Neutral Citation Number: [2006] EWHC 1539 (Admin)

Case No: CO/2791/2006

IN THE HIGH COURT OF JUSTICE
ADMINISTRATIVE COURT
DIVISIONAL COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 27 June 2006

Before:
THE RT HON. LORD JUSTICE SEDLEY
THE HON. MR JUSTICE GRAY

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Between:

USMAN MALIK	**Claimant/ Applicant**
- and -	
(1) CENTRAL CRIMINAL COURT **(2) CROWN PROSECUTION SERVICE**	**Defendants/ Respondents**

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- -

David Gottlieb (instructed by **Johns & Saggar, Solicitors**) for the **Claimant/Applicant**
David Perry and Rosemary Fernandes (CPS Lawyer)
(instructed by **Crown Prosecution Service**) for the **Defendants/Respondents**

Hearing dates: 26 May 2006

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Judgment

Mr Justice Gray:

1. This is the judgment of the court.

2. This is an application made on behalf of Usman Malik, the Claimant, for judicial review of the decision of the Common Serjeant of London, sitting at the Central Criminal Court, made on 24 March 2006, whereby he refused the Claimant's application to have his application for bail heard in public. The Claimant also applies for judicial review of the refusal of the Common Serjeant to direct that the Claimant be produced at the hearing of his bail application. The Defendants are (1) Central Criminal Court and (2) Crown Prosecution Service. The Common Serjeant refused bail but there is no challenge to that part of his decision.

3. The application is made with the permission of the Full Court (Keene LJ and Jack J) on 5 May 2006, following refusal of permission on 11 April 2006 on the papers by the single judge.

4. The Claimant, a 20-year-old man of good character, has been charged with possession of a record of information likely to be useful to a person committing or preparing an act of terrorism, contrary to section 58(1)(b) of the Terrorism Act 2000. The police had found material on his computer which has been described by the Prosecution as "extremist". The Claimant denies the offence.

5. The Claimant had made two previous bail applications in the Magistrates Court on 10 and 16 March 2006 respectively. Both applications were heard in open court. The Claimant was present, as were his mother, father and brother. Both applications were unsuccessful. We are told that members of the press attended both hearings and that reports of the hearings were published.

6. What was described as "an appeal" was lodged on 21 March 2006. It was strictly speaking an application: see section 81(1G) of the Supreme Court Act 1981. Nothing, however, turns on that. The application was accompanied by a letter from the solicitors acting for the Claimant who requested that the application should be heard in open court.

7. The Claimant's application for bail was heard by the Common Serjeant on 24 March 2006. The Claimant was represented by counsel, Mr David Gottlieb. The Crown, represented by Miss Rosemary Fernandes, opposed the application. According to the transcript of the hearing, Mr Gottlieb prefaced his submission by telling the Judge that his point did not involve great issues of law and was simply a matter for the Judge's judgment. He described his application for the hearing to take place in open court with the Defendant produced and members of his family present as being "not an unreasonable request". Mr Gottlieb pointed out that the previous applications for bail made in the Magistrates' Court had taken place in open court. He submitted that there was no suggestion that Mr Malik posed some particularly high level of terrorist threat. Opposing the application, Miss Fernandes relied on "the normal practice" of the Central Criminal Court that bail applications are made *in camera*. She submitted that there was nothing to distinguish the instant case from any other. It was not suggested in the course of the brief hearing that any issue of principle arose and the Common Serjeant understandably did not treat it as doing so.

8. Refusing bail, the Common Serjeant said that the rules were clear and for a reason, as was the procedure in his court. He said that there was nothing which distinguished the present case from any other and expressed the intention to continue with the application in chambers unless the application were to be withdrawn in order for further consideration to be given to it. Mr Gottlieb then indicated that he wished to proceed with his application.

9. In written Observations which are annexed to the Acknowledgement of Service and for which the court is grateful, the Common Serjeant sets out his recollection of the course which the application took. Of the submission that the application be heard in public in the presence of the Claimant and members of his family, the Common Serjeant said:

> "Given the charges, the unusual nature of the case and the possibility of confidential matters being aired and taking into account the view of the Crown it did not seem appropriate to me to accede to the applicant's request and to divert from the usual course. I told counsel that if he wished he could adjourn his application [so that in effect he could give the matter further consideration and if necessary give notice that he wished to argue fully the point] or we could continue In Chambers. He said that he wished to proceed".

Bail was refused on the ground that it appeared to the Common Serjeant that there was a real risk of further offences being committed by the application or his failing to surrender if bail was granted. As I have said, that part of his decision is not challenged on this application.

10. The grounds of the application may be summarised as follows: Mr Gottlieb accepts that there may be many cases where a public hearing is not in the interests of the defendant or of justice. He accepts that it is not necessarily unreasonable for a Judge to refuse a public hearing. He submits, however, that the Defendant's wish for a public hearing is a relevant factor to be taken into account by the tribunal. Indeed Mr Gottlieb goes so far as to say that, in the absence of any free-standing reason for the application to be heard *in camera*, the Defendant's wishes should be decisive. He submits that the Common Serjeant failed to exercise his discretion to hold the bail application in open court; that he failed to take into account the Claimant's previous request for the hearing to be in open court with his family present, that he failed to identify any free-standing reason why the Claimant's request should be rejected and was wrong to treat the "normal procedure" as a free-standing reason. Mr Gottlieb contends that the decision of the Common Serjeant was, as he puts it, "*Wednesbury* unreasonable".

11. In support of these submissions Mr Gottlieb referred the court to the Criminal Procedure Rules 2005 (SI 2005 No. 384) and in particular Rule 16.11 and to two decisions of the court in Strasbourg, namely *Assenov v Bulgaria* [1999] 28 EHRR 652 and *Nikolova v Bulgaria* [1999] 31 EHRR 64. The court was also invited to note the view expressed by the authors of the Law Commission Report "Bail and the Human Rights Act, 1998 [2001] EWLC 269(11)". Reliance was placed on *R (M) v Isleworth Crown Court and HM Customs & Excise* [2005] EWHC 363 (DC). His attention having been drawn to it by the Court, Mr Gottlieb relied in addition on the well-

known case of *Scott v Scott* [1913] AC 417. Mr Gottlieb submits that the decision of the Common Serjeant is susceptible to judicial review and he says that his decision to sit in private should be quashed. It appears to us that if this part of his decision is quashed, the refusal of bail falls with it.

12. In their skeleton argument, counsel for the Second Defendant (Mr David Perry, appearing with Miss Fernandes) do not challenge the susceptibility of the decision of the Common Serjeant to judicial review. Nor did Mr Perry in the course of his oral submissions seek to cast doubt on the general desirability, for the reasons advanced in *Scott v Scott*, that proceedings should take place in public. His argument is that it will invariably be necessary for bail applications to take place in private and that there is no general requirement for a defendant to be present at a bail application. The requirements of Article 5(4) of the European Convention on Human Rights are satisfied if the defendant participates in the bail proceedings through his legal representative and the parties enjoy equality of arms in an adversarial process. Mr Perry submits that Article 6 of the Convention has no application to preliminary hearings concerning trial arrangements including the question of bail for the defendant: see *R (on the application of the Director of Public Prosecutions) v Havering Magistrates' Court* [2001] 1 WLR 805 and the Law Commission Report, to which we referred earlier, at paragraphs 11.9 and 11.14.

13. The argument for the Second Defendant is that the decision of the Common Serjeant was not unreasonable, since the presence of the Claimant was not necessary to prevent unfairness or the risk of injustice and there were good and sufficient reasons for the hearing to take place in chambers.

The jurisdiction of the High Court

14. Although Mr Perry does not contend otherwise, we should turn first to the question whether in the circumstances of this case this Court has jurisdiction to entertain an application for judicial review of the decision of the Common Serjeant sitting in the Central Criminal Court, which is of course a Crown Court.

15. Section 29(3) of the Supreme Court Act, 1981 excludes "matters relating to trial on indictment" from judicial review. There is, however, clear authority that a decision whether to grant or refuse bail at an early stage of criminal proceedings does not relate to trial on indictment. In *R v Manchester Crown Court ex parte the Director of Public Prosecutions* [1994] Cr. App. (R) 461 Lord Browne-Wilkinson said:

> "It may therefore be a helpful further pointer to the true construction of the section to ask the question, 'is the decision sought to be reviewed one arising in the issue between the Crown and the defendant formulated by the indictment (including the costs of such issue)?' If the answer is 'yes', then to permit the decision to be challenged by judicial review may lead to delay in the trial: the matter is therefore probably excluded by the section. If the answer is 'no', the decision of the Crown Court is truly collateral to the indictment of the defendant and judicial review of that decision will not delay his trial: therefore, it may well not be excluded by the section".

So section 29(3) is no barrier to the present application being made to this court.

16. It was decided in *R v Croydon Crown Court ex parte Cox* [1997] 1 Cr. App. (R) 20 that a refusal of bail was not susceptible to judicial review. But, as this court pointed out in the case of *M* (loc. cit) at paragraph 9, the ground of that decision was that there then existed an alternative remedy, namely the possibility of applying to a High Court judge for bail. That alternative remedy was, however, abolished by section 17(6)(b) of the Criminal Justice Act, 2003. So that jurisdictional barrier has also been removed. This does not mean that the High Court can entertain challenges to refusals of bail on the merits, but it does enable a jurisdictional issue such as the present one to be entertained.

17. The authorities to which we have referred were all applications challenging the refusal of bail in the Crown Court. In the present case the challenge is to the manner in which the Crown Court dealt with the bail application. It appears to us that, to use the terminology of Lord Browne-Wilkinson in the *Manchester* case, the decision was also truly collateral to the indictment of the defendant. Accordingly the decision of the Crown Court in the present case is in our judgment susceptible to judicial review.

18. Coming to the substance of the present application, we will deal first with the principal contention advanced on behalf of the Claimant which is that the bail application should have been heard in public. As we will explain, different considerations arise when it comes to the Claimant's ancillary submission that he should have been produced on the hearing of his bail application.

Hearing in public

19. Our starting point is that, other things being equal, court hearings should take place in public. Article 6 of the Convention says that everyone is entitled to a public hearing of any criminal charge against him; but the principle of open justice in both criminal and civil countries was established at common law in this jurisdiction long before 1950. In *Scott v Scott* (loc. cit) Viscount Haldane LC, having referred to "the broad principle… that the Courts of this country must, as between parties, administer justice in public" said at page 438:

> "… unless it be strictly necessary for the attainment of justice, there can be no power in the Court to hear in camera either a matrimonial cause or any other where there is a contest between parties. He who maintains that by no other means than by such a hearing can justice be done may apply for an unusual procedure. But he must make out his case strictly, and bring it up to the standard which the underlying principle requires".

Likewise Lord Halsbury said at page 440:

> "I am of the opinion that every Court of Justice is open to every subject of the King… I believe this has been the rule, at all events, for some centuries".

To similar effect are the words of Lord Shaw who, after quoting Bentham's dictum that 'Publicity is the very soul of justice', at page 477 approved these words of the historian Hallam:

> "Civil liberty in this kingdom has two distinct guarantees; the open administration of justice … and the right of Parliament … to inquire into, and obtain redress of public grievances. Of these the first is by far the most indispensable …".

It seems to us that these sentiments apply with equal, if not greater, force a century later: see *Hodgson v Imperial Tobacco Limited* [1998] 1 WLR 1056.

20. Exceptions to the principle of open justice do of course exist in both criminal and civil cases. At common law there exists a jurisdiction to sit in camera if the justice of the case so requires. For instance cases concerning trade secrets may be heard in private where a public hearing would undermine the purpose of the proceedings. There are also various statutes which require or at least permit proceedings to take place in private, for example prosecutions under the Official Secrets Act. In all such cases the exception arises from the same source as the rule, namely the need for justice to be done: see Lord Haldane LC in *Scott v Scott* at 437.

21. In this connection it is worth noting the recent change in the practice followed in the Family Division. Whereas formerly the presumption was that hearings in family cases should take place in private, the practice nowadays favours public hearings: see *Clibbery v Allen* [2002] Fam 261 per Thorpe LJ at paragraph117.

22. No statutory provision has been relied on for the proposition that the public should routinely be excluded from bail applications. The Criminal Procedure Rules provide by Rule 16.11:

> "16.11 (1) The criminal jurisdiction of the Crown Court specified in the following paragraph may be exercised by a judge of the Crown Court sitting in chambers.
>
> (2) The said jurisdiction is—
>
> (a) hearing applications for bail; …
>
> (h) hearing appeals under section 1 of the Bail (Amendment) Act 1993(b) (against grant of bail by magistrates' court); and
>
> (i) hearing appeals under section 16 of the Criminal Justice Act 2003(e) (against conditions of bail imposed by magistrates' court)."

In our view the word "may" in that rule is permissive rather than mandatory. It is not to be taken to give rise to any presumption in favour of bail applications being heard in private. It enables the Crown Court judge to sit in chambers when it is necessary to do so. Sitting "in chambers" is not synonymous with sitting "in private", as Lord Woolf made clear in *Hodgson v Imperial Tobacco* (loc. cit) at paragraph 23. So Rule

16.11 provides little assistance on the question before us, namely whether bail applications should be heard in public or in private. We express the issue in that way because, if such applications are heard in chambers but not in private (in the former terminology, *in camera*), there is in principle and subject to the law of contempt no inhibition on publishing an account of the proceedings: see section 12 of the Administration of Justice Act, 1960.

23. Moreover for Rule 16.11 to be construed as requiring the Crown Court judge to deal with bail applications in private might arguably fall foul of the European Convention on Human Rights. It is common ground that the potentially relevant Convention rights are those contained in Articles 5 and 6 which read respectively as follows:

> "5.1 Everyone has the right to liberty and security of person…
>
> 5.4. Everyone who is deprived of his liberty by arrest or detention should be entitled to take proceedings by which the lawfulness of this detention shall be decided speedily by a court and his release ordered if the detention is not lawful.
>
> …"
>
> "6.1 In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment should be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interest of juveniles or the protection of private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.
>
> …"

24. Mr Perry contends that Article 6 extends only to proceedings by which a criminal charge is finally determined. He says that the guarantees provided by Article 6(1) do not apply to preliminary hearings concerning trial arrangements including applications for bail. In support of that contention he relies on *Havering* (loc. cit).

25. *Havering* was a case where this court had to consider various questions concerning the manner in which bail applications should be conducted. Those questions did not include the question whether the hearing should be conducted in public, no doubt because, as we understand it, the practice in magistrates' courts is to conduct such applications in public. The court had to consider the interaction between Articles 5 and 6 of the Convention. Having considered a number of domestic and Strasbourg authorities Latham LJ, with whom Poole J agreed, said at paragraph 34:

> "34. It seems to me that care needs to be taken to ensure that the facts and decisions in given cases do not hide the principal

> purpose behind the provisions of Article 5. It is to ensure that persons are not subject to arbitrary deprivation of liberty…
>
> 35. It is clearly with this principle in mind that the court has been prepared to borrow some of the general concepts of fairness in judicial proceedings from Article 6. But that does not mean that the process required for conformity with Article 5 must also be in conformity with Article 6. That would conflate the Convention's control over two separate sets of proceedings which have different objects. Article 5, in the present context, is concerned to ensure that the detention of an accused person before trial is only justified by proper considerations relating to the risks of absconding, and of interfering with witnesses, or the commission of other crimes. Article 6 is concerned with the process of determining the guilt or otherwise of a person who if found guilty would be subjected to criminal penalties. It is in that context that the procedural safeguards required respectively under Article 5 and Article 6 must be viewed".

26. As we have said, the court in *Havering* was not concerned with the question whether magistrates dealing with bail applications should sit in public or in private. We respectfully agree that the principal purpose of Article 5 is to ensure that persons are not subject to arbitrary deprivation of liberty. There is no reference to an entitlement to a public hearing to be found in Article 5, whereas that is an entitlement conferred on everyone by the express terms of Article 6. The entitlement applies, as is clear from the opening words of Article 6, to "the determination of his civil rights and obligations or of any criminal charge against him". It is no part of the functions of a tribunal dealing with an application for bail to determine any criminal charge against the defendant. On the other hand, since the outcome of the bail application may be that the defendant will be incarcerated, it may be said that the bail application will involve the determination of the defendant's civil right to liberty. That right is to be found in the opening words of Article 5, quoted above. If that be right, it would follow that the entitlement to a public hearing conferred by Article 6 applies not only to the trial itself but also to any bail application which may be made prior to or during the course of the trial. The point appears to be open, and we do not have to decide it.

27. Mr Gottlieb relied on two Strasbourg cases mentioned earlier, *Assenov* and *Nikolova*. In both those cases the fact that the hearings in question had been held in closed court was one of the reasons given for the court's finding that they did not satisfy Article 5(4). Mr Gottlieb is, however, right to point out that the hearings in both those cases denied access not only to the public but also to the defendant and his representative. In effect the applications were dealt with on the papers alone. Moreover, in *Neumeister v Austria (No. 1)* [1968] 1 EHRR 91 the Court rejected the suggestion that pre-trial hearings are subject to the same procedural requirements as Article 6(1) imposes in respect of trials, on the basis that, if this were so, it would follow that such hearings would have to be conducted in public, whereas 'publicity in such matters is not… in the interests of accused persons as it is generally understood'. However, the argument to which we have adverted at paragraph 25 above was not raised in *Neumeister*.

28. Mr Perry draws attention in his skeleton argument to the view expressed by the Law Commission in its Criminal Law Consultation Paper "*Bail and the Human Rights Act 1998*" (Consultation Paper No. 157 (1999)):

> "The [Strasbourg] court has laid down certain essential characteristics of a 'judicial procedure' in the context of pre-trial detention. First, the defendant should be able to participate in the hearing, if only through a legal representative. Secondly, the hearing must be 'adversarial' and the parties must enjoy 'equality of arms'. Finally, though this is not entirely clear, it is arguable that the hearing must be held in public".

29. Of greater significance is what was said by the Law Commission on this point in its final report (Law Commission Paper No. 269 (2001)):

> "11.40 [The issue whether there is a requirement that the hearing be held in public] does not seem to pose a problem. Under the present arrangements, there seems to be no reason why, if the defendant wants the hearing to be in public, the hearing should be held in private against his or her wishes. The power exists for the court to hold it in public and we would have thought it inconceivable that any judge would refuse such a request by the defendant unless there was some other free-standing reason for it to be held in camera".

It is to be noted that that view was arrived at by the authors of the report after consideration of the Strasbourg jurisprudence.

30. In our judgment the hearing in open court of an application directly affecting personal liberty is in the first instance a matter not of private or individual right, and certainly not of judicial discretion, but of public obligation. The role of private or individual right, which will be prominent in bail applications, lies in the court's obligation to consider whether it is necessary to depart from the ordinary rule of open justice in the interests of justice itself. This may be at the instance of one party or both; it may also be on the court's own initiative in the interests of third parties. The court's decision is an exercise not of discretion, which implies a judicial choice between two or more equally proper courses, but of judgment as to whether a departure from the norm is justified. All of this, it seems to us, is encapsulated in the well-known passage of *Scott v Scott* in which Lord Shaw of Dunfermline described the doing of justice in public as "the maintenance of constitutional right" and asserted that to treat adherence to it as simply a matter of discretion was "to shift the foundations of freedom from the rock to the sand".

31. There will be cases where a bail application can be heard in public without any substantial risk that the position of either the prosecution or the defence at trial, or that of any third party, will be prejudiced. But there will also be a great many cases where there are good reasons for the court to sit in chambers, and a few, no doubt, where it may need to sit in private. Among the former will be those cases in which the delay involved in arranging a public hearing would defeat the purpose of the application.

32. If bail is opposed by the prosecution, reliance will necessarily be placed on one or more of the grounds for refusing to grant bail contained in Schedule 1, Part 1 to the Bail Act 1976, namely that:

> "1. there exist substantial grounds for the belief that if released on bail, whether with sureties or not, the accused will
>
> a) fail to surrender;
>
> b) commit an offence while on bail;
>
> c) interfere with witnesses or otherwise obstruct the course of justice, whether in relation to himself or any other person.
>
> 2. the offence is one which is indictible only or triable either way and it appears the accused was on bail in criminal proceedings on the date of its commission;
>
> 3. [the Judge] is satisfied that the accused should be kept in custody for his own protection (or welfare in the case of a juvenile);
>
> 4. the accused is already in custody in pursuance of the sentence of a court or of any authority acting under the Services Acts;
>
> …
>
> 6. the accused has been arrested under Section 7(1)(2) of the Bail Act 1976 for absconding or breaking his conditions of bail".

33. Mr Perry listed for us a number of other instances where applications for bail may in the interests of the accused have to be heard in private: where the prosecution need to rehearse a damaging case against the defendant or his co-accused; where the prosecution intend to give detailed reasons for fearing that the defendant will not surrender if given bail; where the defendant's previous convictions will be referred to; where it will or may be necessary to reveal personal and confidential information about the defendant or about prosecution witnesses or others; and where the court may need to be told about information which has been provided to the prosecuting authorities by the defendant or by someone else connected with the case (as for example in *Taylor v Serious Fraud Office* [1999] 2 AC 177). There will no doubt be many other applications where the court may properly decide to exclude the public.

34. In other cases, by contrast, a public hearing will not only meet the primary requirement of open justice. It will serve as a discipline upon parties who are tempted to make exaggerated or unfounded assertions in seeking or opposing bail if they face the possibility of having to answer at trial for what they have chosen publicly to assert.

35. We recognise that this judgment may affect the day-to-day administration and practice of many Crown Courts. We would therefore make certain consequential things clear. It does not follow from what we have held that bail applications have to be listed and called on in open court and then adjourned to chambers if, and only if, a case is made for doing so. Such a process, as well as being time-consuming, would as often as not be self-defeating. There will be nothing objectionable in listing bail applications on the provisional assumption that the interests of justice are going to call for a closed hearing, so long as any application to sit in public is approached on the footing that, once made, it must be acceded to unless there is a sound reason for excluding the public. Such an application will ordinarily come from one or both of the parties, but it may also legitimately come from the media or some other third party. Whether listing is carried out on this basis or on a contrary presumption that the hearing will be in public, parties to bail applications must be prepared to respond promptly, and with relevant reasons, if the court requires to be told in advance of the hearing whether a different course is to be sought and, if it is, whether that course is to be supported or opposed. Crown Court administrators for their part may consider it wise to ask for this information when they list bail applications for hearing. Where there is a conflict, it must be resolved by a judicial decision which itself respects the principles we have set out.

The presence of the defendant

36. We come finally to the further question raised on this application, namely whether the Common Serjeant erred in law in failing to accede to Mr Gottlieb's application that (as it is put) the Claimant should be produced at the hearing of the bail application, that is, that he was entitled to be present. As we have said, we consider that this is a question which is separate and distinct from the issue whether the application should be heard in private or in public.

37. There is a separate rule dealing with the question of an applicant's entitlement to be present at his or her bail hearing. Rule 19.18 of the Criminal Procedure Rules, 2005 provides:

> "(5) Except in the case of an application made by the prosecutor or a constable under Section 3(8) of the 1976 [Bail] Act, the applicant shall not be entitled to be present on the hearing of his application unless the Crown Court gives him leave to be present".

Section 3(8) has no bearing on the present case because it relates to individuals already on bail who are seeking a variation of conditions. The words of sub-rule 5 make clear that an applicant for bail who is already in custody has no automatic right to be present on the hearing of his application and that he or she has the burden of persuading the Crown Court that he or she should be given leave to be present.

38. If, as was the case here, the defendant has legal representation one can see sound pragmatic reasons why he should not have a right to be "produced". Producing a defendant at court for a bail application can be and often is inconvenient and expensive. It is by no means uncommon for defendants who are in custody to be held

at prisons a considerable distance away from the court where they are to be tried. Moreover, the increasing use of video links between the court and the prison where the defendant is detained effectively remove any disadvantage to the defendant by reason of his not being physically present when the application for bail is heard.

39. Section 58 of the Terrorism Act 2000, under which section the Claimant is charged, is not within the list of offences contained in the Protocol issued by the President of the Queen's Bench Division for the Management of Terrorism Cases. It is nevertheless worth noting that paragraph 17 provides:

> "Unless a judge otherwise directs, all Crown Court hearings prior to the trial will be conducted by video link for all defendants in custody".

Conclusion

40. The approach of the Common Serjeant to the application of the defendant to hear his bail application in public did not start, as it should have done, from the fundamental presumption in favour of open justice. Whether his conclusion would have been the same had he taken this approach we are in no position to say. We therefore announced at the end of the hearing our decision to quash his refusal to hear the Claimant's bail application in public, with the consequence that the magistrates' refusal of bail remained extant and that a judge of the Central Criminal Court (we made no direction as to which judge it should be) must now re-determine in the light of our judgment whether to sit in public and, having so decided, whether to grant bail. This should now be done as soon as practicable.