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**IN THE COURT OF APPEAL**  
**CRIMINAL DIVISION**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Thursday, 6 June 2019

**B e f o r e:**  
**LORD JUSTICE FULFORD**

**MRS JUSTICE MAY DBE**

**MR JUSTICE SWIFT**

**REFERENCE BY THE ATTORNEY GENERAL UNDER**  
**S.36 OF THE CRIMINAL JUSTICE ACT 1988**

**R E G I N A**  
**v**  
**MUHAMMAD BABAR BASHIR**  
**KOTESWAWA NALLAMOTHU**  
**TASHINA NAYYAR**

**Mr D Penny QC** appeared on behalf of the **Attorney General**  
**Mr M Harries** appeared on behalf of the **Offender Bashir**  
**Mr I Shafi** appeared on behalf of the **Offender Nallamothe** (via Video Link)  
**Mr A Khan** appeared on behalf of the **Offender Nayyar**

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**J U D G M E N T**  
(Approved)

1. LORD JUSTICE FULFORD: Muhammad Babar Bashir was born on 29 November 1979 and is 39 years old. Koteswara Nallamothu was born on 24 October 1981 and is 37 years of age. Tashina Nayyar was born on 17 January 1968 and was therefore 51 years of age.
2. On 9 July 2018, in the Crown Court at Manchester, on the day of trial, Nayyar pleaded guilty to one count of conspiracy to facilitate breaches of United Kingdom immigration law (section 25 of the Immigration Act 1971), contrary to section 1(1) of the Criminal Law Act 1977.
3. On 16 October 2018, in the Crown Court at Manchester, following a trial before Her Honour Judge Nicholls and a jury, Bashir was convicted of two counts of conspiracy to facilitate breaches of United Kingdom Immigration Law (section 25 of the Immigration Act 1971), again contrary to section 1(1) of the Criminal Law Act 1977. Nallamothu was convicted on one of those two counts.
4. On 31 January 2019 Nayyar was sentenced to 27 months' immediate imprisonment. She alone was sentenced on that day because Bashir had absconded and Nallamothu's sentence was adjourned because of his counsel's ill-health. On 22 March 2019 Bashir was sentenced (in his absence) to a total of 6 years' imprisonment made up of 5 years' imprisonment on count 1 and 12 months' imprisonment to be served consecutively on count 3. On the same day, Nallamothu was sentenced to a total of 24 months' imprisonment suspended for 2 years together with an electronically monitored curfew order for 5 months.
5. The facts of the case were as follows. In summary, Bashir, Nallamothu and Nayyar

were involved in conspiracies to abuse immigration law in the United Kingdom by participating in the abuse of the Home Office Tier 4 Temporary Migration Programme, a programme which permits genuine students from outside the European Union to obtain permission to enter the United Kingdom in order to obtain an education. Put generally, they participated in the systematic abuse of that scheme through the sale of what are called "confirmation of acceptance to study" (CAS) at two colleges at which no education was to be offered. These confirmations were no more than a sham by which the defendants, at one and the same time, gained financially and - certainly as regards two of these applicants - abused the trust which had been granted to them in their administration of this scheme by the Home Office.

6. Bashir set up "St John College" in Ashton-under-Lyne. The college was granted a sponsor licence in July 2011. By September 2012 Bashir was using his CAS allocation to facilitate illegal immigration. It had become a sham college.
7. Together with Nallamothu (and it was alleged his brother, Muhammed Sajid Bashir), he chose to sell the CAS allocation for his institution without providing any education. With Nallamothu acting as his agent, he was selling his CAS allocation "with or without English" in breach of Tier 4 rules. They targeted migrants who wished to enter or remain in the United Kingdom. With a CAS, in effect the applicant in question was then able to apply for a student visa, supported by "confirmation" of a place to study at Bashir's college.
8. Nallamothu purchased the CAS allocation at St John's College from Bashir. He advertised the CAS for sale "with or without English" and transferred large amounts of money to Bashir through various bank accounts. In a relatively short period of time

(from 2 October 2012 to 12 October 2012) at the point when the college began to issue CAS, Nallamothu paid £60,400 into Bashir's bank account. Text messages revealed Bashir's repeated requests for payment for the CAS he was selling to Nallamothu and he threatened to terminate the arrangement if he was not paid.

9. Nayyar was the managing director of a different college named "Kinnaird College", where she alone was authorised to use the Home Office system. The sponsor licence at that college was reinstated on 29 January 2014 and she then issued 352 CAS, receiving fees of £856,600. She had previously entered into an agreement, dated 25 March 2014, to sell her CAS to Bashir and his brother.
10. Nonetheless Nayyar told HMRC officials that she had sold Kinnaird College to a man by the name of Bilal Shahid in return for £5,000. The suggested sale was a sham in order to hide her criminality. Shahid left the United Kingdom on 16 February 2014 and Nayyar was the sole signatory for the Kinnaird College bank account. £93,894 was paid in during the period that CAS were being sold to Bashir and his brother.
11. The Home Office Tier 4 Temporary Migration Programme allows educational establishments to offer courses to individuals from outside the EU. In order to do so they must first obtain a sponsor licence from the Home Office. If approved a college will be given a quota of CAS, a unique reference number, which is allocated to a student, once accepted by the college for study and which permits their entry into the United Kingdom. Without a CAS a student can neither enter the United Kingdom nor remain in the United Kingdom once the course has finished unless a further CAS is obtained. Once a college receives a sponsor licence they can effectively manage their own recruitment of students via an online database. The CAS are "purchased" for a small

nominal application fee and the college, which is the sponsor, has to be satisfied of certain criteria as regards the student (for instance, whether he or she has sufficient wherewithal to live in the United Kingdom for the duration of the course before applying for a CAS on the student's behalf).

12. The official from the college applying for the CAS must populate certain mandatory fields on the online database, including the value of the fees that it expects to be paid by the student for the course and the fees already received. If a college loses its sponsor licence or a course finishes the student can only remain in the United Kingdom for 60 days thereafter unless a further CAS is obtained.

13. These offenders operated the fraud via this system, selling CAS to those who wished to enter or to remain in the United Kingdom, some of whom were genuine and others were not. But either way, the applicants would not be receiving any genuine education.

14. As its core, this was a device to flout the scheme which had been put into effect by the Home Office and the defendants used either failing or fake colleges for the purposes of facilitating this illegal immigration scheme.

15. Bashir and his brother were at the centre of the conspiracy and conspired with Nallamothu through St John's College in Ashton. Nayyar used her college, Kinnaird College in Manchester. Bank accounts, telephone records and diaries showed that CAS were purchased and sold between the three defendants for profit.

16. On 6 July 2011 St John College Ltd in Ashton-under-Lyne was granted a sponsor licence under the Tier 4 system. Bashir, as the managing director, was the key contact. Further to a compliance visit the sponsor licence was suspended in July 2012 but then,

following a period of uncertainty about the status of the college as a result of a legal challenge, it was reinstated on 10 September 2012.

17. From then, Bashir and his brother used it to make as much money as they were able by selling CAS to facilitate illegal immigration. They did so by assuming assumed identities to manipulate the Home Office database. In a 3-month period Bashir obtained and sold nearly 1000 CAS which were then sold on to those who wished to apply to enter or remain in the United Kingdom under the Tier 4 scheme. The plan was to sell on the business and to disappear into the background.
18. On 13 September 2012 the first CAS were allocated. Thereafter the college proceeded to allocate 955 CAS in quick succession over this period (three times as many confirmations as it had allocated when it had been genuinely operating as a college).
19. The Home Office online database showed fees received by the college during this period of £2,610,000. By the 16 February 2013 the college had closed. As already set out, those who received a CAS during this period were not genuine students. In December 2012 Bashir purported to sell the college to a person by the name of "Galla Venkata Rao". Rao lived in India and had never visited the United Kingdom. His identity was used by Bashir. Neither Rao nor his son had any connection with St John College and they had not met the Bashir brothers. However, Bashir set this identity up as a new level 2 user on the Home Office online database in October 2012. On 28 December 2012 he then went on to seek to register Rao as the key contact at St John College. By the 28 December 2012, he purported to sell the college to this hijacked identity for £24,000. A forged document drafted by Bashir showed the sale of St John College to Rao, containing both of their signatures. At a later stage the fraudulent use of Rao's name

resulted in Rao's son, a man called Galla, being arrested on a flight by Home Office officials who believed that he had been a party to this conspiracy.

20. Bashir was seeking to distance himself from the fraudulent scheme. He set up two more hijacked identities, Amin Qamar and Hussain Ghassan, through which he further manipulated the online database. Between 20 September 2012 and December 2012, whilst Rao allocated 510 CAS, 311 were allocated by Qamar and 90 by Hussain. In reality these were all controlled by Bashir, using the assumed identities of these other people.

21. The date of the sale of the college to Rao is significant (28 December 2012) because on the following day the sponsor licence was suspended.

22. On 19 February 2013 the sponsor licence for St John College was revoked. This was due to the fact that the visa refusal rate for their prospective students had been too high. The fictitious Rao was informed of this by e-mail as the Home Office had been told he was by then the proprietor of the college.

23. Following the demise of St John College, Bashir became involved with Nayyar in Kinnaird College via a company called Multi Associates which he controlled. He purchased 350 CAS for Nayyar which he sold. A photograph was discovered by the police of Bashir with £60,000 in cash and the metadata of the photograph suggested that it had been taken not before 18 January 2014.

24. Nallamothu had significant knowledge of the Home Office online database as he had previously run "Griffith College" where he was the managing director and the sole user of the database. During this time he had also purchased a restaurant in London called

"Hyderabad Red Chillies Bar and Restaurant Ltd" of which he became the managing director in July 2011. He was also the managing director of a consultancy firm, Neox Consultancy Service Ltd.

25. The sponsor licence (SL) was revoked from Griffith College but Nayyar kept the bank account active.

26. When the police recovered his telephone they found text messages which showed that Nallamothu was buying CAS from Bashir and his brother to then sell on.

27. On 2 October Nallamothu received the hijacked user details for Rao from a number he stored as "Coll St Albans Ali Raza". They came to him by text at 17.08 hours. By 17.50 the details had been changed and following this, Nallamothu sent out instant messages to a variety of numbers "St John College with or without English CAS 500". He was advertising CAS without English which was a clear sign that he was trying to attract genuine CAS students because all applicants have to be able to speak English to study on CAS courses and to be granted Tier 4 visas.

28. Thereafter there were periodic requests by Bashir requesting payments from Nallamothu which matched with evidence from the defendants' respective bank accounts. On 11 October 2012 there was a text from Bashir to Nallamothu: "Borther(sic) look again, u let me down, you didn't put money in my account as you have promised" to which Nallamothu replied "(9000 in ur acc. Check. Balance sorted out tomorrow morning)".

29. Nallamothu used the bank account for the Hyderabad Chilly Restaurant to pay Bashir and his brother for CAS. Nallamothu paid £60,400 to Bashir in the 10 days after the Rao identity started issuing CAS. Nayyar was, as we have said, the sole proprietor and

principal of Kinnaird College, which ostensibly operated as a legitimate institution until it lost its sponsor licence in May 2013. A new licence was granted on 29 January 2014. Nayyar held all of the key roles and was the only level 1 user. She was the sole bank account signatory and all of the CAS were allocated with her identification details. Kinnaird was awarded an allocation of 352 CAS places and almost immediately CAS were purchased using the Kinnaird College bank account and also the personal accounts of both Nayyar and her son.

30. Prior to the SL being reinstated, Nayyar asked two individuals called Gul and Imran to assist her in regaining the SL. They had been involved in a legitimate Tier 4 college in Bradford and Nayyar asked them to help her with advice and to help her financially and they signed an agreement to this effect. Shortly afterwards the SL was reinstated and Nayyar then denied the existence of the legal agreement and barred both of them from the premises.

31. Following the purchase of the CAS, sums totalling £94,000 were transferred to the Kinnaird bank accounts from accounts controlled by Bashir and his brother between 4 April 2014 and 22nd May 2014. Further payments approximating £30,000 were paid by them to her and her husband. Bashir's diary records these payments and the payments made into the Kinnaird accounts referred to and they are named as CAS payment. A notebook recovered from her address at 377 Wilbraham Road shows entries consistent with these movements and approximately £120,000 in cash was recovered from the loft in that house.

32. Kinnaird declared receipts of £856,600 for this period, in contrast to £177,000 by way of receipts into the Kinnaird bank account. A safety deposit box rented in the name of her

son was found to contain a further £30,000. A hard drive was recovered from the address containing a Word document, dated 25 March 2014, referencing an agreement between multi associates, that is Bashir's company and Kinnaird, to supply them with 300 CAS at £500 in breach of the Tier 4 rules in respect of agents.

33. Nayyar tried to distance herself from her criminality by creating a fake sale of Kinnaird College to a man called Bilal Shahid in a very similar way to the device used by Bashir and his brother when they contrived a sham sale to Mr Rao. She told an official from the HMRC that Bilal Shahid bought Kinnaird College by way of an agreement dated 14 February 2014, in return for the sum of £5,000.

34. Nayyar informed Companies House that Mr Shahid had become the sole director on 7 April 2014. Shahid in fact left the country for Pakistan on 16 February 2014, two days after signing the agreement and has never returned.

35. Officials had become concerned as she was making no effort to get the college ready for students to receive the education that was promised. By the 19 May 2014 a compliance visit revealed that Kinnaird College had ceased trading. A search warrant for the college was obtained and officers executed this on 7 February 2015. Files for purported students to whom CAS had been assigned in 2014 were recovered and Home Office checks have been carried out on their identities. Of the 352 named the following has been established: 282 remain in the United Kingdom, 28 have been removed and 42 have departed voluntarily.

36. The Crown's case against Nayyar was that she was heavily involved in the immigration fraud and had no intention of providing education for any students. She very quickly

sold as many CAS as possible following her SL being reinstated in order to maximise her profit. She received money from Bashir and his brother for the CAS and closed down her operation in a very short period of time once the CAS had been sold.

37. The overall picture therefore was that 955 CAS had been sold by St John College and 352 by Kinnaird College making a total of 1,309. At £500 each, the overall proceeds were in the region of £650,000, excluding fees charged by the offenders for letters following the revocation of the sponsors licences.

38. Of the 352 CAS sold by Kinnaird College all resulted in an application for a visa. Most, if not all, were from applicants who were already in the United Kingdom. Bashir submitted in mitigation that 103 of the 950 applications resulting from the CAS sold by St John's College were from out- of- country applicants. Overall this equated to just over 8% of the applications with which the judge was concerned in sentencing.

39. When interviewed by the police Bashir denied being involved in running a bogus or sham college, claiming that St John College was a bona fides educational establishment. He also asserted that he had acted under duress.

40. Nallamothe offered a prepared statement in which he claimed that he had been working as an agent for Bashir and he suggested that he had been in touch with two sub agents called Qumar and Galla. He otherwise made no comment to the questions which were asked.

41. Nayyar also offered a prepared statement in which he claimed that the agreement with Bashir was a legitimate agreement to undertake a legitimate business in which genuine students were to be sent to her at Kinnaird College for her to progress. She otherwise

made no comment to the questions that were asked.

42. In passing sentence, the learned judge observed that the motivation was purely selfish and commercial. It was not a particularly sophisticated form of criminality, in that a system with poor safeguards was being exploited. There were none additional aggravating features of trafficking offences in terms of exploitation or in human living conditions.

43. The judge indicated that Bashir had been involved in this offending since 2012. As regards the offence concerning Kinnaird College, it was highlighted that he did not own that establishment and did not make significant profits from this particular aspect of the criminality. He had been of previous good character. He tried to live up to his father's reputation and it was accepted that he started St John College originally intending it to be a bono fide educational establishment. The sponsorship system had caused him problems and as a result he decided to exploit the overall system dishonestly.

44. Nallamotheu, in the judge's estimate, played a significant role albeit for about 2 months spread over some 2 years. He made less profit than the other two, and he was not a prime mover of this offending. He had not committed any offence since December 2012 and previously had been a man of good character. He now works in IT and supports a young family. The judge concluded that he was likely to be rehabilitated and he had been living a Conventional life for the last 8 years. For those reasons the judge suspended his prison sentence.

45. For Nayyar, the judge highlighted that the offending extended between January and May 2014. She had established a successful college in 2009 but having lost her sponsorship licence she turned to this offending, the inspiration for this criminality having come from

Bashir. She had considerable personal funds (over £300,000) and as a result she was not responding to dire financial need. For a period of 6 weeks she issued CAS knowing that what she was doing was to issue 352 CAS to facilitate a number of students entering the United Kingdom. Others were already in this country and were seeking leave to remain.

46. The judge identified a notional sentence following trial of 5 years' imprisonment.

Nayyar pleaded on the day of trial and the judge afforded her 20% credit reflecting what, in her view, were the underlying complications of the case. The conviction has significantly affected her life and the judge described how this has been a shocking experience for Nayyar and her family. Custody will weigh heavily on her, for what is now offending committed some years ago. Allowing for Nayyar's depression, her 2016 health scare which continues, and abortive court hearings, the judge reduced the sentence from 5 years to 27 months.

47. The Attorney General, through Mr Duncan Penny QC highlights the following

aggravating features which were said to be present in the case of Bashir. First, the ongoing and considerable criminality that he orchestrated. In the case of count 1 (St John College) the offending spanned a period of 6 months although the most intense activity took place between October and December 2012. In the case of count 3 (Kinnaird College) the offending went on for approximately 4 months, starting in February 2014. Second, the first offence (count 1) involved the use of at least three assumed identities for the purpose of evading detection and casting blame onto others. Third, the offences were committed for commercial gain. Fourth, the offences involved systematic abuse of the trust placed in him and his college by the Home Office. The sponsorship licence and CAS system was designed to be administered in a trustworthy fashion by those to whom

licences and CAS were granted by the Home Office. Fifth, the second offence (count 3) was committed with Nayyar a year after the first offence had come to a conclusion. The speed with which it was executed and the down payment made to Nayyar suggested significant premeditation. It follows that Bashir was prepared to indulge in a second bout of offending in 2014, having been successful in the St John fraud during 2012. Sixth, Bashir was involved in facilitating a breach of immigration law in relation to over 1300 individuals. He was the architect of the scheme whereby none of these people were to be provided with education. Seventh, this was a scheme operated for profit, without regard to the purpose of the scheme and the trust that had been placed in him. Eighth, Bashir involved others in the offending including his brother who is unwell.

48. In the case of Nallamotheu, Bashir used him to market and sell the CAS and then pursued him for the sale monies. In the case of Nayyar, Bashir took advantage of the opportunity which the new grant of a licence to Kinnaid College presented to him.

49. As far Nallamotheu is concerned, Mr Penny highlights the following aggravating factors. First, the offences were repeated and continuing. Second, in the case of count 1, the offending went on for a period of 6 months although the most intense activity took place between October and December 2012. The criminality was for commercial gain. Third, Nallamotheu was familiar with the CAS system having himself been previously been the managing director of Griffith College and the sole user of the Home Office online database. Fourth, in relation to advertising and selling CAS for gain to students without English, Nallamotheu used the login details for the assumed identity of Rao when utilising the Home Office database. Fifth, the scale of the offending was significant and involved strangers. In the 10 days after the grant of the licence he transferred over

£60,000 to Bashir representing the proceeds of the sale of the CAS which had been allocated in that period.

50. Finally, for Nayyar, Mr Penny underlines the following aggravating factors. First, the offences were repeated and continuing. In the case of count 3, it went on for approximately 4 months between February and May 2014. Second, the offences were committed for commercial gain. Third, the offences involved systematic abuse of the trust placed in Nayyar and the college. The sponsorship licence and CAS system was designed to be administered in a trustworthy fashion by those to whom licences and CAS were granted by the Home Office. Fourth, the second offence was committed with Bashir and his brother. The speed with which it was executed and the down payment suggested, as we have already indicated, significant premeditation. Fifth, Nayyar was involved in facilitating a breach of immigration law in relation to over 350 individuals. She was jointly responsible with Bashir for a scheme whereby none of them would be provided with education. Sixth, this was a scheme operated for profit, without regard to the purpose of the scheme and the trust which had been placed in her. Seventh, she used a forged document to seek to persuade HMRC that the business had been sold to a fictitious individual who had returned to Pakistan.

51. Mr Mark Harries, on behalf of Bashir, accepts that there were two colleges that concerned his lay client and therefore his offending involved notable repetition. It is also accepted that the CAS allocation for both colleges was exhausted during the course of this fraudulent activity. Notwithstanding those concessions, properly made in our view, we are urged to bear in mind that this was not a sophisticated offence. It is accepted that Bashir was a driving force, albeit it is contended that he did not in any real

sense recruit either of his co-accused. We are reminded that the offending occurred over a short period of time and that there was no duping of the various students in that they were all said to have been compliant in this unlawful activity.

52. These were relatively old offences and there had been significant delays in bringing the case to trial given that the arrest of Bashir occurred in July 2015. His health is poor, having had a heart attack in his mid-30s and he is a diabetic. He certainly, at the time of trial and sentence and possibly before, had suffered from fragile mental health. The risk of re-offending in his case is assessed as being low.

53. The problems with the Home Office over the licence for St John College is emphasised and, most particularly, that it put the viability of the college at risk. The judge had assessed the evidence over a 4-month trial and was well placed to identify the right level of sentence. In those circumstances, Mr Harries submits that 6 years is an appropriate and commensurate sentence. He urges us to focus on the overall term imposed and whilst he acknowledges that the sentence was probably lenient, it is contended that it was not unduly lenient.

54. Mr Imran Shafi, on behalf of Nallamothe, accepts that this might appear, in his client's case, to have been a lenient sentence but he also highlights the delay between the offence and the date of sentence, the length of time that Mr Nallamothe spent on bail, the relatively modest benefit for his lay client, the short period of his offending, the absence of any breach of trust on his part, his previous good character and the impact of these proceedings on his family.

55. His criminality was restricted to St John College. Mr Shafi argues that his role was a

peripheral one and was clearly more limited than the other two accused and the profit that he received was significantly less than applied in the case of Bashir or Nayyar. In the circumstances, it is argued that the decision to suspend the sentence and the length of that sentence did not result in an unduly lenient sentence.

56. Mr Ashraf Khan, on behalf of Nayyar, emphasises the value of the guilty plea on her part, albeit entered late. She has lost her good character and, as a result of these proceedings, has become something of a broken individual. He urges us to conclude that 5 years was a sustainable starting point. She has suffered from anxiety and depression, for which she is taking medication. There is a positive report from Styal Prison. She is undergoing treatment for breast cancer. Her husband was subjected to a violent criminal offence during the course of these proceedings. Against that background it is argued for an old case, 27 months was not an unduly lenient sentence.

57. There are a number of decisions of this court that are relevant as to the correct level of sentence in cases of this kind, albeit they underscore the point that no two cases are ever identical. These are first R v Kao & Ors [2011] 2 Cr App R(S) 4. This case involved a sham college that provided false documents to the Home Office in order to enable students to remain in the United Kingdom as of right. The offending spanned a number of years. There was substantial profits following some 574 fraudulent applications. There were sentences between 7 and 4 years' imprisonment imposed. On an appeal against sentence this court indicated that a sentence of 9 years' imprisonment, following a trial, would not be considered too high.

58. Attorney- General's Reference No 28 of 2014 [2014] EWCA Crim 1723, was a case that involved unlicensed security guards who had no right to work in the United Kingdom and

whose services were rented to the building industry and in relation to whom false documents were created.

59. In the course of giving judgment in that case, Treacy LJ set out the following principles:

- i. *“19. The following considerations appear to us to arise. The offence will often call for a deterrent sentence since the problem with immigration control is a substantial one, causing considerable public concern. The court will have to consider (a) whether the offence is isolated or repeated, (b) the duration of offending, (c) whether the offender had previous similar convictions, (d) whether the offender's motivation was commercial or humanitarian, (e) the number of individuals involved in the breach of immigration law, (f) whether they were strangers or family, (g) the degree of organisation involved, (h) whether the offender recruited others, (i) the offender's role, and (j) whether the offender's conduct involved exploitation of or pressure put upon others. That list is not intended to be exhaustive as cases are necessarily fact-specific.”*

60. In that case, albeit on different facts, the court increased a sentence of four- and- a- half years following a trial to 8 years. The offender had employed at least 50 security guards who had no right to work in the United Kingdom and this formed part of his highly profitable business.

61. In Attorney- General's Reference Nos 49 and 50 of 2015 [2015] EWCA Crim 1402, false documents were issued to students to enable them to submit applications for visas. The fraud, which lasted over a year, involving 177 fraudulent applications, had a value of at least £144,000 and probably nearer to £300,000. Following a trial, this court quashed sentences of 5 years and two- and- a- half years' imprisonment on the two offenders

and substituted terms of 8 years and 5 years respectively.

62. The ease with which the present offences were committed provides no substantive, indeed no, mitigation. The Home Office may have run a scheme that opened up the possibility of fraud but it required dishonest people, who were prepared to exploit the security weaknesses in the way it operated. They fully availed themselves of the opportunity that was presented. The fraudulent activity may not have extended over a long period of time but whilst the crimes were being committed, determined attempts were made; indeed successful attempts were made to process the entirety of the CAS allocation before the offenders covered their tracks and faded into the background.
63. As we have already described, relatively large sums of money were involved. Both colleges, certainly for a significant period, were run as fraudulent institutions and it is relatively immaterial that each may once have been legitimate. The fraud involved significant abuse of the points- based system, part of the Immigration Rules. That system depends on the trustworthiness for Tier 4 of the colleges who are licensed and permitted to issue CAS. As we have said, all available CAS had been utilised given the overall number available was finite.
64. Bearing in mind the guidance that can be derived from the cases to which we have just referred, we are of the view that in relation to Bashir the judge adopted the wrong starting point which should have been no lower than 7 years. His role was a leading one and he breached the important trust that had been afforded to him. There was no credit to be given for a guilty plea. Bearing in mind the principle of totality and his mitigation, we quash the sentence on count 3 (1 year's imprisonment) and we substitute a consecutive sentence of 3 years' imprisonment, making the overall sentence in his case 8 years'

imprisonment.

65. In relation to Nallamothe, he was responsible for uploading a significant amount of misleading information into the SMS system. We do not accept the submission that his role was peripheral or notably limited. During the course of this criminality he was a committed participant who played a critical role. The combination of adopting a starting point of 3 years 6 months' and then deducting 18 months' for personal mitigation, including the delay, resulted, in our judgment, in an unduly lenient sentence. The starting point in his case should not have been less than 5 years' imprisonment. Having deducted 12 months to allow for his mitigation, the sentence in his case will be 4 years' immediate imprisonment. He will receive full credit for half the time spent under curfew if that curfew qualified under the provisions of section 240A of the Criminal Justice Act 2003. On the information before the court the total period is 157 days, but if this period is mistaken this court will order an amendment of the record for the correct period to be recorded.

66. For Nayyar, as with Bashir, the starting point should have been 7 years. Deducting 20% for her plea and a significant amount for her personal mitigation, her sentence should also have been one of 4 years' imprisonment. It follows that we grant leave to the Attorney General and we quash the sentences imposed by the trial judge. For Bashir, there will be a sentence of 8 years' imprisonment and for Nallamothe and Nayyar sentences of 4 years' imprisonment will be substituted.

67. Nallamothe will need to surrender to custody and arrangements should be made for him to surrender to South Yorkshire Police Station, Shepcoate Lane in Sheffield, by 4.00 pm today.

68. We wish to express our considerable gratitude to all counsel for their helpful submissions in this somewhat complex case.

**69. (The Registrar conferred with the Bench)**

70. LORD JUSTICE FULFORD: If it will assist to name a police station for Nallamothu, then we make that order.

71. MR SHAFI: Two matters arise if I may?

72. LORD JUSTICE FULFORD: Yes Mr Shafi?

73. MR SHAFI: Firstly, the court will be aware that with the imposition of the suspended sentence the learned judge made a condition that he was subject to an electronically monitored curfew which he has been subject and that is for a further period of 76 days. My understanding is that 76 days will not count towards the sentence that the court has imposed today and I wonder whether the court might revisit the default period given that he will not have the benefit now of 76 days that he has been on curfew. It would be effectively halved and would be about 35/36 days, a month?

74. LORD JUSTICE FULFORD: Mr Shafi, we are not going to deal with this, as it were, on the hoof. I am going to give time for you to discuss this with Mr Penny and at either 12.55 or 2.05, you have liberty to come back to us on the point, if agreement can be reached as to what, if any, credit should be allowed for the matter that you have just raised.

75. MR SHAFI: Thank you my Lord. Secondly, I seek the court's indulgence that Mr Nallamothu surrender himself today. I am not attended by my instructing solicitors; I

need to speak to them and they speak to him. Would the court indulge Mr Nallamotheu to this extent, that perhaps he can hand himself in to the police station tomorrow, just so he can finalises his matters?

**76. (The Bench Conferred)**

77. LORD JUSTICE FULFORD: Mr Shafi, no. Your client has known about these proceedings for a considerable period of time. I am sure you have advised him of the risk that an immediate determinate sentence would be substituted. This, at most, requires a phone call by someone indicating to him at which police station he needs to surrender and he should have put his affairs in order by now. The order is 4 o'clock this afternoon.

78. MR SHAFI: Thank you.

79. LORD JUSTICE FULFORD: We will hear from you again at 12.55 or 2.05.

80. MR SHAFI: Thank you.

81. MR HARRIES: My Lord does not expect any of the rest of us to be here for that?

82. LORD JUSTICE FULFORD: We certainly do not. Sorry Mr Penny.

**83. (A short while later)**

84. LORD JUSTICE FULFORD: How have we got on Mr Penny?

85. MR PENNY: I think we have established that the matter is discretionary, it is simple as that. The provisions in the Criminal Justice Act deal with offenders who are remanded in custody prior to conviction and offenders who are remanded on bail and if a qualifying

curfew is imposed as a bail condition, then the court may make an order that the relevant number of days may be deducted from a sentence of imprisonment in due course, if one is imposed. Qualifying curfew being a curfew of at least 9 hours at one place. This is neither of those situations because here a sentence has been imposed which this court has found unduly lenient and the court is resentencing for the offence and in those circumstances the submission which is being made by my learned friend is one that the court is entitled to listen to and to consider, but it is effectively a discretionary question of discretionary remedy. The curfew order that he has been responding to as part of the suspended sentence order, had it been a bail condition, would have been a qualifying condition for the purposes of a future sentence of imprisonment.

86. LORD JUSTICE FULFORD: What you are really saying is the fact that this had been the position under the sentence is something that we can bear in mind when considering what the overall length should be of the immediate term of custody?

87. MR PENNY: Of course. Bearing in mind you are dealing with a situation where this is an application for the exercise of the section 36 powers and you are in that situation having concluded that the sentence is unduly lenient you are re-sentencing. This is a fresh sentencing exercise.

88. LORD JUSTICE FULFORD: If it was bail, would you deduct the entirety of the days or would you deduct by half?

89. MR PENNY: You divide by two. The calculation that the way in which the calculation is arrived at is set out in section 240A of the 2003 Act which is at Archbold at page 818. The matter is addressed in fact in the note to the court in the court bundle because of the

direction that the judge gave about what would happen if the suspended sentenced order was activated. That is not this situation. This is sentencing and the imposition of an immediate custodial penalty.

90. MRS JUSTICE MAY: So the 157 days can be dealt with by directing that half of that gets taken into account automatically when considering how much of the sentence is to be served.

91. MR PENNY: The 157 relates to....

92. MRS JUSTICE MAY: Time spent before the trial, on a tagged curfew before the trial.

93. MR PENNY: The submission that my learned friend is making relates to the date of sentence, time spent since the imposition of the sentence.

94. MRS JUSTICE MAY: A different period.

95. MR PENNY: My learned friend is inviting me to deduct 32/36 - something like that - half of 76, from the sentence of 4 years immediate.

96. MRS JUSTICE MAY: That is the only way that it can be done.

97. MR PENNY: In other words my learned friend is inviting you to impose a sentence of something like 3 years 11 months or 3 years. He will make the submission himself but that is my understanding of this submission.

98. LORD JUSTICE FULFORD: Thank you. Mr Shafi is that your submission?

99. MR SHAFI: It is my Lady, 36 is straightforward. There is a discretion that the court has to correct any sentence of injustice, for example, someone has been on electronic

monitored and been caught that count. That cannot be applied in these circumstances so the only way that effectively given to that 57 days is for the sentence that this court arrives at to be amended to give effect to the sentencing 76 days. The ordinary course of events if that was bail it would have been half of that which is 38 days I think. It is in fact - - Sorry.

100. LORD JUSTICE FULFORD: Thirty- eight days you would like us as a matter of discretion to take off the sentence of 4 years.

101. MR SHAFI: Yes my Lord. Thank you.

102. **(The Bench Conferred)**

103. LORD JUSTICE FULFORD: It has been brought to our attention that Nallamothu was subject to a curfew as part of the sentence imposed by the learned judge. We have a discretion to take that into account in arriving at the proper length of the sentence that should be substituted.

104. Having heard submissions from Mr Penny and Mr Shafi, the relevant period, which is one- half of the overall length of time for which the curfew for this period extended is 38 days. In our judgment, some allowance should be made for that period on curfew and we reduce the term of 4 years' imprisonment to 3 years 11 months. The order of the court should be redrafted to reflect that amendment.

105. Mr Shafi, Mr Penny, thank you for looking into this.

106. **(The Registrar conferred with the Bench)**

107. LORD JUSTICE FULFORD: It is 3 years 11 months less whatever was the qualifying curfew before the sentence was passed. So all of the original orders remain in place save for the 4 years; it is 3 years 11 months.

**Epiq Europe Ltd** hereby certify that the above is an accurate and complete record of the proceedings or part thereof.

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