – he was told that she was not – in March 2016. It is said that he attempted to meet her intending that unlawful sexual activity would follow.

5. In each case the evidence to support these counts arises out of the activities of an individual who has chosen, as an ordinary citizen and with no prior authority from the police, to adopt a false persona on a dating website. Michael Evans (such an individual and the central witness for the prosecution in each case) says in respect of Walters that he posted a picture on a site known as Badoo. This was a photograph of a real 18 year old woman, posted with a profile indicating that she was "Amanda", saying that she was 19 years of age and lived in Newcastle upon Tyne. There was no such person. In the case of Ali, Michael Evans posted a profile on an internet based dating application called Skout in the name of "Jessie", showing a photograph of a 21 year old woman. Ali connected with her on that site. When he did so, he was operating within an area of the site which was ostensibly restricted to those who were 18 years of age or older.

6. The Defendant Walters, using his real name, sent a message to "Amanda" through Badoo and a conversation on the web took place between her (so it appeared) and him shortly before 7pm on the 5th September 2015. During the course of this conversation, references were made by "Amanda" to her being

only 13 years old. This did not dissuade the Defendant. There was a subsequent exchange of texts between "Amanda" and him as a result of which the Defendant made his way to an arranged meeting outside Newcastle central station. Evans and a man called Timby were present there to video and record the confrontation which then took place. The police were told it was about to happen, and attended, were told of these events, and duly secured the arrest of the Defendant.

7. Abdirizak Ali was a member of the 18-plus area of Skout. "Jessie" told him that she was 13 years of age; an e-conversation followed, at the end of which, shortly after midnight on 6th March 2016 the Defendant asked whether "Jessie" wanted sex. Three days later a meeting was arranged between him and the person he took to be "Jessie". This was a trap: Evans and an associate were present, the police were called and the Defendant was arrested.

8. These two cases have these factual features, amongst others, in common. The Defendants were both of good character. Neither attempted to disguise their names or true identities. By contrast, the person with whom initially they would have thought they were making contact was supposedly a woman of over 18: but her identity was in each case totally fictitious, as was her profile. Both Defendants had therefore at the outset appeared to look for sexual contact with those over 18, if not by much: on the face of it, their interest in the girls to whose pictures they responded was entirely lawful. That is on the face of it: it may be that many girls who are underage pretend to be older than they are, and post details on websites in which (in order to do so) they lie about their age. However true that may be, the Prosecution say that in each of

these two cases "Amanda" on the one hand and "Jessie" on the other were clear that they were aged 13 before any invitation to have sex was made by the relevant Defendant to either. In each case, the false persona was adopted by Evans who claims to be acting in common with a number of others in an attempt to identify those who are prepared to use the internet to arrange to meet under-age girls for the purpose of pursuing unlawful sexual activities with them. As a group, he and those others have adopted the name of "Dark Justice".

9. Detective Superintendent Michael Jones gives evidence in a statement of 14 March 2017 that it is his role within the Northumbria Police to authorise the use and conduct of CHISs on behalf of the force. He says that members of Dark Justice are not encouraged in the activities they do by the Police – if anything, they are discouraged – and in no way can they be considered as taking steps on behalf of or at the request of a public authority.

10. Detective Superintendent Michael Barton, in a statement of the same date, says that on behalf of the Force he has "ownership" of the issues around internet vigilantes. Current advice from ACPO is that forces neither work with nor endorse the activities of those such as the members of Dark Justice. He has concerns about the public safety of some of their activities, and thought it appropriate to develop a policy towards such groups. In no way did the force condone, endorse or deliver an implicit tasking of Dark Justice. Policy is not to forge a convenient quasi-volunteer arrangement to somehow discharge the responsibility of the Police to investigate crime; it is clear that activities such

as those of Dark Justice pose risks to suspects and victims alike, and have the potential to compromise regulated law enforcement activity.

11. The Defendants did not seek to challenge the evidence of either Superintendent, though both were available to be called if needed: I accept their evidence as to the position of the Northumbria Police force.

Submissions

12. Mr MacDonald QC submits that the discretion of the court to stay proceedings for abuse of process is well established. There is a discretion to do so where it would be unfair due to executive misconduct. In **R v Maxwell and others** [2011] 1WLR 1837, SC, Lord Dyson JSC said (para. 13):-

> **"It is well established that the court has the power to stay proceedings in two categories of case, namely (i) where it will be impossible to give the accused a fair trial and (ii) where it offends the court's sense of justice and propriety to be asked to try the accused in the particular circumstances of the case. In the first category of case, if the court concludes that the accused cannot receive a fair trial, it will stay the proceedings without more. No question of the balancing of competing interests arises. In the second category of case, the court is concerned to protect the integrity of the criminal justice system. Here a stay will be granted where the court concludes that in all the circumstances a trial will offend the court's sense of justice and propriety (per Lord Lowry in R v Horseferry Road Magistrates Court, ex parte Bennett [1994] 1 AC 42, 74G) or will undermine public confidence in the criminal justice system and bring it into disrepute (per Lord Steyn in R v Latif and Shahazad [1996] 1WLR 104, 112F)"**

13. In **Latif** at page 112H, Lord Steyn said that the law in relation to the second category of case was "settled". As he put it:-

> **"The law is settled. Weighing countervailing considerations of policy and justice, it is for the Judge in the exercise of his discretion to decide whether there has been an abuse of process, which amounts to an affront to the public conscience and requires the criminal proceedings to be stayed: R v Horseferry Road Magistrates Court, ex parte Bennett. Ex parte Bennett was a case where a stay was appropriate because a Defendant had been forcibly abducted and brought to this country to face trial in disregard of extradition laws. The speeches in ex parte**

> **Bennett conclusively establish that proceedings may be stayed in the exercise of the judge's discretion not only where a fair trial is impossible, but also where it would be contrary to the public interest in the integrity of the criminal justice system that a trial should take place. An infinite variety of cases could arise. General guidance as to how the discretion should be exercised in particular circumstances will not be useful. But it is possible to say that in a case such as the present the judge must weigh in the balance the public interest in ensuring that those that are charged with grave crimes should be tried and competing public interest in not conveying the impression that the court will adopt the approach that the end justifies any means."**

14. In **Warren v Attorney General of the Bailiwick of Jersey** (Court of Appeal of Jersey) [2011] UKPC 10, Lord Kerr summarised the basic principles in paragraph 83, which I gratefully adopt. There is no dispute as to the applicability in general of these principles.

15. The essence of Mr MacDonald QC's argument is that Mr Evans, and, to the extent that he assisted, Mr Timby, said in the immediate cases they were following a practice which members of Dark Justice adopted generally in others. They had no prior knowledge that the Defendant in any given case would wish to make an arrangement to meet the person with whom they imagined (wrongly) that they had been in communication. In the cases of both Walters and Ali they were both of good character: and in both cases they had on the face of it approached women whom it was legitimate to approach (and did so before being inveigled by Evans into meeting a fictional girl said to be 13 years old). Evans and fellow members of Dark Justice were investigating a crime which had not yet been committed; facilitated its commission; and did so without regard to any of the regulatory provisions such as those in RIPA which would have restrained or regulated their behaviour if they had been employees of the police or any other public authority which considered it should investigate potential wrong doing. Given the posts on the Dark Justice

website indicating that members of that organisation had been responsible for a significant number of prosecutions, many of which had already been successful, it was clear that the police and prosecuting authorities regularly adopted the investigations conducted by Evans and others. Once the police were aware, as they were at the time of the instant cases, of the activities and methods of Dark Justice, they were aware that its members were passing information to the police which arose as a result of private relationships which had been established and maintained specifically for a covert purpose. **RIPA** provided controls where such activity was performed by a servant of a public authority acting as such: those controls were designed to safeguard members of the public, to balance the public interest in the detection of crime against the public interest in maintaining the privacy of members of the public, and to ensure that the state did not, however unwittingly, abuse its power. These controls were sidestepped if the Police were allowed to adopt the evidence produced by the actions of those who were within the statutory definition of CHISs, acting repeatedly as such, in the expectation that the material they uncovered would be utilised by the authorities in prosecuting such as the Defendants. To permit this to happen was to permit the law to be evaded, and thus diminished the integrity of the court process.

Regulation of Investigatory Powers Act 2000

16. These arguments depend centrally upon **RIPA.** Without the provisions of that Act, for instance, it would be impossible for Mr MacDonald QC to make the submission that those investigating on behalf of a public authority would have to do so in a manner which was regulated in several of its aspects, for it

is the Act alone which provides for such regulation. Without the provisions of the Act, Mr MacDonald QC's points could have no force. This is a point to which I shall return later in this judgment. However, the starting point is to consider what **RIPA** actually provides.

17. The long title of the Act is :-

> **"An Act to make provision for and about the interception of communications, the acquisition and disclosure of data relating to communications, the carrying out of surveillance, the use of covert human intelligence sources and the acquisition of the means by which electronic data protected by inscription or passwords may be decrypted or accessed; to provide for Commissioners and a tribunal with functions and jurisdiction in relation to those matters to entries on and interferences with property or with wireless telegraphy and to the carrying out of their functions by the Security Service the Secret Intelligence Service and the Government Communications Headquarters; and for connected purposes."**

18. **RIPA** is divided into 4 parts. The first deals with communications. The second deals with covert human intelligence sources ("CHIS"s). Part III deals with electronic data; and Part IV deals with the scrutiny of investigatory powers and of the functions of the intelligence services.

19. Within Part II, section 26(8) defines the meaning of "covert human intelligence source" as follows:

> **"For the purposes of this Part a person is a covert human intelligence source if –**
>
> **a) He establishes or maintains a personal or other relationship with a person for the covert purpose of facilitating the doing of anything falling with Paragraph (b) or (c);**
> **b) He covertly uses such a relationship to obtain information or to provide access to any information to another person; or**
> **c) He covertly discloses information obtained by the use of such a relationship or as a consequence of the existence of such a relationship."**

What is "covert" for the purposes of Section 26 is illuminated by sub-section 26(9)(b). By that:

> **"a purpose is covert, in relation to the establishment or maintenance of a personal or other relationship if and only if the relationship is conducted**

> **in a manner calculated to ensure that one of the parties to the relationship is unaware of the purpose…"**

20. Behaviour as a CHIS is not as such regulated by Part II of RIPA. Instead "the conduct and use of covert human intelligence sources" is: this is the effect of Section 26(1)(c). I accept the meaning of this phrase given to it by Mr Richard Wright QC. That is that Part II of RIPA, and section 26 within it, are directed toward those public authorities which might use or authorise the use of a CHIS, rather than at the behaviour of an individual CHIS personally.

21. Section 30 provides for Schedule 1 to RIPA to have effect, by listing those public bodies ("relevant public authorities") particular officers of which are empowered to authorise the conduct and use of a CHIS, under the careful regime which RIPA then applies.

22. The list of public authorities includes any police force, the Serious Organised Crime Agency, the Serious Fraud Office, the intelligence services, HM forces, HM Revenue and Customs, listed government departments, local authorities and devolved governments, together with a number of other bodies of a public nature. It is not necessary for present purposes to set out the full list.

23. Accordingly, the mere fact that a person operates as a CHIS gives rise to no obligation on the part of an authority to authorise or control such a person, unless it can be said that any such authority has engaged in the conduct and use of the CHIS concerned. Mr Wright QC submitted, and I accept, that the words "conduct and use" go together as one. "Conduct" does not apply on its own to anyone who acts as a CHIS: given the fact that the Act is directed towards the operations of a public authority, then, consistent with its approach

in Part I of the Act (in which the power of the state to conduct intrusive surveillance is balanced against the effect such intrusion will have upon the liberties of the subject) RIPA looks in Part II to influence the behaviour of public authorities where they consider using or conducting covert human surveillance. Thus the Act cannot sensibly be construed to apply to the conduct of an individual CHIS who falls within the definition of a CHIS, whose identity and existence may not be known to any public authority, let alone authorised by one. This view is consistent with my view which I set out below to the effect that the Act does not make the behaviour of a CHIS unlawful where it would not otherwise be so, but, rather, protects the CHIS if in the course of behaving as such he offends against the law (whether criminal or civil), in which case any authorisation protects him against that liability. If he is not authorised to act as a CHIS, or if though authorised he is not acting within the four corners of that authorisation, he has no such protection, and is subject to any liability for which the law otherwise provides.

24. Though with some hesitation, Mr Wright QC conceded that the behaviour of Mr Evans came within Section 26(8)(b) though Evans had not maintained a personal relationship (the description would not be appropriate for someone who had been in contact with the accused for less than 3 hours before his arrest): he had in that period of time, nonetheless, established a relationship, and had done so in a manner calculated to ensure that the accused did not know of his purpose.

25. Though the definition appears in section 26(8) the natural force of the words "covert human intelligence source" tends to support a conclusion that the

statute is directed towards the actions of a public authority rather than those of the informant. Take a situation where A befriends B, and in the course of their friendship B tells A of a number of matters he has previously kept private. The word "covert" relates to the relationship between them, and to the perspective of B. But so far as the "source" of the private information is concerned, in the eyes of A, and as between A and B, the source is B. It is only when A passes the information he has obtained on to C that A might be described as the source of the information – and in this case, that is in the eyes of C alone: so far as A and B are concerned, A is not the source, but B is. (It might be added that the word "intelligence", coupled with the word "source", supports this, for it suggests that the source is not merely to be seen as a particular person, but as part of a system of intelligence gathering for ulterior purposes - in this context, to enable public authorities better to fulfil their role in the protection of the public). Since A cannot be seen as the source of the relevant intelligence in the absence of a relationship between the public authority (C) receiving the information and A, and to regard A as a source is by reference to the position of C alone, the provisions of **RIPA** appear by use of the word "source" in this context to be directed toward providing for the powers and duties of the relevant public authority

26. By way of a side note, which I mention only since I am told there are some twenty or so cases which await my decision in these conjoined applications, it follows also that there is a reasonable argument that A does not become a CHIS until he tells C what he has discovered for as between A and C he could not before then be regarded as a source of the intelligence - unless, that is, it had been intended all along as between A and C that that is what he would do.

I do not rule out an argument along these lines in later cases to the effect that in circumstances like the present, where the Police had no advance knowledge that there might be information covertly being obtained by Evans about Walters or Ali, he was not acting as a source until the moment he first disclosed that information to them, and thus was never a CHIS, to be authorised, or implicitly regulated, by the Police until then if at all: in short, that Evans never was a CHIS in any sense relevant to an application to stay proceedings for abuse, and neither would be others who were shown in later cases to be in a similar position to that of Evans. Since it is conceded that Evans is probably a CHIS within the meaning of RIPA for present purposes, I do not need to consider this argument further here, and do not do so.

27. Whereas Part I of RIPA makes it unlawful for a person intentionally and without lawful authority to intercept any communication by post or by any communication system, whether public or private, this is subject to a power to provide for an interception, which would otherwise be unlawful, to be authorised and permitted. By contrast, part II does not make either the conduct or use of a CHIS unlawful. There is no sanction provided for by the Act in respect of the conduct or use of a CHIS.

28. Section 27(1) provides as follows:-

> **"(1) Conduct to which this Part applies shall be lawful for all purposes if (a) an authorisation under the Part confers an entitlement to engage in that conduct on the person whose conduct it is; and (b) his conduct is in accordance with the authorisation**
>
> **(2) A person shall not be subject to any civil liability in respect of any conduct of his which (a) is incidental to any conduct that is lawful by virtue of sub-section (1) and (b) is not itself conduct an authorisation or warrant for which is capable of being granted under a relevant enactment and might reasonably have been expected to have been sought in the case in question".**

29. Section 29 provides for the manner in which an authorisation to which Section 27 refers may be granted. Relevant to Mr MacDonald's argument is that such an authorisation shall (Section 29(2)) be granted for the conduct or the use of a "human intelligence source" if the person believes "that the authorisation is necessary on grounds falling within sub-section (3)(b) that the authorised conduct or use is proportionate to what is sought to be achieved by that conduct or use" and (c) [that appropriate arrangements exist in respect of the source].

30. An authorisation will only be necessary if (Section 29(3)) it is:- "(a) in the interests of national security (b) for the purpose of preventing or detecting crime or of preventing disorder (c) in the interests of economic well-being of the United Kingdom (d) in the interests of public safety (e) for the purpose of protecting public health…"

31. The conduct to be authorised is (Section 29(4)) such conduct as is "comprised of any such activities involving conduct of a covert human intelligence source or the use of a covert intelligence source as are specified or described in the authorisation (b) consists in conduct by or in relation to the person who is so specified or described as the person to whose actions as a covert human intelligence source the authorisation relates; and (c) is carried out for the purposes of, or in connection with, the investigation or operation so specified or described".

32. It is not necessary for present purposes to set out the remaining provisions of Section 29.

Discussion

33. Unless Mr MacDonald QC can show on the facts of the cases relating to either Walters or Ali that either or both had been used by the police, or their surveillance had been conducted by or on behalf of the police, his argument that to prosecute either would be an abuse under the second limb of the case law (that to prosecute would be unfair, or would damage the integrity of the courts) must rest upon analogy only. RIPA has no direct application, since it does not restrict the behaviour of any individual CHIS. He expressly disavows any misconduct by the police. He accepts there is no bad faith on the part of the police. He relies upon the frequency of repetition with which members of Dark Justice pursue their campaign to show that the police were, despite the protestations of their witnesses, indeed making use of a CHIS by accepting the evidence which had been garnered by Evans and Timby as the basis for arrest and prosecution of the Defendants: and that because of this it would not be fair to prosecute the Defendants, because the way use was made of them as CHISs had none of the safeguards there would have been if only it had been realised that the police were in fact using or conducting CHISs.

34. However, the argument falls at first base. The Act does not require the registration of any person who acts as a CHIS. It does not require that such behaviour be authorised before it may be lawful, or admissible in court proceedings. A person may act in a manner which falls within Section 26(8) without being required or invited by a public authority to do so. An ordinary member of the public, taking it upon her or himself to act as the evidence suggests Evans has done in the cases before me, may be telling lies on a dating website, but as such commits no crime. It is not argued that it is unlawful for him to do so for the covert purpose of obtaining information which he intends

to relay to a public authority. Neither he nor Timby have any protection against being prosecuted, or sued, for any unlawful act which they may commit in the course of doing so: without authorisation, each takes the risk that they may overstep the mark so as to incur criminal or civil liability. However, I am not directly concerned with whether there is a potential for any breach of law by them, but rather with the admissibility of any evidence they produce for the prosecuting authorities to consider.

35. The fact that where a local or public authority proposes to use a CHIS (directing, requiring or inviting that person covertly to establish a relationship and use it to obtain information subsequently to be relayed to the public authority) that authority may secure that a relevant person within the meaning of Section 30 of the Act grants authorisation to the CHIS, thereby relieving the CHIS of any liability to which he might otherwise potentially be subject, cannot, in my opinion affect the situation where the authority does not seek the use of the CHIS in the first place. Repeated conduct by a CHIS, which is repeatedly productive of evidence then handed to the police, does not have the consequence that the police are to be said to have "used or conducted" it. Any use in a situation such as that in the present cases is retrospective, not prospective: it is the latter to which the scheme of authorisation applies.

36. Since, in any event, RIPA does not apply any sanction where a CHIS is used or operates outside the scope of an authorising organisation, still less provides that such a use or behaviour is unlawful, the consequence is that neither can it be unlawful where there is no such a situation as to call for authorisation in the first place.

37. Mr Wright QC postulated the case of a trade organisation, investigating copyright theft with a view to potential prosecution. Such an organisation might regularly conduct test purchases. The apparent purchaser may well come within the definition in Section 26(8) on much the same basis as Mr Evans is said to do in the cases before me. Authorisation in advance, by means of the mechanism in the Act, is not required: and this is so despite the many occasions on which those who do engage in test purchases may interact with trading standards officers, or the police.

38. The fact that the activities of a CHIS are not unlawful even without authorisation is further emphasised by Section 80 of **RIPA**, which is headed "General Saving for Lawful Conduct". It reads:-

> **"Nothing in any of the provisions in this Act by virtue of which conduct of any description is or may be authorised by any warrant, authorisation or notice, or by virtue of which information may be obtained in any manner, shall be construed – a) as making it unlawful to engage in any conduct of that description which is not otherwise unlawful under this Act and would not be unlawful apart from this Act; b) as otherwise requiring (i) the issue grant or giving of such a warrant authorisation or notice or (ii) the taking of any step for or towards obtaining the authority of such a warrant, authorisation or notice, before any such conduct of that description is engaged in; or (c) as prejudicing any power to obtain information by any means not involving conduct that may be authorised under this Act."**

39. Further, I do not consider that the police or CPS were using or conducting CHISs by accepting the evidence offered to it by Evans and Timby in the cases of Walters and Ali. A police force has an obligation to act upon credible information received. Where, as here, that information indicated that there was about to be a confrontation in a public place, the police would be failing in their duty if they did not attend; and having done so were fully entitled to

take and consider the evidence offered to them. The position is very different from one in which a CHIS is specifically asked in advance to provide information, covertly.

40. A code of practice has been issued under Sections 71 and 72 of RIPA. The code of practice suggests (paragraph 2.24) that public authorities should avoid inducing individuals to engage in the conduct of a CHIS, either expressly or implicitly, without obtaining a CHIS authorisation. It goes on to give an example of a person, Y, who volunteers information to a member of a public authority about a work colleague out of Y's sense of civic duty. No authorisation is required. It continues that if, however, Y is subsequently contacted by the public authority and asked if he would ascertain certain specific information about his colleague, it is likely that his relationship with that colleague is now being maintained and used (by the authority) for the covert purpose of providing that information. It suggests that a CHIS authorisation would then be appropriate, in order to authorise what might otherwise be an unlawful interference with the Article 8 right of Y's work colleague to respect for private and family life. (This assumes that the interference would, because it breached Article 8, be an activity for which the public authority would be liable under Section 6 of the **Human Rights Act 1998** if not authorised in a way compatible with the 1998 Act which would ensure its purpose and operation fell within the qualifications to the right: I note this, but do not need to decide whether the assumption holds true, and do not do so).

41. The line between "use and conduct" of a CHIS on the one hand, and the acceptance of evidence which has not been sought in advance on the other, is thus seen by the code as being the difference between a public authority asking a person to act as a CHIS, and doing so before he acts as such, on the one hand, and accepting the benefits of that which a person falling within the definition of a CHIS can offer after he has secured all the intelligence he set out individually to obtain, on the other. Though RIPA is neither to be interpreted nor understood because of the view of it which is taken by that which is merely guidance, far from being primary legislation, nonetheless I am comforted that the view expressed here coincides with that which I take as to the proper interpretation and application of the Act.

Conclusion

42. Briefly, my conclusions are:

(1) No misconduct is suggested against the Northumbria Police force, and it is not suggested that it is guilty of any bad faith;

(2) I accept the evidence of Jones and Barton as set out above;

(3) The Police have neither expressly nor implicitly authorised members of Dark Justice – in these two cases, Evans and Timby – to act as CHISSs, nor invited them expressly or implicitly to do so.

(4) The members of Dark Justice have acted as private citizens throughout

(5) Authorisation of them by any public authority to act as a CHIS was and is not required by law

(6) The provisions of **RIPA** are directed towards the behaviour of public authorities rather than private citizens. There is no legal requirement for their activities to be subject to any of the controls that might have been a condition of authorisation

(7) Even where **RIPA** applies, the effect of authorisation of a person to act as a CHIS is to protect that person when acting as such from being in breach of the law. It does not regulate his activities so as to make them unlawful where they would otherwise be lawful if he were not authorised as a CHIS. Nor does it render any intelligence he supplies inadmissible.

(8) It is not a precondition of the admissibility of the evidence of Evans and/or Timby in the present cases that they either should have been expressly subject to authorisation, or behaved as if they were: if a stay is later sought on the basis of entrapment by them of the Defendants, then (i) it cannot be on the basis that **RIPA** should have applied to their activities, nor (ii) that their acts were endorsed or adopted by the state. There may remain an argument that in doing what they did Evans and Timby did not act in the public interest to reduce crime, but rather acted in a manner contrary to the public interest by helping to create it where it might not otherwise have occurred. I have not decided this argument (which relates to any submission that might later be made as to entrapment) since it was rightly regarded by the Recorder of Newcastle as turning upon the specific facts of any individual case in which it may be raised.

(9) No separate issue arises under Section 78 **Police and Criminal Evidence Act 1984** as Mr MacDonald QC accepts.

43. It follows that the application for a stay in each of the present cases is refused in both