Neutral Citation Number: [2015] EWCA Crim 1

Case Nos: 2014/04245/A6
2014/04044/A5
2014/05255/A3
2014/05451/A6

IN THE COURT OF APPEAL (CRIMINAL DIVISION)
ON APPEAL FROM

Kingston upon Hull Crown Court
His Honour Judge Robinson
Peterborough Crown Court
His Honour Judge Madge
Manchester Crown Court
Her Honour Judge Newton
Grimsby Crown Court
His Honour Judge Tremberg

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: Tuesday 20th January 2015

Before :

LORD JUSTICE PITCHFORD
MR JUSTICE POPPLEWELL
and
MR JUSTICE EDIS

- -

Between :

Adrian Kenneth Thorsby **Davin Glasson** **Keith Robert Pilkington** **Zoe Marie Robinson**	**Appellants**
- and -	
The Queen	**Respondent**

(Transcript of the Handed Down Judgment of
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Official Shorthand Writers to the Court)

Roy James (Solicitor Advocate) (instructed by **DKJ Solicitors**) for the **Appellants**
Lee Ingham (instructed by **The Crown Prosecution Service**) for the **Respondent**

Hearing dates : 12 December 2014

Judgment
As Approved by the Court

Lord Justice Pitchford :

The issues

1. On 12 December 2104 the Court heard the appeal against sentence of Adrian Thorsby, and three applications by Davin Glasson, Keith Pilkington and Zoe Robinson for extensions of time within which to apply for leave to appeal against sentence. The appeal and the applications raise a single ground of appeal namely that the sentencing court failed to give credit under section 240A of the Criminal Justice Act 2003, as amended, for one half of the time spent by the offender on qualifying curfew before sentence. We announced our decisions at the conclusion of argument, with reasons to be given later in writing. These are our reasons.

2. There is an issue common to the applications: In what circumstances is it appropriate for this Court to grant significant extensions of time when the responsibility for the delay lies with the court and the legal representatives and not with the applicant personally. There is no doubt as to the merits of the appeals. The question is whether substantial extensions of time should be granted to enable the applications to be made. This Court has on several occasions alerted the professions and the Crown Court to the need for diligence but the Court is still receiving out of time applications because relevant duties have been neglected.

The statutory background

3. Since 3 November 2008, when section 240A Criminal Justice Act 2003 was inserted by section 21 of the Criminal Justice and Immigration Act 2008, it has been necessary for the sentencing court to specify the number of days which will count towards sentence in consequence of time spent on remand subject to a qualifying curfew (that is for 9 hours or more a day, monitored by electronic tagging). In *Irving and Squires* [2010] EWCA Crim 189; [2010] 2 Cr App R (S) 75 the working of the scheme was explained fully by the then Vice President, Hughes LJ, delivering judgment on behalf of the Court. At paragraph 13 the Court reminded practitioners and judges of the action required to deal effectively with the requirements of the section 240A regime. In particular it was said that the Court would not routinely grant extensions of time to permit out of date applications for leave to be made.

4. With effect from 3 December 2012, section 240A was amended by section 109 of the Legal Aid, Sentencing and Punishment of Offences Act 2012. The court *"must direct that the credit period is to count as time served by the offender as part of the sentence"*. Subsection (3A) permits the qualifying days to count only in relation to one sentence and only once in relation to that sentence. Subsection (3B) provides that a qualifying curfew day cannot count towards any period of 28 days served by the offender before automatic release under section 255B(1). The credit period must be calculated as directed in subsection (3) which sets out five separate steps to be taken by the Court in order to produce a calculation of the credit period. In essence the credit period is one half of the number of days spent on a qualifying curfew of not less than 9 hours per day under electronic monitoring conditions, although certain days defined in the steps are not to count. We paraphrase:

Step 1

Add up the days spent on **qualifying** curfew including the first, but not the last if on the last day the defendant was taken into custody.

Step 2

Deduct days on which the defendant was at the same time **also** (i) being monitored with a tag for compliance with a curfew requirement and/or (ii) on temporary release from custody.

Step 3

Deduct days when the defendant has broken the curfew or the tagging condition

Step 4

Divide the result by 2

Step 5

If necessary round up to the nearest whole number

5. The amended regime was again considered by a court over which the Vice President, Hughes LJ, presided, in *Hoggard* [2013] EWCA Crim 1024. Sweeney J, giving the judgment of the Court, reiterated the demands upon practitioners and courts created by the scheme. In particular at paragraph 24 he said this:

> "24 Against that background and in view of the guidance previously given in *Irving* and in *Williams* [[2012] EWCA Crim 1590] it seems to us that:
>
> (1) It remains essential that every court which imposes a curfew and to tagging condition uses the Court Service form entitled "Record of Electronic Monitoring of Curfew Bail" (or its up to date equivalent) which is required to follow the defendant from court to court. When a defendant is sent or committed to the Crown Court then the form (properly competed) must go with the papers to the Crown Court. If the defendant has never been subject to curfew and tagging the magistrates are required to say so, or to send a copy of his bail conditions. If on receipt of a case involving a defendant on bail there is no such form and the question of his status is not clear, then the Crown Court must ask the magistrates for clarification and get hold of the form if it exists.
>
> **(2) Solicitors and, if they have not done it, counsel are required to ask the defendant whether he has been subject to curfew and tagging. If he says that he has, they are required to find out, from the court of record, for which periods. It is also the responsibility**

of the CPS to have a system for ensuring that such information is available.

(3) Compliance with the above mentioned requirements should ensure that Step 1 is relatively straightforward.

(4) In any event, the consideration of Steps 1 -3 will be part of the post-conviction proceedings and thus not subject to the invariable application of strict rules of evidence. The approach to admissibility, particularly in relation to heresy evidence, should be that indentified in *Clipston* [2011] 2 Cr App R (S) 101 - with emphasis upon the procedures adopted to deal with Steps 1 – 3 being both flexible and fair.

(5) Nevertheless, if there is a dispute under, in particular, Step 2 and/or Step 3, then the prosecution must prove to the criminal standard that the days sought to be deducted from the number of days identified under Step 1 are caught by the relevant Step.

(6) However, if the court is of the opinion that the resolution of the dispute, or part of it, would be likely to amount to the disproportionate use of time and expense then (without more) the dispute, or the relevant part of it, should be resolved in the defendant's favour and no deduction made from the number of days identified under Step 1. The court is only likely to be of such an opinion if the number of days involved is relatively modest.

(7) The court will then deal with the maths required by Steps 4 and 5 and will thereafter give the direction – complying in the process with sub section (8).

(8) Save in a case where it is clear that there is no possibility of crediting a period of remand on bail, the order of the court should, in accordance with *Nnaji* [[2009] 2 Cr App R (S) 107] and *Williams*, be along the following lines:

> "The defendant will receive full credit for half the time spent under curfew if the curfew qualified under the provisions of section 240A. On the information before me the total period is … days (subject to the deduction of … days that I have directed under the Step(s) 2 and/or 3 making a total of … days), but if this period is mistaken, this court will order an amendment of the record for the correct period to be recorded"

(9) It remains the case that it ought not to be expected that this court will routinely grant long extensions of time to correct errors when no one has applied his mind to the issue until long after the event." [emphasis added]

6. In *Hoggard* the sentence, imposed on 13 December 2012, was twelve months imprisonment. The judge had intended that the appellant should receive credit under section 204A but erroneously thought that the credit would be given administratively. The papers were not put before him until after the 56 day period for administrative correction under section 155 of the Powers of the Criminal Courts (Sentencing) Act 2000 had expired. It followed that an application for leave to appeal was made out of time. Time was extended, leave was granted and 47 days were ordered to count against the appellant's sentence. Judgment in *Hoggard* was handed down on 20 June 2013.

7. On 12 November 2013 the Lord Chief Justice, Lord Thomas (sitting with Mackay and Sweeney JJ) considered several out of time applications for leave to appeal against sentence in *Leacock and Others* [2013] EWCA Crim 1994. They concerned complaints under the former section 240 regime that days on remand in custody had not been ordered to count and, in one case, Morin, that the Judge had failed to specify the number of days to count under section 240A, as inserted by section 21 of the 2008 Act. Ms Morin had been sentenced on 12 December 2012 to three years' imprisonment after spending time on a qualifying curfew awaiting sentence. Counsel had failed to draw the qualifying days to the attention of the judge. The offender contacted her solicitors about the omission in late February 2013 and an application for leave was lodged out of time on 5 April seeking an extension. The court granted the extension of time and corrected the error.

8. The court refused to extend time in the case of Trevis. In his case, a minimum term was set on 11 August 2005 under the transitional provisions for sentencing in cases of murder. It was not possible to tell from the judge's ruling whether he had taken into account time spent by the applicant on remand in custody. However, the application for leave was not made until seven and a half years had elapsed since the minimum term was announced. In the opinion of the court the term set could well have reflected the time spent on remand in custody (256 days) and the application to extend time was refused. In the case of Nutting on 21 June 2010 a sentence of imprisonment for public protection with a minimum term of 27 months was imposed in the Crown Court. The offender had spent almost six months in custody on remand. The Recorder had been told that the period was 23 days and no one corrected him. On 5 February 2013, over two years later, the offender made an application for an extension of time and leave to appeal. At paragraph 44 of his judgment Lord Thomas CJ said:

"44 In our judgment this is the type of case to which the decision of this court in *Irving and Squires* should for the future apply. Over two years elapsed before an application was made to this court. We would emphasise again that it is the duty of the advocate to check carefully at the time the position; this court will not correct errors unless an application is promptly made. However, on this occasion, exceptionally, we will grant leave and allow the application and direct that 168 days be

> counted. For the future, it must be expected that an application of this type would not succeed."

It is important to note that at the sentence hearing the time spent in custody on remand was discussed. On the audio tape of the proceedings the applicant could be heard to say "six months" but no-one paid any attention to him. It follows that the applicant was there and then aware that an error had been made in the calculation. He was, accordingly, personally responsible for the delay before taking action. Nonetheless, an extension of time was granted.

9. Similarly, at paragraph 49 of his judgment in the case of Ms Morin the Lord Chief Justice said:

> "49 As we have stated in respect of the appeal in Nutting, it is the duty of the advocate to make proper inquiries. The advocate did not do so. This has been a case where the issue should have been raised at the sentencing hearing; there is no proper reason why it was not as the advocate has accepted. He has appeared here today without fee. For the future, the court will apply the time limit strictly. On this occasion, exceptionally, we are, however, prepared to grant leave, allow the appeal and direct that 21 days be counted."

10. These decisions make clear that there is a duty on the court imposing a qualifying curfew to complete the appropriate form, for court officials to ensure that the form travels with the defendant from court to court and for those representing the defendant to ensure that they have all the necessary details to hand at the time of sentence. It is for the parties to make the calculations, agree the result and inform the judge. In the unlikely event of a dispute the judge must decide whether it is necessary and proportionate to resolve the dispute and, if so, how the dispute is to be resolved.

The problems

11. The difficulties this court faces include the fact that neither advocate nor the relevant court drew the judge's attention to the existence of a qualifying curfew and nothing was said about it. In some cases it is difficult after a prolonged delay to ascertain from court records what number of days should count towards the qualifying curfew. Records held by the parties and the court do not always coincide. In many cases endorsements on the papers are silent as to the existence of a curfew. The magistrates courts depend on the accuracy of electronically recorded information. It follows that on appeal the Criminal Appeals Office, solicitors firms, the Crown Prosecution Service and counsel can be involved in the time and cost wasting exercise of attempting to ascertain and, if successful, to agree the number of days to which the defendant was entitled at the time of sentence. Plainly the advice given on previous occasions by this Court has not been heeded. It is important that all Crown Court centres should understand the importance of these provisions so that the waste of time and money can be stemmed. We attempt to provide some practical advice at the conclusion of this judgment.

Extensions of time

12. Section 18(2) of the Criminal Appeal Act 1968 provides that a notice of application for leave to appeal against sentence must be given within 28 days of the date on which sentence was passed. By subsection (3), time for giving notice under the section "may be extended, either before or after it expires, by the Court of Appeal".

13. CrimPR rule 65.4, requires the applicant to make an application for an extension of time when serving the notice of appeal and to give reasons for the application. Neither the Criminal Appeal Act nor the Rules limit the discretion of the court on the issue whether an extension of time should be granted. In this court's experience the principled approach to extensions of time is that the court will grant an extension if it is in the interests of justice to do so. There are, however, several components that contribute to the interests of justice. The court will have in mind the public interest in the proceedings of the Court generally, in particular in the finality of Crown Court judgments, the interests of other litigants, the efficient use of resources and good administration. However, the public interest embraces also, and in our view critically, the justice of the case and the liberty of the individual. As Sir Igor Judge, then President of the Queen's Bench Division said in *Gordon* [2007] EWCA Crim 165; [2007] 2 Cr App R (S) 66 at paragraph 31, speaking of the need for the Crown Court to specify the number of days spent in custody to count towards sentence under the original section 240 regime:

> "31 The imperative is that no prisoner should be detained for a day longer than the period justified by the sentence of the court."

Where there is no good reason why an applicant should not have complied with well known time limits this court will be unlikely to grant an extension of time unless injustice would be caused in consequence. Accordingly, the court will examine the merits of the underlying grounds before the decision is made whether to grant an extension of time. The judgment is judicial and not merely administrative.

14. In sentence appeals (see sections 9 and 10 of the Criminal Appeal Act 1968) the jurisdiction of the court to alter the sentence below is created by section 11(3) of the Act. The court may, if it considers that the appellant should be sentenced differently for an offence, quash any sentence or order which is the subject of the appeal and, in place of it, pass a sentence or make an order which the court considers appropriate for the case, and as the court below had power to pass, provided that the appellant is not, taking the case as a whole, more severely dealt with on appeal than he was dealt with in the court below. The traditional approach of the Court of Appeal in sentencing appeals is that it will not interfere with sentences that are neither manifestly excessive nor wrong in principle (see, for example, *Waddingham* [1983] 5 Cr App R (S) 66 at page 69). Since the advent of sentencing guidelines, an argument that the sentencing judge failed to follow or to apply a sentencing guideline correctly may lead to a conclusion that the sentence was manifestly excessive; occasionally, that the sentence imposed was wrong in principle. However, the court will intervene in a variety of circumstances, the first being when the sentence was not justified in law. In such a case the court does not examine the exercise of the judge's sentencing judgment or discretion but corrects an error of law. If, for example, the judge imposed a sentence that was unlawful in the circumstances (perhaps by reason of the defendant's age or of

the maximum sentence at the time the offence was committed) the Court of Appeal will inevitably intervene to correct the error.

15. In this court's experience, the Court of Appeal is likely to extend time to correct an error of law once the error is discovered whether the fault lies in the failure of representatives to advise the court or in the failure of the court itself. The practice of the court is generally to refuse a long extension of time unless injustice would be caused by refusal. It is improbable that a long extension of time would be granted on the ground that the sentence imposed was manifestly excessive, particularly when the applicant has already received competent advice to the effect that it was not. The court will be more likely closely to examine the merits of an out of time appeal when it is argued that some principle of law or legal requirement has been ignored or overlooked.

16. In each of the present cases the defendant was entitled, pursuant to section 240A(2) of the Criminal Justice Act 2003, as amended, to a calculation of the credit period that was to count as time served by the offender as part of the sentence. The Crown Court failed to perform its duty under section 240A (as to which it has no discretion, since the section is mandatory in its terms), partly because of the neglect of the advocates on both sides and partly because it failed to obtain or apply the information relevant to the applicant's case. While we embrace the demand that advocates and those instructing them must perform their professional duty to the court, we do not consider that the failure of the advocates to perform that duty can absolve the Crown Court from its statutory responsibility to give the credit required. It follows, in our view, that when the statutory duty of the Crown Court is not performed, the error in sentencing is not one of judicial assessment but one of law and of principle: a defendant, on whom no statutory duty has been placed, has been deprived of his statutory right to have his days on qualifying curfew and his credit period calculated. In the ordinary way, errors of principle or law in sentencing occur rarely and it is our experience that, when they are clear and the applicant bears no responsibility for the failure, this court is likely to take steps to correct the error even when a significant extension of time is required to achieve it.

17. However, when the applicant, with knowledge of the error, fails to act with due diligence to make the application for an extension of time the position is likely to be different. In those circumstances, the applicant cannot be heard to complain that he has been kept out of his remedy for an error in the performance of the court's duty that he is entitled to expect will be corrected when discovered.

18. Secondly, where the passage of time has obscured the entitlement itself, and the problem cannot be solved by drawing appropriate inferences in favour of the applicant, the full court may refuse the extension or grant the extension but refuse leave or dismiss the appeal. One or more of the cases considered by the court in *Leacock* demonstrates that a substantial passage of time may put the court in difficulty in resolving whether or not an error has occurred and if so to what extent. In those circumstances the court may not be able to conclude that it would be in the interests of justice to intervene.

The present cases

19. At the Crown Court each of the defendants was entitled to have calculated the number of days to be credited towards the sentence. The court failed to make the calculation. The responsibility for the error lay elsewhere than with the defendant personally. In each case the defendant was entitled to a substantial number of days credit. The best information available to the court is that as soon as a defendant became aware of the entitlement the matter was drawn to the attention of legal advisors. In none of the cases is it suggested on behalf of the respondent that the interval between discovery and the application for leave was excessive, or that the effect upon sentence would have been insignificant, or that it is no longer possible to ascertain the defendant's entitlement. It is possible that, in some cases, the court will consider that having regard to the sentence imposed no injustice would be done by refusing an extension of time. It is not possible to anticipate the precise circumstances of each individual case. However, if the applicant was entitled under section 240A to a significant number of days credit we do not consider that it would be right in principle to refuse an extension of time by reason only of the proportion that those days bear to the total sentence imposed. No such submission has been made in the present cases and we do not consider that if it had it would have affected the exercise of our discretion. We turn to the circumstances of each of the current cases.

Adrian Thorsby

20. Adrian Thorsby is now aged 51. On 8 February 2013 he was sentenced at Kingston Crown Court to four and a half years imprisonment for an offence of possessing a firearm with intent. He was entitled to 133 days credit against his custodial sentence. He did not receive credit. In circumstances of which we are unclear an inquiry was made by his solicitors to HMP Hull on 24 February 2014. It concerned his time in custody on remand but almost certainly referred in addition to days spent on qualifying curfew because, in a reply dated 24 March 2014, the Head of Offender Management, Mr Glover, wrote:

> "The electronically monitored remand will need to be queried with the court as it is up to them to credit these days against the sentence."

We have had sight of an internal e-mail written by Mark East of John Robinson solicitors to a colleague, dated 16 October 2013, in which the correct number of qualifying curfew days had been calculated; yet, the application for an extension of time was not made until 28 August 2014. This is lamentable but we do not know the intervening circumstances. We do not have to consider granting an extension of time because it has already been granted, together with leave, by the single judge who, generously, construed the words used by the sentencing judge as giving, possibly, a misleading impression to the advocates. What the judge said was:

> "If there is any time capable of counting towards the sentence that is nothing to do with me any more and will be dealt with administratively."

In our view, it should have been clear to everyone in court that the judge was not referring to a qualifying curfew, which certainly *was* the concern of the court: he was referring to time spent on remand in custody credit for which had become an administrative process. However, since an extension of time and leave has been

granted, our concern is only with the merits of the appeal. The sentence imposed was wrong in principle and should be corrected. We shall allow the appeal and order that 133 days will count towards the appellant's sentence under section 240A of the Criminal Justice Act 2003.

David Glasson

21. On 12 December 2013 David Glasson was sentenced to 27 months imprisonment for offences of burglary, theft and taking a conveyance without authority. We understand that on his reception into prison to serve his sentence he was informed that his qualifying curfew could be credited towards his sentence. The applicant wrote to his solicitors, DKJ, to bring the issue to their attention. However, the letter was misfiled and no action was taken. While he was still in custody the applicant was investigated for separate matters and again raised the issue of his qualifying curfew with his solicitors. This time they did take action. The application notice was filed on 27 August 2014, eight months after sentence. None of the delay can be laid at the door of the applicant himself. The responsibility for the original error was that of the advocates, including Mr James, and of the Crown Court. In our view, an extension of time should be granted. We grant leave, allow the appeal and direct that 77 days shall count towards the sentence of 27 months imprisonment under section 240A of the 2003 Act. Since we have allowed the appeal we shall correct the second error made by the Crown Court. All the offending took place after 1 October 2012. Accordingly, the court was required to impose a victim surcharge order of £120 pursuant to section 161A of the Criminal Justice Act 2003 and the Criminal Justice Act 2003 (Surcharge) Order 2012. The court did not make the order. We shall correct that error and impose it.

Keith Pilkington

22. On 15 July 2014 at Manchester Crown Court Keith Pilkington was sentenced to a term of 15 months imprisonment for an offence of unlawful wounding. On 12 November 2014 the applicant told his solicitors that his qualifying curfew had not been credited towards his sentence. The applicant had not before served a sentence of imprisonment and he learned of his entitlement only when informed by the Offender Management unit at HMP Risely. His solicitors wrote to Manchester Crown Court and were told that their only avenue was an appeal to this court. He was let down by both advocates and by the Crown Court. In our view he should be granted an extension of time. We will give leave to appeal, the appeal will be allowed and we order that 93 days shall count towards his sentence under section 240A of the 2003 Act.

Zoe Robinson

23. On 17 July 2014 Zoe Robinson was sentenced at Grimsby Crown Court to a term of 20 months imprisonment for an offence of robbery. Neither counsel, nor the court clerk mentioned her qualifying curfew at the sentence hearing. On 23 July the Crown Court office telephoned her solicitors to remind them about the qualifying curfew. The solicitors were advised to make an application in writing to the court in order that the matter could be corrected. On the same day the solicitors faxed their written application to the Crown Court but the Crown Court could not later and cannot now find any record of it. The solicitors wrongly assumed that the matter was being

processed and there appears to have been no chasing up as the 56 day deadline was approaching. Instead, the applicant herself raised the matter with her solicitors on 7 October. By then it was too late for correction by the Crown Court. On 12 November 2014 the notice of application to this court was filed. There is an issue arising from the court records whether the applicant was electronically monitored beyond 7 April 2014, but it is conceded by the respondent that in the circumstances it is very unlikely that she was not. We shall, as we are invited by the respondent, resolve the issue in favour of the applicant. The applicant herself was not at fault. The advocates neglected their duty and, when invited to correct the error, the Crown Court mislaid the written application. We shall grant the extension of time, give leave to appeal, allow the appeal and direct that 86 days count towards the sentence of 20 months imprisonment under section 240A of the 2003 Act.

Procedural matters

The Crown Court

24. We do not underestimate the burden falling upon hard pressed court centres and judges. We understand that on occasions documents that should be with the defendant in the Crown Court are not. In our experience however, it is commonplace for judges and Crown Courts to keep a sentencing checklist. We suggest that the solution to the present problem is to place prominently in the checklist the question: *Has the defendant spent any time on a qualifying curfew?* If that question is asked at the sentence hearing it seems to us that the rest (see paragraph 5 above) is likely to follow.

25. In *Gordon* at paragraph 47 Sir Igor Judge pointed out that provided the sentencing judge makes clear that the defendant is to receive the full entitlement to credit under (the then) section 240 and that if an administrative error has occurred it can be corrected by the Crown Court, such an arrangement would postpone the final adjudication of the court. For that reason, the jurisdiction of the Crown Court to deal with the matter would extend beyond the time limited by section 155 of the Powers of Criminal Courts (Sentencing) Act 2000 (then 28 days, now 56 days). In our view there is no reason why exactly the same reasoning should not apply also to section 240A crediting of days. If this course is taken any error can be corrected by the Crown Court without the need to institute an appeal to this court (see paragraph 5(8) above).

26. These, with respect, are administrative improvements that deserve the attention of resident judges.

The appeal

27. We are conscious that the circumstances in which these late applications have arisen may not be regarded as “exceptional”. It is in their nature that such applications will be made after the 56 day correction period has expired. For the reasons we have given the present applications have been granted. We have endeavoured in our judgment to identify those circumstances in which the court will look much less favourably upon the correction of a failure to provide the defendant with the statutory entitlement.

28. Henceforward, the applicant will be expected to present to the Court of Appeal office with his notice and grounds, either agreement with the prosecution, or the necessary documentary and other evidence to support his assertions (i) that he is entitled to be credited with section 240A days *and* (ii) as to the number of those days. The Court of Appeal office will not routinely become the investigator for the applicant. It is the responsibility of his legal representatives to make the necessary enquiries. "These enquiries will always involve contacting the prosecution. Having done this, the applicant should be able either to say that his calculation is agreed or identify the nature and extent of any dispute. In all well founded cases the Crown will also have failed in its duty to the court and the court will therefore expect the CPS to investigate the complaint promptly and to supply to the applicant and the Court of Appeal a brief written response setting out its approach to the application. These cases should be dealt with as urgent cases at a suitably senior level within the CPS as they directly involve the liberty of the subject."

29. Applicants will be expected to demonstrate with some particularity in a witness statement when and in what circumstances they became aware of the entitlement for the first time, and that, upon discovery, no further delay occurred. In a case of delay by the applicant himself the single judge or the full court is likely to refuse the extension of time.

30. An application that fulfils the criteria that we have applied to the present applications is likely to receive an extension of time from the single judge. If so, the application for leave can be referred to the full court without the need for legal representatives to attend. In a case of doubt the application is likely to be referred to the full court with or without a representation order. The court is unlikely to make a representation order if the work should, by reason of the representative's fault, be performed *pro bono.*