

Irish Council for Civil Liberties: second annual lawyer's dinner

Keynote speech of Fiona Murphy

1. It is an enormous honour to be asked to speak tonight concerning the work of Bhatt Murphy. Human Rights works can feel like a battle against the odds, so this is a much-appreciated opportunity to meet with fellow minded practitioners and I would like to thank Mark and the Irish Council for Civil Liberties for affording me this opportunity.
2. It has been 12 years since I first met Mark in his role with the European Committee for the Prevention of Torture and I would like to come back to that meeting a little later.
3. Mark has asked me to talk about the work of Bhatt Murphy solicitors and the journey we have followed to craft a practice in human rights work.
4. The first thing to say, perhaps, is that we never did set out to set up a human rights practice. When, as a newly qualified solicitor in 1992, I went to work with Raju Bhatt, the expression "human rights" was not really one that we heard and certainly not one that we used.
5. We found ourselves responding to clients who had emerged from the criminal process without the wrongs that had been done to them having been addressed and with those clients looking to us to obtain the vindication that their acquittals had not achieved. Some of those cases concerned the high profile miscarriages of justice of the previous "war against terror" which blighted the Irish community in Britain but many others reflected a routine pattern of systemic physical abuse perpetrated against London's black and ethnic minority communities by the police.
6. As with the high profile miscarriages of justice, these almost routine cases involved blatant conspiracies by senior officers to cover up their junior

colleagues' wrongdoing. The police complaints process was in crisis and clients were instead pursuing civil claims for damages. The determined intention was to maximise the impact of damages in these cases - to draw attention to the systemic pattern of abuse and culture of impunity. Many cases settled with national media attention.

7. The culmination of this strategy arrived in 1996 when 7 separate juries, sitting at Central London County Court, awarded landmark damages against the Met Commissioner. We were involved in 4 of those cases which collectively attracted over £1 M in damages, mostly punitive damages, to castigate the culture of impunity. Although the damages were reduced on appeal, the invitations we had made to the juries to "send a message" to the commissioner had served its purpose.
8. At about the same time we were dealing - inevitably - with deaths in police custody arising from this same pattern of police violence. In 1994 Irish traveller, Richard O'Brien and black Briton, Shiji Lapite died under police restraint. In November 1995 and two months later in January 1996, the inquests into the deaths of these two men returned unlawful killing verdicts something which had not occurred at a police inquest for several decades.
9. Judicial reviews of the Director of Public Prosecution's failure to prosecute in light of those verdicts, led in July 1997 to the DPP conceding that her decisions in the *O'Brien* and *Lapite* cases were unlawful. In the related case of *Treadaway* the court ruled that the DPP's decision had been unlawful. She faced calls for her immediate resignation and following a judicial enquiry, she did precisely that in March 1998.
10. The outcome of the compensation claims and judicial reviews drew the attention of Mark at the European Committee for the Prevention of Torture. He arranged for the Committee to make an extraordinary visit to the United Kingdom to investigate police impunity, not in Belfast but in London.
11. The Committee's visit in September 1997 was front-page news and it was our pleasure to meet the Committee and Mark when they arrived in London.

12. The Committee of jurists and experts gave careful consideration to evidence from a sample of cases with which we had been involved including that of Trevor Gerald who had been viciously assaulted in the back of a Paddington TSG carrier by a police sergeant. The Met had put up a "spirited" defence, promoting the sergeant (although he was involved in at least one other similar case that we knew about) and calling an "expert" pathologist to say that the severe bruising under Trevor's eyes was probably caused by lack of sleep. Fortunately, the evidence of our expert - that he had seen similar severe bruising in African torture victims - prevailed and the jury awarded Trevor £125K: this was one of the 7 large jury awards at Central London County Court that year.
13. The Committee gained access to the Met's lawyers files and appear to have found matters of significant interest which were included in the report prepared within a few months of their visit. However, in an unprecedented interference with the work of the Committee, the British government refused to agree the publication of the report in its entirety. Negotiations continued until May 2000 but when the report was eventually published, it included several redacted sections including with regard to Trevor Gerald's case.
14. Unlike the arrival of the Committee in the UK in 1997, the publication of the report in 2000 attracted little interest from the domestic media. One can safely surmise that matters would have been very different indeed, if the redacted sections had been included.
15. Meanwhile in 1998 as the Human Rights Act brought a form of incorporation of the European Convention on Human Rights into British domestic law, Raju and I, together with Mark Scott and Simon Creighton set up Bhatt Murphy.
16. Police accountability has remained an important aspect of our work but over the last 11 years, our remit has expanded. We continue to rely upon the dedicated work of front line legal aid lawyers in criminal and increasingly, immigration practice to identify and refer cases that may benefit from our approach. Single sets of instructions have led to inquest proceedings, private

law litigation, multiple public law challenges and engagement with diverse complaint and administrative procedures. It is in those cases where we have used a variety of approaches and worked collaboratively with NGOs and the media that we have been at our most effective.

17. Outside of our work on police accountability:
 - We have been working with the families of several young boys who have taken their own lives in custody. Reliance upon Article 3 of the ECHR has assisted in striking down rules concerning the use of force against them.
 - We have also relied on the UN Convention on the Rights of the Child to bring public and private law challenges to the immigration related detention of families.
 - We have compelled changes of government of policy in relation to the immigration detention of children and victims of torture.
 - We have successfully concluded class actions on behalf of children wrongly detained as adults and prisoners wrongly denied access to life saving opiate dependency treatment.
 - Prison law has always been at the heart of our work. We have deployed Articles 5 and 6 to challenge the independence of the Parole Board and to achieve greater fairness in administrative processes for prisoners.
 - We have relied upon Article 8 to achieve redress for those who endeavour to assist the police in investigating crime but whose identities have been disclosed to violent criminals.
 - Our current work includes representing victims of British complicity in the torture of detainees in Pakistan.

18. Human rights standards are prayed in aid in almost all of our case but it is the British legal aid scheme that has made our work possible: not only the funding that we have secured to bring litigation but also the funding that enabled the front line criminal and immigration practitioners to secure acquittals and prevent deportations, without which our work would be impossible. This scheme is seriously under threat and cutbacks have been an ever present reality but without the safety net guaranteed by this branch of

the British welfare state, we would simply not be able to be involved in the risky business of litigating against the state.

19. Before concluding this talk, I wanted to go back to the issue of police accountability and the work of Mark's Committee, our clients and others of the 1990s. This work was not entirely in vain. It led directly to the Police Reform Act 2002. Although a flawed and inadequate response to the challenges of police impunity, the Act has achieved one meaningful change: increased openness and transparency. Our clients are now in a position to see and therefore challenge the poor quality investigation of their complaints, which remain a significant feature in these cases. A paradigm example is that of Babar Ahmad.
20. In April 2006, Babar approached us in relation to the events of December 2003 when he was brutally assaulted by officers from Paddington TSG in the course of an anti-terrorism arrest. This was the very same division of the Met that had been involved in the Trevor Gerald and other cases from the 1990s.
21. By the time that Babar instructed us, the police and DPP had decided there was insufficient evidence to prosecute any officer and our only option was to pursue a civil claim for compensation. The police response to that claim was to offer £20,000 compensation. Babar declined the offer and emphasised that he would not accept any offer without an admission of liability.
22. In the summer of 2008 as the trial approached, we invited the Met's lawyers to disclose any similar fact evidence against the officers. In a carefully worded response the Met lawyer replied that there "were no similar allegations that were capable of being probative" of Babar's allegations. We were not in a position to gainsay that assertion until December 2008 when two young boys telephoned Bhatt Murphy and explained that they had also been assaulted by Paddington TSG, and that the officers were being prosecuted because a black colleague had turned whistle blower. One of the lads alleged that he had been put in a dangerous neck hold in the back of the TSG van by a PC Mark Jones whilst being racially abused. The particular hold described was precisely the same as that described by Babar Ahmad

and in a carefully worded letter on our part; we sought confirmation as to whether there was a "coincidence of identity" with the PC Mark Jones who had assaulted Babar and twice placed him in a life threatening neck hold in the back of the TSG carrier. The Met conceded that he was and resiled from the position that there was no similar fact evidence against the officers. They agreed to offer up the files of all complaints of violence and/or dishonesty against the officers but within days, they had reverted to the court complaining that due to the "sheer volume of complaints against these officers" they could not comply. Instead, they produced a schedule disclosing some 77 complaints against this group of officers and about 22 files that they had managed to locate.

23. The content of the 22 files made disturbing reading. There were other neck hold allegations and several other complaints of striking similarity to Babar's allegations, many of which had resulted in serious injuries. Most significantly there was a dramatic over representation of black and ethnic minority complainants. Either 77 men and women had conspired together to make up these allegations, which seemed unlikely, or the culture of impunity identified by the Committee in 1997 had simply been allowed to prevail unabated. It seemed to me that a direct line could be drawn between the unit's activities in the 1990s and those of this century.
24. At any rate, we pressed on for full disclosure. A few days before trial the Met improved their offer to £60,000. In an exceptionally principled stance, Babar instructed us to press on at significant risk of losing the compensation completely. Bravely, the legal aid people continued to back us. Then the Met announced that the balance of the complaint files had been lost within the Met and could not be found. In fact, they asserted that they would not be found.
25. On the second day of the trial, the Met Commissioner had no option but to admit every detail of Babar Ahmad's allegations and it was later revealed that the officers involved had refused to give evidence on his behalf.

26. After the trial, we were granted legal aid to compel the DPP to reach a decision on the material unearthed by the civil litigation, including compelling new expert evidence, and only this week, the DPP has announced the appointment of First Senior Treasury Counsel to advise as to whether criminal charges should be brought. A judicially supervised review of the outcome of the Babar's case is also awaited. Earlier this month a jury acquitted PC Jones of the allegations brought by the young boys but the failure to adduce the available similar fact evidence and other issues with regard to the conduct of that prosecution are the subject of a recently lodged formal complaint to the DPP. We will also be pursuing the outstanding matter of disciplinary sanctions and compensation for the boys.
27. There remains much to do and despite the appearance of so little progress, we remain confident that the dedicated effort of the 30 people now working at Bhatt Murphy will continue to play its part in holding the state to account - we certainly enjoy enormous satisfaction from our work.
28. Thank you very much for this opportunity