

IN THE COURT OF APPEAL (CIVIL DIVISION)  
ON APPEAL FROM THE HIGH COURT  
JUSTICE HECTOR

Case No.

**BETWEEN:**

**CHIEF COMMISSIONER OF POLICE FOR NEWCOUNTYSHIRE**

**Appellant**

**and**

**GANT**

**Respondent**

---

**SKELETON ARGUMENT ON BEHALF OF THE APPELLANT**

---

**Introduction**

1. This is an appeal brought by the Chief Commissioner of Police for Newcountyshire (“the Appellant”) against the decision of the High Court, to find for Mr. Matthew Gant (“the Respondent”) and hold that the Appellant acted unlawfully in its treatment of the Respondent. Lead Counsel for the Appellant will make submissions concerning the appeal. Junior Counsel for the Appellant will make submissions concerning the cross appeal.
2. Please see the attached chronology for a breakdown of the relevant facts.

**Grounds of Appeal**

3. The Appellant invites this court to discharge the decision of the High Court on the ground that:
  - a. the learned judge erred in holding that Article 5 of the European Convention on Human Rights (ECHR) covers detention following conviction as this is the subject of Protocol 7 Article 3 and is also separately treated in English law under Criminal Justice Act 1988, s.133.
4. The Respondent cross-appeals against the low award on the ground that:
  - a. Article 5 (5) ECHR requires damages to be paid that are commensurate with the extent of loss of liberty. Consequently, the learned judge erred in reducing his damages on account of non-criminal behaviour; all that mattered was that he had appealed as soon as reasonably possible after the new evidence was communicated to him.

## **LEAD COUNSEL FOR THE APPELLANT: Miss Kate Newson**

### **First submission**

Article 5 ECHR does not cover detention following conviction because this is the subject of Protocol 7 Article 3

5. This Court is respectfully invited to set aside the decision of the High Court on the ground that Hector J wrongly determined that Article 5 ECHR could apply to detention following conviction.

6. Article 5 (1)(a) ECHR states:

*"[e]veryone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law: the lawful detention of a person after conviction by a competent court."*

7. The language adopted in the convention is clear; detention following conviction is a legitimate exception. The purpose of Article 5 is to prevent arbitrary or unjustified deprivations of liberty pre-conviction as it is not the role of the European Court of Human Rights to undermine the rule of law in Member States.

8. Further, Protocol 7 Article 3 states:

*"When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed, or he has been pardoned, on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to the law or the practice of the State concerned, unless it is proved that the nondisclosure of the unknown fact in time is wholly or partly attributable to him."*

9. It is submitted that Protocol 7 Article 3 was inserted into the ECHR precisely because Article 5 does not apply to individuals who have been detained following conviction. If this were not the case then a claim for financial compensation could have been brought under Article 5(5) which provides a compensatory remedy for any deprivation of liberty.

10. Further, Hector J incorrectly relied on the case of *Zenati v Commissioner of Police of the Metropolis* [2015] EWCA Civ 80 to find that the state could not rely upon Article 5(1)(a) in relation to the extra time caused by culpable delay. Lewison LJ clearly states at para 59 that:

*"Mr Zenati's success at this stage does not amount to imposing...any other general duty on the police or the CPS. It applies only in circumstances in which a person is detained in custody despite not having been convicted of anything."*

11. If this Court finds that Article 5 could apply to individuals who have been convicted, it is respectfully submitted that Article 5 was not breached in this case.
12. The Respondent was not arbitrarily detained. The Respondent remained in prison because of an administrative error on the part of the police, the Hector J has recognized that the police were not acting in bad faith.
13. The delay was justified by the complexity of the case. The police were contending with a multitude of factors, including unspecified DNA evidence, a vague confession, a similarly vague statement from the Respondent suggesting he saw a "man with blond hair in the area" and a murder inconsistent with Paul Cannon's modus operandi.
14. The delay was justified until Paul Cannon's arraignment in June 2013 when he plead guilty. Consequently, the delay lasted for three months, a relatively short period of time given the complexity of the case (*Zenati v Commissioner of Police of the Metropolis* [2015] EWCA Civ 80 at paragraph 34).
15. It is respectfully submitted that it would be an over extension of the purpose of Article 5 of the ECHR to apply it to these facts. The police did not breach Article 5 and therefore did not commit an "unlawful act" under section 6(1) Human Rights Act 1998.

### **Second submission**

Detention following conviction is treated separately in English law under the Criminal Justice Act 1988, s133

16. Hector J erred in failing to consider the Criminal Justice Act 1988 s133 which states:  
  
*"...when a person has been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows beyond reasonable doubt that there has been a miscarriage of justice, the Secretary of State shall pay compensation for the miscarriage of justice to the person who has suffered punishment as a result of such conviction..."*
17. Separating detention following conviction from the Human Rights Act 1998 is deliberate and demonstrates that Parliament did not intend to classify such cases as breaches of human rights.
18. It is submitted that compensation is not available to the Respondent under s133 as for compensation to be payable the Respondent must prove his innocence. The Court of Appeal (Criminal Division) allowed the appeal saying "*we may never know who truly killed Betty Hinks but we can say with some confidence that this new evidence might well have made all the difference at the trial of Mr Gant*". It is clear that the conviction was unsafe not because the court was not certain that the Respondent did not kill Betty Hinks but because it was not certain that he did.

**JUNIOR COUNSEL FOR THE APPELLANT: Miss Kate Macleod**

**First Submission**

It is the correction of the infringement which should serve as the remedy, not compensation

19. The requirement of damages relating to breaches of the ECHR is made clear by Article 5(5):

*“5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation”*

20. The above paragraph assumes that there has been a violation of a provision in Article 5. If it is accepted, however, that Article 5 does not cover detention following conviction, it is respectfully submitted that damages awarded be wholly reconsidered.
21. In the alternative, if it is found that there was a breach of Article 5, it is respectfully submitted that Hector J was not only correct but ultimately generous in his assessment to award nominal damages of £500.00 to the Appellant.
22. Damages must be considered only as a secondary response when considering breaches of the ECHR. This is not a breach of a private law matter but instead one involving an individual's human rights.
23. It is the correction of infringement not compensation which should be the priority as discussed in *Faulkener, R (on the application of) v Secretary of State for Justice and another* [2013] UKSC 23 (paragraph 110).

**Second submission**

It is impossible to calculate damages where the extent of loss of liberty is unknown

24. It is the Respondent's case that the Appellant is ultimately unable to prove but for the delay of the new evidence he would have been released earlier. It is accordingly impossible to quantify damages based on the unknown extent of loss of liberty.
25. It is submitted that even if the new evidence had been made available, the Appellant would likely have still remained in custody. As seen in the case of *R (on the application of Nunn) v Chief Constable of Suffolk and another* [2014] UKSC 37, it does not follow that fresh investigation material which is speculative has the power to overturn a conviction (paragraph 38, 43).
26. Further, as made clear in *Faulkener*, “Damages should not be awarded merely for the loss of a chance of earlier release” (paragraph 13(10)).
27. In accordance with the above three paragraphs, it is submitted that nominal damages of £500.00 serve as the appropriate form of compensation.

**Third submission**

**Ultimate holistic approach required for consideration of damages**

28. It is respectfully submitted that the calculation of damages is deliberately vague and is at the ultimate discretion of the judge. Each case is to be considered on its own facts, as discussed in *Faulkener* (paragraph 13(7)).
29. It follows that Hector J was correct in his holistic approach to the facts in this case. The amount of nominal damages to be awarded is ultimately a matter of judgment and relied upon all factual elements of the case.

**Lead Counsel: Miss Kate Newson  
Junior Counsel: Miss Kate Macleod**

**20<sup>th</sup> October 2016**