Neutral Citation Number: [2018] EWHC 2908 (Admin)
Case No: CO/1754/2018; CO/2466/2018

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
DIVISIONAL COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 01/11/2018

Before :

THE PRESIDENT OF THE QUEEN'S BENCH DIVISION
(SIR BRIAN LEVESON)
MRS JUSTICE McGOWAN

- -

Between :

FELIPE VALIATI	**Appellant**
- and –	
DIRECTOR OF PUBLIC PROSECUTIONS	**Respondent**
KM	**Appellant**
- and -	
DIRECTOR OF PUBLIC PROSECUTIONS	**Respondent**

- -
- -

Libby Anderson (instructed by **Stewart Begum, London**) for Appellant, Felipe Valiati
Owen Greenhall (instructed by **T.V. Edwards LLP, London**) for the Appellant, KM
Benjamin Douglas-Jones Q.C. (instructed by the **Crown Prosecution Service**)
for the Director of Public Prosecutions in both appeals

Hearing date: 4 October 2018

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Judgment Approved

Sir Brian Leveson P :

1. These appeals by way of case stated both involve consideration of the use which the court may make of information provided by advocates acting for the defendant as part of case management in the Preparation for Effective Trial ('PET') form. In both cases, it is argued that critical information was taken from the PET form and treated as evidence either to fill a gap in the prosecution evidence or to support a conclusion reached.

2. The underlying principle for criminal litigation in the 21st century is identified in *R v Gleeson* [2004] 1 Cr App R 406 by Auld LJ (who was responsible for the Review of the Criminal Courts of England and Wales, October 2001) at [36]:

> "A criminal trial is not a game under which the guilty defendant should be provided with a sporting chance. It is a search for truth

> in accordance with the twin principles that the prosecution must prove its case and that a defendant is not obliged to inculpate himself, the object being to convict the guilty and acquit the innocent. Requiring a defendant to indicate in advance what he disputes about the prosecution case offends neither of those principles."

Observations to like effect have been repeated over the years: see, for example, *R (on the application of the DPP) v Chorley Magistrates' Court* [2006] EWHC 1795 per Thomas LJ from [22] and *R (on the application of Hassani) v West London Magistrates' Court* [2017] EWHC 1270 per Irwin LJ at [9], [11]-[13].

General Principles

3. The starting point is the Criminal Procedure Rules made pursuant to s. 69 of the Courts Act 2003 and, in particular, the duty of the court, as set out in CrimPR 3.2(1), to further the overriding objective by actively managing the case which includes the early identification of the real issues: see Crim PR 3.2(2)(a). In that regard there is a corresponding duty on the parties actively to assist the court in fulfilling its duty under 3.2 which includes communication between the parties (and the court) as to what is agreed and what is likely to be disputed: see CrimPR 3.3(1), (2)(a), (b), (c)(ii) and (d). Under the heading 'Conduct of a trial or an appeal' and in order to manage the trial, the court "must establish, with the active assistance of the parties, what are the disputed issues": see Crim PR 3.11(a). The PET form (prepared by the Criminal Procedure Rule Committee) contains a series of questions, a number of which are tick boxes, all designed to assist the process: so that there is no confusion, it should be completed as drafted without amendment to the questions posed.

4. Moving from pre-trial case management into a trial in the magistrates' court, it is first important to underline that CrimPR 24.13(2) requires that unless the court otherwise directs, it must be provided with: a copy of the record of information supplied by each party for the purposes of case management, including any revision of information previously supplied; pre-trial directions for case management, or relating to admission or giving of evidence; and, any admissions. Further, CPR 24.3(3) identifies the sequence to be adopted at the commencement of a trial in these terms:

> "(3) In the following sequence –
>
> (a) the prosecutor may summarise the prosecution case, concisely identifying the relevant law, outlining the facts and indicating the matters likely to be in dispute;
>
> (b) to help the members of the court to understand the case and resolve any issue in it, the court may invite the defendant concisely to identify what is in issue …."

5. In *R (Firth) v Epping Magistrates' Court* [2011] EWHC 388 (Admin), [2011] 1 WLR 1818, [2011] 1 Cr App R 32, the issue arose as to the admissibility in evidence, for the purposes of proceedings for committal for trial, of case management information supplied by her advocate. Initially charged with a summary offence, the case progression form then used in magistrates' courts identified the issues as "assault on

[defendant] by complainant and "only contact made was in self-defence". When assault occasioning actual bodily harm was substituted and a committal held, the defence challenged the adequacy of the evidence of presence at the scene. The prosecutor relied on the inference to be drawn from the issues identified in the case progression form and successfully argued that it was admissible pursuant to s. 118(6)(a) of the Criminal Justice Act 2003 ("the 2003 Act") as an admission made by an agent of the defendant.

6. Before the Divisional Court, it was conceded that the information given constituted an admission of presence at the scene but it was argued that it was inadmissible on the basis that indications given for the purposes of case management should not be used as evidence against the provider of that information. Toulson LJ (as he then was) rejected (at [23]) the broad proposition that any requirement that a defendant should disclose his or her hand before trial was inherently repugnant. He went on to observe that any unfairness at the trial could be prevented by the court's power to exclude evidence under s. 78 of the Police and Criminal Evidence Act 1984 ("PACE").

7. Toulson LJ also dealt with the position of a trial in the magistrates' court. He said:

> "[29] … Suppose that in the present case the matter had proceeded to a summary trial in the way that the parties originally expected. Because of the way that the issues were identified in the case progression form, the prosecution would not have thought it necessary to adduce identification evidence. If then, after the prosecution had called its evidence dealing with the nature of the events, Miss Firth had submitted that there was no case to answer because there was no proof of identification, Mr Grout recognises that there would be a problem. To put it colloquially, the prosecution would have been led up the garden path. He submits that it would not be possible in those circumstances for the prosecution to introduce the case progression form. Rather the appropriate course would be for the prosecution to seek an adjournment. As a matter of practical reality, the case would then have to go off to a future date, probably before a different bench of magistrates, and the prosecution would have to set about seeing whether they could obtain further identification evidence, involving identification parades, by now a considerable time after the incident.
>
> [30] If one asks rhetorically whether that approach is consistent with the object of the Criminal Procedure Rules 2010, i.e. whether it would further the interests of justice, do fairness and encourage expedition, the answers are obvious. I see no unfairness, in such a case, in the prosecution being able to put in evidence the case progression form."

8. Concern was expressed that this decision had the effect of modifying the fundamental right of a defendant to put the prosecution to proof of its case and to might encourage claims to privilege against self-incrimination in connection with case management (see, for example, (2011) Crim LR 547). The Court of Appeal (Criminal Division) sought to deal with them in *R v Newell* [2012] EWCA Crim 650, [2012] 1 WLR 3142.

9. The case concerned the use sought to be made by the prosecution of the comment "no possession" on a case management form in connection with a trial for possession of a controlled drug with intent to supply. A later defence statement (served on the first day of the trial) admitted possession but denied any intent to supply. Prosecution counsel was permitted to adduce the form into evidence and to cross examine the defendant on the inconsistency between "no possession" and the defence case statement. Sir John Thomas P (as he then was) said (at [33]):

> "Given that statutory regime in the Crown Court embedded primarily in the CPIA and the Criminal Procedure Rules, and the obligation to put "cards on the table" through the attendance of the trial advocate at the PCMH, the requirements of a PCMH form in the Crown Court should be seen primarily as a means for the provision of information to enable a judge actively to manage the case up to and throughout the trial, and the parties to know the issues that have to be addressed and the witnesses who are to come. The nature of the defence should appear from the defence statement with the statutory consequences provided for in the event of a breach of requirements. The Crown is also generally protected by the principles in the *Chorley Magistrates' Court* case and *R v Penner*, if in breach of the obligation to identify the issues an ambush is attempted by the defence."

10. He explained (at [35]) that the Trial Preparation form (now the PET) provides for admissions or acknowledgment that matters are not in issue, that admissions will be admissible but that other statements should be made without the risk that they would be used at trial as statements of the defendant admissible in evidence "provided the advocate follows the letter and spirit of the Criminal Procedure Rules". Allowing the appeal on the basis that the use of the form for cross examination should not have been allowed, he went on (at [36]):

> "Applying what we have set out, therefore, the position should be, provided the case is conducted in accordance with the letter and spirit of the Criminal Procedure Rules, that information or a statement written on a PCMH Form should in the exercise of the court's discretion under s.78 not be admitted in evidence as a statement that can be used against the defendant. The information is provided to assist the court. Experience has shown that, unless the position is clear, the proper administration of justice is hampered. There may of course be cases where it would be right not to exercise the discretion but to admit such statements. Those circumstances are fact specific, but an example is a case where there was no defence statement, despite the judge asking for one to be provided, and an ambush attempted inconsistent with what was stated on the PCMH Form. In such a case it would not be appropriate to exercise the discretion to refuse to admit what was stated on the form, if an adjournment to enable the Crown to deal with the issue could be avoided. However, we think, provided the parties adhere to the letter and the spirit of the Criminal Procedure Rules and follow the practices we have outlined, such cases should be very, very rare."

11. What is clear is that the court was not saying that the information was inadmissible as a matter of law (otherwise there could never be a situation, however rare, in which it could be admitted). Indeed, subject to s. 78 of PACE, the statements may be admissible as hearsay under the sixth rule preserved by s. 118(1) of the Criminal Justice Act 2003 ("the 2003 Act"). In order for that to happen, however, an application must formally be made to the court and that, along with any application under s. 78 then have to be determined. That is not to suggest that the requirements of notice as set out in CrimPR Part 20 can or should be required: it is this sort of circumstance that is envisaged by Crim PR 20.5(1)(c).

12. Against the background of the Rules and these decisions, I turn to the Criminal Practice Directions. It is important to underline that the directions pass through the Criminal Procedure Rule Committee and are issued by the Lord Chief Justice pursuant to s. 74 of the Courts Act 2003 and Schedule 2 (Part 1) of the Constitutional Reform Act 2005. They represent the current practice and bind the courts to which they are directed. In that regard, they are identical to the practice directions for civil proceedings (s. 74 of the 2003 Act being in substantially the same terms as s. 5 of the Civil Procedure Act 1997) in respect of which Waller and Dyson LJJ said in *Secretary of State for Communities and Local Government v Bovale Ltd* [2009] EWCA Civ 171 at [28]:

> "The issue of a practice direction is the exercise of an inherent power, … and … it cannot be open to another judge of the court to which the practice direction is intended to apply to ignore that practice direction or to suggest in a judgment that a practice direction should no longer be followed in that court."

The value of the Criminal Procedure Rules and the Practice Directions is that they provide a code which govern the practice of all criminal litigation and go a long way to ensuring that justice is administered consistently throughout the country.

13. In relation to trials in the magistrates' courts, the relevant Practice Direction in relation to the role of the Legal Adviser is CPDVI Trial 24A.11 and is in these terms:

> "Immediately prior to the commencement of a trial, the legal adviser must summarise for the court the agreed and disputed issues, together with the way in which the parties propose to present their cases. If this is done by way of pre-court briefing, it should be confirmed in court or agreed with the parties."

I emphasise the mandatory nature of the requirement.

14. More significantly, under the heading "Identification for the Court of the Issues in the Case", the Directions provide:

> "24B.3 The parties should keep in mind that, in most cases, the members of the court already will be aware of what has been declared to be in issue. The court will have access to any written admissions and to information supplied for the purposes of case management: CrimPR 24.13(2). The court's legal adviser will have drawn the court's attention to what is alleged and to what is understood to be in dispute: CrimPR 24.15(2). If a party has

> nothing of substance to add to that, then he or she should say so. The requirement to be concise will be enforced and the exchange with the court properly may be confined to enquiry and confirmation that the court's understanding of those allegations and issues is correct. Nevertheless, for the defendant to be offered an opportunity to identify issues at this stage may assist even if all he or she wishes to announce, or confirm, is that the prosecution is being put to proof.
>
> 24B.4 The identification of issues at the case management stage will have been made without the risk that they would be used at trial as statements of the defendant admissible in evidence against the defendant, provided the advocate follows the letter and the spirit of the Criminal Procedure Rules. The court may take the view that a party is not acting in the spirit of the Criminal Procedure Rules in seeking to ambush the other party or raising late and technical legal arguments that were not previously raised as issues. No party that seeks to ambush the other at trial should derive an advantage from such a course of action. The court may also take the view that a defendant is not acting in the spirit of the Criminal Procedure Rules if he or she refuses to identify the issues and puts the prosecutor to proof at the case management stage. In both such circumstances the court may limit the proceedings on the day of trial in accordance with CrimPR 3.11(d). In addition any significant divergence from the issues identified at case management at this late stage may well result in the exercise of the court's powers under CrimPR 3.5(6), the powers to impose sanctions."

15. The Directions are intended to codify the approach identified by the case law dealing with the tension between case management on the one hand and the rights of the parties (in particular the defendant) on the other. This underlying principle reflects the approach to the administration of criminal justice in which both sides rather than the prosecution alone are required to disclose the issues well before trial. More significantly, if these directions are followed, there will be clarity between the court, the prosecution and the defence as to the nature of those issues and appropriate admissions can be formulated in relation to what is not in issue so that any trial can be conducted efficiently and expeditiously.

16. I repeat the observations of Auld LJ that requiring a defendant to identify the issues does not offend the twin principles that the prosecution must prove its case and that a defendant is not obliged to inculpate himself. In that regard, if the defence is to put the prosecution to proof, that is what must be indicated: this does not involve the presentation of a positive case. Where such a case is thereafter sought to be presented, such an attempt could demonstrate that the defendant is not acting in the spirit of the CrimPR and applications by the prosecution can be considered accordingly. If there is a failure to comply and what then appears to the court to be the creation of a trap for the prosecution, in addition to the possible approaches described by CPD 24B.4, it could be open to the prosecution to seek to rely s. 118 of the 2003 Act and, subject to

s. 78 of PACE, the admission of hearsay. It is against that background, that the two appeals by way of case stated fall to be decided.

Valiati v DPP

17. On 23 November 2017, Felipe Valiati appeared before Highbury Corner Magistrates' Court charged with common assault upon his partner, Fernanda Santos. He pleaded not guilty and a PET form was completed which included answers by way of tick box to the following questions set out in para. 8.1:

> "The defendant [carried out][took part] in the conduct alleged: - No.
>
> The defendant was present at the scene of the offence alleged: - Yes.
>
> The defendant was correctly identified: - Yes
>
> The defendant was arrested lawfully: - Yes.
>
> Defendant's interview [summary][record] is accurate: - Yes – No comment."

18. The PET form went on to pose the question, "What are the DISPUTED issues of fact or law for trial, in addition to any identified in paragraph 8.1". The response was:

> "I do not remember any of these incidents. I put the prosecution to proof."

19. Paragraph 9 of the form deals with admissions and asks whether any facts which are not in dispute can be reduced into a written admission pursuant to CrimPR 24.6 and s. 10 of the Criminal Justice Act 1967. The response was in the affirmative but the only admission offered related to the interview (which contained no comment).

20. The Case Stated identifies what happened thereafter. Although summoned to attend court for the trial on 19 January 2018, the complainant did not appear. An independent witness, Mr Lowe, however, gave detailed evidence of seeing a man assaulting a woman at a bus stop which caused him such concern that he turned his car around and witnessed a further assault, eventually stopping to assist the woman whom he provided with his contact details. Having received a call from her, he spoke to the police but was never asked to take part in identification procedures. Mr Valiati did not give evidence and submissions were made on his behalf about identification, the absence of an identification parade and the possibility of error.

21. The justices recorded their findings in the Case Stated in these terms:

> "We found the evidence of Mr Lowe, a fully independent witness, to be reliable and consistent. We found that Ms Santos was assaulted by being forcefully and violently pushed, resulting in her falling over a low wall and that the assailant ran after her and repeatedly kicked out at her. We noted the appellant's no comment interview and the acceptance on the PET form of

> presence at the scene. We drew an adverse inference from his failure to give evidence in court. We were satisfied so that we were sure that Mr Valiati was the perpetrator of the attack on Ms Santos and found him guilty of assault by beating."

22. The questions posed for the High Court were as follows:

> "(i) When reaching our verdict were we entitled to consider the following questions on the PET form that were answered in the affirmative part 3 paragraph 8.1
>
> The defendant was present at the scene of the offence alleged;
>
> The defendant was correctly identified;
>
> The defendant was lawfully arrested;
>
> even though they were not contained within part three, paragraph 9 PET form that is entitled 'Admissions'?
>
> (ii) Were we entitled to find that the perpetrator of the assault was the defendant, in the absence of specific identification evidence being presented by the Crown?"

23. It is not suggested that a formal application was made by the prosecution to admit the information on the PET form or that the defence were alerted to the evidential use to which the PET form would be put so that representations could be made about it. Neither does it appear that there was any evidence that proved the relationship between Ms Santos and Mr Valiati.

24. Not being contained in formal admissions made pursuant to s. 10 of the 1967 Act, or the subject of the discussion envisaged by the Practice Direction at the start of the trial, the inconsistency between the case management information that presence and identification was not in dispute and the observation that Mr Valiati did not remember any of the incidents and put the prosecution to proof was not explored. What is clear, however, is that no attempt was made to utilise s. 118 of the 2003 Act by admitting what was said on the PET form as hearsay and what the justices (albeit understandably) did was to confuse the provision of case management information with evidence without the same being formally adduced. If the relevant Practice Directions had been followed, this problem would not have occurred.

25. In the event, the answer to this Case Stated is clear. The answers to both questions posed must be in the negative and the appeal allowed accordingly.

KM

26. Soon after an incident on 8 September 2017, KM (who was 15 years old at the time) was arrested and, after interview the following day, charged with common assault on two other girls and theft of the mobile telephone of one of them. On 11 October 2017, she appeared at the Stratford Youth Court and entered not guilty pleas and a PET form was completed, signed by prosecution, defence and the court.

27. Part 2 was completed by the prosecution. It stated that some CCTV evidence was outstanding and would be served. It also indicates that the prosecution would rely on a summary of KM's interview.

28. Part 3 of the form was completed by the defence. In paragraph 8, dealing with case management information, the tick boxes read as follows:

> "The defendant [carried out][took part] in the conduct alleged: - *This was left blank but this and the following question were bracketed and marked* "See below".
>
> The defendant was present at the scene of the offence alleged: - Yes.
>
> The defendant was correctly identified: - No. …
>
> Defendant's interview [summary][record] is accurate. If not agreed, explain what is in dispute: No. *The form is annotated* "Require interview recording".

29. At the bottom of the form the following was annotated in manuscript:

> "1. Did not provoke incident and not aggressor
>
> 2. Any violence used in reasonable self-defence.
>
> 3. Did not take part in joint enterprise attack on either complainant.
>
> 4. Accepts picked up mobile but at the time did not realise belonged to complainant. deny comments alleged by [one of the complainants].
>
> 5. Admissibility of Q & A with PC Ramchandan (Breach of PACE - Interview without caution or appropriate adult)."

30. Part 4 of the PET was completed by both parties and the court. It deals with the required attendance of prosecution witnesses. Both complainants and the two police officers were fully bound. The defence set out why they needed the witnesses namely that their account was disputed. The court appears to have filled in the time estimate for the evidence of each of the witnesses and included time for legal argument based on s. 78 of PACE.

31. An order was made for the service of the tape of the interview (which was not complied with). Further, on the date fixed for trial (13 December 2017) although both complainants attended, neither of the police officers did and the full interview was not, even then, available. In the circumstances, there was no evidence of arrest and the interview summary was not admitted into evidence. There was no application to adduce any hearsay evidence and formal admissions were not sought by either party.

32. The complainants gave evidence about the incident in which they described their attacker and the person who took the mobile phone, in general terms, as being a black

girl with red hair. That description could have matched the defendant at the time of trial although neither witness had been asked to take part in any form of identification procedure. The phone taken had been restored a little while later by one of the police officers: that was proved as one of the complainants demonstrated it was hers by entering the passcode accurately. There was, however, no evidence from the police officers (and thus no evidence as to the identity of the person from whom they recovered the phone) and the interview was not adduced.

33. The defence made a submission of no case on the basis that the identification evidence was insufficient. The magistrates found as fact that KM was arrested a short distance from the incident and that, when searched, she was found to be in possession of the mobile phone which the complainant unlocked whereupon KM was taken to the police station and admitted being present at the scene, raising self-defence or defence of another; she admitted picking up the phone saying that she shouted to ask who it belonged to and received no reply. The court went on to hold that there was a case to answer on the following grounds:

> 1. There was a case to answer. The two prosecution witnesses had given credible evidence that they were assaulted by a girl of particularly distinctive appearance.
>
> 2. The mobile phone had been recovered by police from the Appellant, who had been apprehended in an area close to where the assaults took place. The police had got the description of this person from the complainants and this same person as being the girl who carried out the assaults, and who had taken [the complainant's] mobile phone. [She] was able to identify the phone as being definitely her phone, which had been taken by the girl "with red hair". This was by opening the phone with the security pin.
>
> 3. We were satisfied that the "girl with the red hair" was, indeed, the Appellant who appeared before us, and that there was a case to answer."

34. The Case Stated goes on to explain that, having retired to consider their verdict, they asked (without objection from either party) for the PET form containing the information set out above. They gave the following reasons for their decision:

> "Notwithstanding the comments made in the PET form, we were of the opinion that the evidence of the two complainants was sufficient to place the appellant at the scene of the incident for the reasons we have already mentioned [regarding the rejection of the submission of no case to answer]. The issue of mistaken identity was not raised as a trial issue. We felt that the witnesses' evidence alone (and not in conjunction with what was stated in the PET form) was sufficient to satisfy us, to the criminal standard, that the appellant was guilty of the offences with which she has been charged."

35. The questions for the opinion of the High Court are:

1. Were we entitled to rely upon the information contained within section 8 of the preparation for effective trial form to confirm our decision when that form was not before the Court in evidence?

2. Notwithstanding the answer to [(1)] above, were we permitted, in the light of the decision in *R v Newell* [2012] 2 Cr. App. R. 10, to note from the PET form that the appellant's presence at the scene of where the alleged offences took place was not an issue in dispute?

3. Was it open to the court find a case to answer?

36. Before dealing with the questions posed, by way of preliminary observation, it does not seem that there was sufficient evidence of identification from the general description provided by the witnesses of a black girl with red hair unless there was something else to link KM to the offence. Evidence that she had the mobile phone could have been sufficient but there was no basis for the magistrates to find as a fact that the police seized the mobile phone from KM or where they did so. Neither was there any evidence of the interview to justify the findings of fact to that effect.

37. Although there might have been no objection to the request for the PET form, again, the Practice Direction was not followed. Had that happened, it might be that sufficient formal admissions would have been agreed or, in default, urgent arrangements made for the arresting officer to attend. Given that the prosecution had been ordered to provide the interview and both police witnesses had been required to attend (but without apparent explanation did not do so), it is difficult to see on what basis it would have been appropriate to admit the identification of issues contained within the form to close the gaps left by the complainants. The PET form cannot be used as a mechanism for avoiding complying with court orders or, absent agreement or specific court order, not bringing witnesses to court whose attendance has been required.

38. Neither this court nor (as far as I can tell) the magistrates' court was not told why the interview had not been served or why police witnesses whose attendance was required were not available. On the face of it, these failures are lamentable and the Crown Prosecution Service owes an apology to the complainants. At the end of the day, however, the court must proceed on the basis of evidence called or properly placed before the court.

39. In this case, the magistrates explain that they did not rely on the PET form to reach a conclusion in the case (although the question posed may lead to the inference that they used it to 'confirm' their decision). Assuming that the questions are not, therefore, moot and the issues had not formally been limited as envisaged by the Practice Direction, the answer to the first two questions is that in the absence of the PET form being admitted in evidence, they were not entitled to rely on it and that, in the context of this case, there was no basis to admit it. Based on the evidence adduced at the trial, the answer to the third question is also in the negative. This appeal, therefore is also allowed.

Conclusion

40. None of the foregoing is intended to minimise the importance of the PET form in the magistrates' court, or the PTPH form in the Crown Court. Neither is it to discourage the identification of issues, leading to appropriate admissions thereby reducing the time which a trial necessarily takes up. Effective case management requires nothing less. Similarly, it does not imply that what is contained in information provided to the court by way of case management cannot be used to prevent "game-playing" (in the language of Irwin LJ in *R (on the application of Hassani) v West London Magistrates' Court* [2017] EWHC 1270 (Admin) at [10]).

41. If circumstances arise in which it is sought to argue that the information provided on a PET form should have evidential significance, an appropriate application must be made and the hurdles both in relation to hearsay and s. 78 of PACE satisfied. In these cases, however, no such application was ever made and, to such extent as it might have been, it was wrong to take it into account. These appeals are, therefore, allowed.

McGowan J :

42. I agree.