

CPS News Brief

09/06/2016

Crown Prosecution Service statement: Operation Lydd

The Crown Prosecution Service (CPS) has considered a file of evidence from the Metropolitan Police relating to one suspect in connection with allegations made concerning the movement and alleged ill treatment of Abdel Hakim Belhadj and his wife, Fatima Boudchar, and Khadija Al Saadi and his wife and children from countries in South East Asia to Libya in 2004.

Sue Hemming, Head of the CPS's Special Crime and Counter Terrorism Division, said:

“Following a thorough investigation, the CPS has decided that there is insufficient evidence to charge the suspect with any criminal offence.

“We made our decision based upon all the available admissible evidence and after weighing up all of the information we have been provided with.”

Assessing the evidence

On 5 January 2012, the joint Crown Prosecution Service and Metropolitan Police Service panel set up to consider complaints of ill treatment against detainees advised that further investigation was needed in respect of these allegations.

Sue Hemming, the Head of Special Crime and Counter Terrorism Division, who had been appointed as the reviewing lawyer and decision maker in respect of these matters, gave some initial advice and the MPS opened the Operation Lydd investigation.

The terms of reference required the MPS ‘to investigate the treatment whilst awaiting transfer, the circumstances of transfer and also the treatment and interviewing once in Libya’ of the Belhadj and Al Saadi families.

In what has been a thorough and painstaking investigation, evidence and information was obtained from a large number of records, individuals and organisations including the Secret Intelligence Service, the Security Service, other Government Departments and authorities in other countries.

Evidence was also taken from alleged victims and other witnesses during the course of this four year investigation. The CPS also considered the closed report from the Gibson Inquiry.

All those concerned have been mindful of the obligation that allegations such as these must be investigated thoroughly and in accordance with Article 3 of the European Convention on Human Rights.

Given the serious and highly sensitive matters involved and the complex nature of the investigation called for, it has inevitably taken some time both to investigate and review.

The investigation is now complete and the MPS requested a charging decision in respect of one suspect.

Before making the final decision, the CPS obtained detailed advice from Richard Whittam QC who at the time of instruction was First Senior Treasury Counsel.

The CPS also worked closely with the Metropolitan Police throughout the process.

Possible offences and the findings on each

It is not claimed that the suspect directly committed the alleged acts but that he aided and abetted, counselled or procured the offending from the UK.

As the movement and alleged ill-treatment took place outside the UK, the CPS first had to decide if it had the ability to prosecute each offence.

A number of offences were considered:

- Aiding, abetting, counselling or procuring any offence of kidnap, false imprisonment or assault
- Aiding, abetting, counselling or procuring any offence of torture
- Misconduct in public office

Aiding, abetting, counselling or procuring any offence of kidnap, false imprisonment or assault:

There is no jurisdiction to consider these offences.

The alleged acts of kidnap, false imprisonment and assault happened abroad, and the law does not allow the CPS to prosecute the secondary offences of aiding, abetting, counselling or procuring for these offences unless the principal offences took place in England and Wales or jurisdiction abroad is provided by law.

Aiding, abetting, counselling or procuring any offence of torture: The law provides jurisdiction for offending abroad. The CPS has concluded that there is insufficient evidence to prosecute because of the conclusions below.

Misconduct in public office: This can be based upon the conduct in this country and the suspect concerned was a public official. The CPS has concluded that there is insufficient evidence to prosecute.

Misconduct in public office requires the prosecution to prove the following four elements:

- A public officer acting as such
- Wilfully neglects to perform a duty and/or wilfully misconducts himself
- To such a degree as to amount to the abuse of the public's trust in that office holder
- Without reasonable excuse or justification

Conclusions

We have considered a substantial amount of evidence.

The security marking of the potential evidence in this case is such that we are unable to provide a public summary of the material submitted to us. Whilst the evidence is in some respects comprehensive particularly given the substantial amount of documentary material which still exists, it has been understandably difficult to piece together events from over 10 years ago with enough precision or for witnesses to recall matters in sufficient detail to prove the elements of the alleged offences.

It is clear, though, that officials from the UK did not physically detain, transfer or ill-treat the alleged victims directly, nor did the suspect have any connection to the initial physical detention of either man or their families.

Following careful review, the CPS has concluded that there is sufficient evidence to support the contention that the suspect had:

1. been in communication with individuals from the foreign countries responsible for the detention and transfer of the Belhadj and Al Saadi families;
2. disclosed aspects of what was occurring to others within this country; and
3. sought political authority for some of his actions albeit not within a formal written process nor in detail which covered all his communications and conduct.

After additional investigation and careful consideration, it remains unclear what impact or influence the communications and conduct of the suspect had on the actions of decision makers abroad.

It is also impossible to reconcile conflicting evidence about what happened at the time and shortly afterwards or to prove each element of the offences to the required criminal standard. The burden of proof in respect of any criminal matter is on the prosecution and it is important that the Crown is able to advance a coherent case. The evidence is such that it is insufficiently clear for us to do so.

The Code for Crown Prosecutors requires the evidential stage of the Code Test to be met before the public interest can be considered. Therefore applying the Code Test, as it must, the CPS has concluded that there is insufficient evidence to afford a realistic prospect of conviction for any criminal offence; in other words, we are unable to say

that a jury considering all the available evidence is more likely than not to convict.

The CPS's function is not to decide whether a person is guilty of a criminal offence, but to make fair, independent and objective assessments about whether it is appropriate to present charges for the criminal court to consider. The CPS assessment of any case is not in any sense a finding of, or implication of, any guilt or criminal conduct. It is not a finding of fact, which can only be made by a court, but rather an assessment of what it might be possible to prove to a court, in accordance with the Code for Crown Prosecutors.

This assessment is based on the evidence available arising out of the police investigation and not on the evidence that is likely to be gathered by the defence, and likely to be used to test the prosecution evidence. The CPS charging decision is therefore necessarily an assessment on the basis of the evidence that is available to the CPS at the time the decision is made.

CPS prosecutors must also keep every case under review, so that they take account of any change in circumstances that occurs as the case develops, including what becomes known of the defence case. If appropriate, the CPS may change the charges or stop a case.

Background

Operation Lydd began 5 January 2012. A joint CPS/ Metropolitan Police Service panel was set up to consider complaints of ill treatment against detainees.

The terms of reference required the MPS 'to investigate the treatment whilst awaiting transfer, the circumstances of transfer and also the treatment and interviewing once in Libya' of the Belhadj and Al Saadi families.

The panel advised that further investigation was needed in respect of these allegations.

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