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6 October 2016

The Research Director
Legal Affairs and Community Safety Committee
Parliament House
Brisbane QLD 4000

By email: lacsc@parliament.qld.gov.au

To the Honourable Members of the Legal Affairs and Community Safety Committee,

SERIOUS AND ORGANISED CRIME LEGISLATION AMENDMENT BILL 2016

The Queensland Council for Civil Liberties (the Council) thanks the Legal Affairs and Community Safety Committee for the opportunity to make a submission on the *Serious and Organised Crime Legislation Amendment Bill 2016.*

The Committee's Briefing paper claims that the legislation implements the 'ethos' of the Taskforce's Report.[1] However, the Council is concerned that key warnings contained within the Wilson report have been ignored by the Government. The Council is also unconvinced with the limited justification given in the Explanatory Memorandum in line with section 4(2) (a) of the *Legislative Standards Act 1992.*

In particular the Council makes the following observations;

1. **New Consorting Offence**

The Bill replaces 2013's anti association offence with a new consorting offence.[2] This provision is claimed to reflect 'in principle' Recommendation 18 of the Wilson Report.[3] It draws heavily on the equivalent NSW provisions as noted in Committee's briefing note.[4]

[1] Briefing Paper, p2.
[2] Explanatory Memorandum, p9.
[3] Explanatory Memorandum, p10.
[4] Briefing note, p15; Explanatory Memorandum p10.

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The Wilson report noted that the NSW laws have been used by police to 'disproportionately target marginalised groups.'[5] The NSW Ombudsman's study revealed that 38% of issued warnings were for Aboriginal people and that the provisions had been enforced disproportionately against, for example, youth.[6] Concerns exist that NSW's 'wide net' approach 'creates an extremely fertile ground' for corruption.[7] It was against this background the Taskforce took 'careful note' of the risks associated with a NSW Model in constructing their proposal.[8]

Therefore, the Council is concerned that the proposed consorting offence does not pay due regard to the issues that arose in NSW and the Taskforce's consequent suggestions for appropriate safeguards.

i) Definition of Recognised Offender

The proposed Queensland provision differs from NSW on the basis that for a warning to be given a person must be convicted of an indictable offence punishable by a maximum of 5 years.[9] This departure from the NSW model is claimed to allay the issues raised by the NSW Ombudsman.[10] However, the Council points out that the majority of other Australian jurisdictions require the offence to be punishable by 10 years.[11]

Similarly, the Taskforce considered that it was important that the offence be limited so not to apply to those convicted with 'objectively low-level' offences that qualify as consorting simply by virtue of their penalty.[12] The Report called for the explicit exclusion of offences such as small scale drug offences.[13] The provision proposed by the Bill does not exclude any such offences.

In fact, provision is made for offences carrying a maximum lower than 5 years to be included in certain circumstances.[14] The Council is concerned that although the 5 year requirement is an improvement on NSW's 'wide net' approach it continues to risk catching low level offending.[15] In echoing the NSW Council for Civil Liberties concerns it is our view that, should a consorting offence exist at all, it should be sufficiently specific. This will ensure the consorting offence only captures the most serious offending, such as that punishable by 15 years.[16]

ii) Defence of Reasonable Excuse

The proposed offence includes various defences to consorting such as family and work interactions.[17] The Taskforce recommended that, in addition, a general defence should be included for those

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[5] Wilson Report, p25
[6] NSW Ombudsman Consorting Issues Paper, p30.
[7] Alex Steel, Consorting in New South Wales: Substantive Offence of Police Power? (2003) 26 U.N.S.W.L.J 267, 598.
[8] Wilson Report, p196.
[9] As opposed to *any* indictable offence in NSW; Briefing note, p12.
[10] Briefing note, p12.
[11] Victoria, Northern Territory; see Wilson Report p196.
[12] Wilson Report, p196.
[13] Wilson Report, p196.
[14] Explanatory Memorandum p10
[15] Wilson Report p196.
[16] NSWCCL Submission p10.
[17] Briefing note, p13.

situations that, although reasonable, may not fall into a specific category.[18] Despite such a recommendation, a general defence of reasonable excuse is not included in the proposed provision. The Council submits that a general defence of reasonable excuse is necessary to ensure that everyday lawful conduct does not equate to consorting. The NSW Ombudsman Issues Paper pointed out that an insufficient defence scheme led to situations such as travelling to hospital with friends to visit a patient being unreasonable.[19] A general defence is crucial in avoiding such absurd situations.

iii) Onus of Proof

The Council is concerned with the reversed onus of proof in relation to the defences of reasonable excuse. We would echo our NSW colleague's submissions to the NSW Ombudsman which also reflects the Law Society of NSW's rejection of a reversed onus of proof.[20] The reversal of the onus of proof is inappropriate and wrong and is, as the Taskforce noted, 'fundamentally (opposed) to the historically evolved, sophisticated system' we have.[21]

2. Mandatory Sentencing

i) Generally unjust

The majority of the Taskforce reported they were 'fundamentally opposed' to mandatory minimum sentencing.[22]

The Council agrees with the submission by the conservative Rule of Law Institute that

> "...The use of law to impose excessive mandatory sentences to achieve the political objectives of the Parliament to be 'tough on crime' is incompatible with the operation of the rule of law in Australia."[23]

The Council refers the committee to the Wilson Report's extensive summary of the negative practical impacts of mandatory sentencing.[24] As pointed out by Melbourne Age police reporter and ex-Victorian Police Officer John Silvester recently, Australian States seem to be walking the 'failed path' of mandatory sentencing which the United States is starting to retreat from.[25]

No discussion of the Taskforce's rejection of mandatory sentencing occurs in the Bill's Explanatory Memorandum. The Council submits that although the proposed reduction of the mandatory term from 15 to 7 years is slightly less severe, the fundamental injustices and serious unfairness of a mandatory scheme remain.

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[18] Wilson Report, p198.
[19] NSW Ombudsman Issue Paper, p44-45.
[20] NSWCCL Submission p20; NSW Ombudsman Issue Paper p47.
[21] Wilson Report, p178.
[22] Wilson Report, p181.
[23] Rule of Law Institute of Australia, Submission 5.2 to the Taskforce on Organised Crime Legislation, 7 August 2015, 2.
[24] Wilson Report p230 -234.
[25] John Silvester, How to break the crime cycle, *The Age*, 30 September 2016, http://www.theage.com.au/victoria/how-to-break-the-crime-cycle-20160929-grr3kg.html

Of particular note is the likelihood that mandatory sentencing leads to 'charge-bargaining' whereby discretion is removed from the court and given to the Prosecution.[26] Similarly the Taskforce outlined the risks, as acknowledged by the Queensland Police Service itself, of promises or inducements by authorities.[27]

Your attention is drawn to the comments of the Chief Justice of the High Court of Australia in Kuczborski quoted in the Taskforce Report at page 111:

> "Under the VLAD Act it is quite possible that a person who would not receive a custodial sentence in the lower range of seriousness would nevertheless... be sentenced to a mandatory 25 years imprisonment"

It is the Council's position that this observation by the Chief Justice is applicable to the new mandatory minimum scheme of 7 years.

The fact that the VLAD law injustices adverted to by the Chief Justice is replicated in the *Serious and Organised Crime Bill 2016* is reflected in a statement made in the Explanatory Notes namely:

- If the base component does not require the offender to immediately serve a sentence of imprisonment in a Corrective Services facility, the offender is to immediately begin to serve the mandatory component... (see page 121 Explanatory Notes).

ii) Incentive for False Information and Fabrication of Evidence

The Council strongly shares the Taskforce's concern that this provision is a 'strong incentive' for an accused 'to provide false information in the hope that they can avoid the mandatory sentence.'[28] This risk was also identified by the Bar Association in their submission.[29] As noted by the Taskforce, when one considers the severity of the mandatory sentencing regime, such a concern cannot be disregarded as 'fanciful or exaggerated.'[30] The Council would remind the committee of the issues that emerged both in the UK in the 1970s and 1980s but also domestically after the Fitzgerald Inquiry with informers or what were colloquially referred to as 'grasses.'[31]

The Council also notes that these concerns are heightened when one considers these informers are dealt with in closed court. The Supreme and District Court Benchbook confirms that 'openness of our courts is a fundamental principle of our judicial system.'[32] It is well settled that 'secret courts are

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[26] Wilson Report, 232;
[27] Wilson Report, 236.
[28] Wilson Report p225.
[29] Bar Association of Queensland, Submission 5.1 to the Taskforce on Organised Crime Legislation, 5 August 2015, 8-9.
[30] Wilson Report, p225.
[31] See, for example, Duncan Campbell, 1996, *Put out to Grass; Use of Informers by British Police*, The Guardian, April 30, 1996.
[32] Supreme and District Court Benchbook: Closed Court Exceptions September 2014 Amendment; *Scott v Scott* [1913] AC 417.

regarded as having a propensity to spawn corruption and miscarriages of justice.'[33] The Council warns that in light of the Taskforce's position on the incentive to provide false information the nature of closed courts leaves little room for accountability or oversight under this proposed legislation.

Enclosed is a relatively recent article from the 2013 UK publication Criminal Law Review which notes that the use of supergrass evidence (which will occur under the current 7 year mandatory minimum regime) has been marred by a troubled past.. (and) it was ultimately discredited by damning findings of police corruption (and) the use of particularly unfavourable supergrasses.

For those who did not live through the 70s and 80s both in the UK and this country and who did not witness the misuse of supergrasses the enclosed article is informative.

3. Restricted Premises and Police Powers

These amendments allow a senior police officer to make an application to a Magistrate to have premises declared 'restricted' on the basis that there are reasonable grounds for suspecting that 'disorderly activity' is occurring on those premises or that 'prescribed offenders attend the premises.[34] The Council considers the definition of 'disorderly activity' to be not only particularly far reaching but also vague.

The Council is particularly concerned that a restricted premises order, which can last for up to two years, allows for police searches to be undertaken without a warrant.[35] Such a provision ignores the crucial policy considerations underpinning provisions of the *Police Powers and Responsibilities Act* which safeguard against police misconduct.

4. Control Orders

The Bill proposes that a mandatory control order be applied where there is a conviction under the new Serious Organised Crime circumstance of aggravation. Discretionary control orders can also be sought by the prosecution for any other indictable offence.[36]

The Bar Association did not support the Taskforce's recommendation for mandatory control orders.[37] The Council echoes those concerns particularly when one considers the impact an order will have on an accused's work prospects.

The Explanatory Memorandum notes that control orders 'are intended to become relevant in the assessment of a person's suitability for a licence, permit, certificate or other authority under the affected occupational licensing Acts.'[38] The Explanatory Memorandum conceded the provision

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[33] G. Nettheim, "Open Justice versus Justice", Adelaide Law Review 9(4) May 1985, 487; Chief Justice Murray Gleeson, 'Judicial Accountability' (1995) 2 Judicial Review 117, 123-4. See also Russell v Russell (1976) 134 CLR 495, 520 (Gibbs J)

[34] Briefing Paper, p16.

[35] Briefing Paper, p16.

[36] Explanatory Memorandum, p21.

[37] Wilson Report, p257.

[38] Explanatory Memorandum, p30.

infringes on, for example, a right to work[39] and will be a consideration when someone applies for a wide range of work licences.[40]

The Council is concerned that although the court's discretion may allow for minimal conditions for less serious circumstances, a control order will still unfairly impinge on a person's right to work. The safeguard which makes conditions discretionary is made redundant by the mandatory nature of the order in relation to serious organised crime circumstances of aggravation offences.

This unjustifiably leads to the grave potential to affect a person's ability to work, or attain the requisite licences to work.

5. General Concerns regarding Legislative Scrutiny

The Explanatory Memorandum, pursuant to section 4(2) (a) of the *Legislative Standards Act 1992,* provides an explanation of how each of the above provisions will impinge on various civil liberties and rights.

However, it is the Council's view that the justifications given are insufficient. Beyond claiming that provisions, for example, are 'justified to punish and signal the community's disapproval of serious and organised crime'[41] little substantive discussion of the affected rights occurs.

The 'nebulous' effect of *Legislative Standards Act* has been highlighted by the current Human Rights Inquiry.[42] In our submission more should be done to justify why the provisions' concepts of necessity and public safety outweigh fundamental legislative principles and civil liberties.

It is noted that a submittee to the recent Queensland Parliamentary Inquiry into a possible Human Rights Act for Queensland noted:

- The *Legislative Standards Act 1992* (Qld) Section 4 (3) contains a relatively nebulous requirement that legislation should have 'sufficient regard' to the rights and liberties of individuals. The enumerated rights and liberties cohere with several, traditional, common law rights (eg. natural justice) and 'Rule of Law' concepts (eg. clear and precise legislative drafting). But the scope of rights to be considered by Queensland's (portfolio) committees when examining bills and subordinate legislation is thin compared to legislative review processes under statutory human rights internationally and in Victoria and the ACT (see submission number 468 page 9 to the Human Rights Inquiry).

The Parliamentary Committee Briefing Note in relation to the *Serious and Organised Crime Legislation Amendment Bill 2016* notes (and this is particularly relevant to the still absurd 7 year mandatory minimum):

- The Government's Regime implements the ethos of the Taskforce recommendations, and the recommendations of the Commission <u>but</u> makes <u>enhancements</u> and <u>adaptations</u> aimed at balancing the legal challenges emphasised by the Taskforce where the operational <u>needs of</u>

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[39] Explanatory Memorandum, p39.
[40] Explanatory Memorandum, p92.
[41] Explanatory Memorandum, p36.
[42] Committee Report, p8; Peter Billings, submission 468, p 9

law enforcement agencies (emphasis added) (see Parliamentary Committee Briefing Note page 7).

What has in fact occurred (particularly by reference to page 241 of the Taskforce Report) is that despite the Taskforce Chair, the Bar Association, the Queensland Law Society and the Public Interest Monitor being opposed to a mandatory sentence regime for the new serious organised crime circumstances of aggravation offence, subsequent to the production of the Taskforce Report the views of the Police have reigned supreme, euphemistically described in the extract from the Parliamentary Committee Briefing Note (above) as 'enhancements and adaptations'.

After the release of the Wilson Taskforce Report it appears only the Police have been consulted by the Government. The Bar Association and the Queensland Law Society have been briefed once policy decisions were made by the Government after secret police briefings.

The Taskforce over numerous pages in its report detailed a large number of instances in other States of Australia where mandatory minimum sentences have wreaked injustice.

Despite the detailed and careful work of the Taskforce law and order populism rather than the carefully reasoned arguments of the Taskforce Report wins out in a way that is inevitably going to produce serious injustices.

The Council cannot emphasise enough the dangers presented by the new 7 year mandatory minimum.

Conclusion

The Council respectfully submits that the proposed provisions in the *Serious and Organised Crime Legislation Amendment Bill 2016* do not reflect the far-reaching and detailed work leading to the Taskforce's Report. The failure to implement key safeguards proposed by the Wilson Report results in the continuation of harsh outcomes particularly with the 7 year mandatory minimum. Without the full force of the recommendations in the Taskforce's Report many of the unjust concerns that arose under the VLAD laws will continue to occur, especially in relation to the mandatory minimum 7 year extra sentence on top of the base offence for the serious organised crime circumstances of aggravation offence.

Yours faithfully
QUEENSLAND COUNCIL FOR CIVIL LIBERTIES

TERRY O'GORMAN
VICE-PRESIDENT

Criminal Law Review

2013

The recent supergrass controversy: have we learnt from the troubled past?

Richard Martin*

Subject: Criminal evidence. **Other related subjects:** Criminal procedure. Police

Keywords: Informers; Northern Ireland; Police sources; Prosecutions

Legislation: Serious Organised Crime and Police Act 2005 (c.15)

Case: R. v Haddock [2012] NICC 5 (CCA (NI))

*Crim. L.R. 273 Summary

After a troubled past in England and Northern Ireland the supergrass has returned. The revival of this notorious character by the police forces in both countries to combat organised crime and paramilitary gangs has caused increasing controversy. Through exploring the troubled past, this discussion demonstrates that underlying this controversy is the question of the legitimacy of a process. The ultimate lesson of the past is that in order to achieve legitimacy the supergrass process must be successfully institutionalized. In seeking to answer whether the new process has learnt this lesson, the discussion identifies and analyzes three key stages in the process: pre-trial, trial and post-trial. Whilst institutionalisation has largely been achieved at the pre-trial stage, the trial and post-trial stages remain haunted by ghosts from the past, which challenge the values to which the criminal justice system aspires.

Introduction

"The stark reality is that without it major criminals who should be convicted and sentenced for offences of the utmost seriousness might, and in many cases certainly would, escape justice"Sir Igor Judge (Blackburn, 2007)

"When that kind of evidence is being relied on in a court of law, justice becomes a lottery, innocent people get convicted, guilty men escape and the system of justice as a whole is discredited"Lord Gifford (The House of Lords, 1985)

Coined by the criminal underworld, borrowed by the media and eventually recognised by the judiciary, the term "supergrass" is used to describe a serious criminal or terrorist, who not only informs on a large number of their partners in crime, but also stars as the prosecution's principal witness in the trial against them. *Crim. L.R. 274 [1] The use of accomplice testimony is nothing new in criminal law; indeed it has been around for centuries.[2] However, the supergrass is no ordinary accomplice. Driven by self-preservation and a commitment to securing leniency, protection and assistance from the State,[3] this character is prepared to offer evidence which, if accepted by the court, has the potential to disrupt and dismantle the most powerful organised criminal gangs and paramilitary organisations.[4]

Whilst supergrass evidence has been used with relative success in America and Italy to combat the Mafia and other serious criminal organisations,[5] in England and Northern Ireland their use has been marred by a troubled past. Although the process in England lasted from the 1970s to the 1990s, it was ultimately discredited by damning findings of police corruption,[6] the use of particularly unfavourable supergrasses[7] and major failures in witness protection arrangements.[8] In Northern Ireland, the deeply flawed "supergrass system", used during the 1980s in a desperate attempt to secure convictions of suspected terrorists, suffered an even greater fall from grace when the judiciary ultimately destroyed the process after "intense public controversy" and critical reports.[9]

Against this backdrop, this discussion seeks to answer whether the recent controversy surrounding the re-emergence of the supergrass process in England, by the Metropolitan Police (the Met), and Northern Ireland, by the Police Service (PSNI), suggests a failure to learn from the troubled past. Part I begins by briefly explaining this re-emergence and recent controversy. Part II then proceeds to explore what is termed the "supergrass process", its connection with the legitimacy of legal authorities

and the importance of institutionalisation in light of the troubled past in Northern Ireland. Working through the pre-trial, trial, and post-trial stages of the supergrass process, Parts III and IV question the extent to which legitimacy has been successfully achieved.

The re-emergence and recent controversy

The current supergrass initiative and statutory framework were born out of an attempt by the Labour government to combat serious organised crime, as expounded in the *White Paper One Step Ahead*.[10] The perception was that organised criminals were growing more sophisticated and "adept at frustrating the trials process".[11] With an awareness that prosecution was central to successfully dismantling these criminal groups, the Home Office was particularly concerned at the limited use of supergrass testimony in the United Kingdom; just a fraction of one per cent of ***Crim. L.R. 275*** defendants were turning Queen's evidence, in stark contrast to the 26 per cent in the United States.[12]

The supergrass's untapped potential was to be captured through two major developments. The first was the establishment of the Serious Organised Crime Agency (SOCA).[13] This intelligence-led, non-departmental public body, would enable information on potential supergrasses and supporting evidence to be gathered, as well as helping to ensure successful prosecutions through close co-ordination with prosecution services in order to "negotiate legal pitfalls and maximise evidential opportunities".[14] The second development was the creation of a statutory framework, ss.71 –75 of the Serious Organised Crime and Police Act 2005 (SOCPA),[15] formalizing the use of Queen's evidence and providing a statutory foundation for senior prosecutors to enter into binding agreements with assisting offenders.[16]

Notwithstanding these developments, the figures made available by the Attorney General reveal that there have been just 140 agreements entered into with supergrasses between April 2006 and May 2011.[17] Moreover, in the limited cases where the provisions are being employed, it has been by regional police forces, particularly the Met and the PSNI, rather than SOCA.[18] The failure to mainstream these provisions, particularly within SOCA, has received academic attention elsewhere.[19] The focus of this discussion, however, is the legitimacy of what is termed the "supergrass process", in light of the recent controversy which has resulted from the more determined efforts of regional police to exploit the supergrass's potential.

Early last year the first supergrass trial in Northern Ireland for over two decades, *R. v Haddock,* [20] resulted in the acquittal of all 13 defendants, after years of preparation and an extensive five-month trial involving over 20 counsel. The defendants were suspected to have been involved in a total of 97 offences linked to the paramilitary organisation, the Ulster Volunteer Force (UVF), including the murder of Tommy English, a member of another Loyalist group, the Ulster Defence Association (UDA).[21] The case was based primarily on the supergrass evidence of two brothers, the Stewarts, former members of the UVF, who received considerable sentence reductions after entering into a SOCPA agreement.[22] According to Justice Gillen, though, their evidence was flawed and unreliable. It was described as "infected with lies" and wrongly implicating "a number of men who were clearly ***Crim. L.R. 276*** not present at the crimes suggested".[23] Despite the public and political debate that has followed, and concerns surrounding the adequacy of legal safeguards,[24] the Northern Irish Justice Minister has insisted there is no need for changes in the law, whilst the PSNI have confirmed that a further six cases are under consideration.[25]

Meanwhile, in London, the Met's use of supergrasses has attracted similar concern. Last year the Met twice attempted to use the uncorroborated evidence of supergrass Gary Eaton. Both cases collapsed with trial judges describing Eaton as "a pathological liar" who was "not just unreliable but false and highly dangerous".[26] The case also exposed serious misconduct by the Met, including the coaching and bribing of Mr Eaton. In light of these acquittals leading members of the police force, including Sir Hugh Orde, President of ACPO, have warned of the dangers of relying on supergrass testimony.[27] Furthermore, the Criminal Cases Review Commission and Attorney General are now reviewing a series of fast-tracked supergrass cases amid concerns over the safety of the convictions.[28]

Learning from the troubled past: legitimacy and the supergrass process

At a superficial level the recent controversy seems to raise isolated problems involving the decisions of prosecutors, police misconduct, and the reliability of particular supergrasses. Through exploring the troubled past of the supergrass, though, this section suggests that underlying this collection of issues

is a more fundamental question concerning the *legitimacy* of a *process*. The ultimate lesson of the past is that in order to claim legitimacy the process must accord with the fundamental values to which the criminal justice system and State aspire: it must be successfully *institutionalised*.

Legitimacy is a property possessed by legal authorities when citizens feel that the actions of these authorities "are appropriate, proper and just and ought to be voluntarily deferred to".[29] Consequently, a rule or decision by this authority is "valid" in the sense that it is entitled to be obeyed by virtue of who made the decision or how it is made, rather than by an external motivation, such as the fear of a sanction.[30] As argued by Gearty,[31] the legitimacy of legal authorities in the context of combating serious organised crime and terrorism often lies in the grey ***Crim. L.R. 277*** area that exists between the threat posed by the actions of these groups and strong law enforcement initiatives used by the State to suppress it.[32]

Building on Gearty's analysis, the connection between the use of supergrasses and legitimacy seems two-fold. First, supergrasses can enable the legitimacy of legal authorities to be strengthened. The actions of serious criminal and paramilitary groups can damage the legitimacy of legal authorities due to the perception that the State cannot, or has a limited commitment to, protect citizens from this harmful, costly and dangerous behaviour. The use of supergrass testimony provides one of the few means of disrupting and dismantling these powerful, secretive groups because of the supergrass's detailed knowledge of the major players in the gang's hierarchy and the particular offences they have committed.[33] Indeed, their very existence can create mistrust and divisions within gangs.[34] Secondly though, the use of supergrasses also has the potential to greatly undermine the legitimacy of legal authorities depending on how successfully authorities incorporate them into the practices and values of the criminal justice system. As demonstrated by the troubled past in Northern Ireland, legitimacy is not purely concerned with the outcome achieved by legal authorities, but also the fairness and propriety of the procedures they employ.[35] In a desperate attempt to secure convictions in a hostile climate of paramilitary violence, the Royal Ulster Constabulary recruited "high-powered" Loyalist and Republican terrorists to testify against large numbers of their erstwhile colleagues in return for immunity or lenient sentences and state protection.[36] Whilst most in Northern Ireland were keen to ensure that the terrorists fuelling this bitter conflict were arrested and punished, considerable public controversy and critical reports emerged in response to, and further exposing, the real dangers underlying the supergrass process used against paramilitary groups. Of particular concern was the lengthy remand periods endured by defendants, the abuse of the Bill of Indictment to by-pass pre-trial scrutiny and ultimately the safety of convictions based on uncorroborated supergrass evidence in non-jury Diplock courts.[37] Wary of the corrosive effect the process was having on the integrity of the criminal justice system, the Northern Irish Court of Appeal ultimately quashed all convictions based solely on the evidence of the supergrass.[38]

Reflecting on this public and political discourse of the past also reveals that the use of supergrasses is perceived as a collective project involving the major actors in the criminal justice system, leading to the phrase "supergrass system".[39] Indeed, the concept of a system has been revived in the current debate.[40] Undoubtedly, a supergrass initiative requires the services and expertise of the major actors in the criminal justice system. This includes: the police, tasked with de-briefing the supergrass, investigating the alleged crimes and ensuring the supergrass's ***Crim. L.R. 278*** protection; the prosecution service, charged with assessing the probative value of the evidence and deciding whether to prosecute; the Judiciary, entrusted with sentencing the supergrass, occasionally deciding the defendant's guilt and ultimately protecting the rule of law, and finally the Parole Board, or Commissioners in Northern Ireland, responsible for releasing the supergrass upon the expiration of their tariff.

However, the coherence and inevitability suggested by the term "system", adopted in the past to suggest supergrasses were travelling through the criminal justice system in a conveyor-belt-like fashion destined to achieve convictions,[41] is conceptually problematic for three reasons. Firstly, it distorts the reality of the relationship and interaction between actors in the criminal justice system. As suggested above, these are autonomous institutions and organisations, assigned with distinct roles and conceptualising events in their own terms. Consequently, they have to respond to the potentially conflicting actions and decisions of one another, fostering a form of negotiation, rather than conviction conspiracy.[42] Secondly, the process is highly dependent on the willingness of the supergrass to continue to offer information and testify at trial, which the criminal justice system can incentivise, but not guarantee. Thirdly, this crude conception of a system fails to identify and explore the three key stages through which the supergrass progresses. A better understanding is of these autonomous, yet responsive, criminal justice actors engaged in a process comprising of three clear transitional stages;

pre-trial, trial, and post-trial.

Accepting that it is the legitimacy of a process which is at issue, rather than simply the new statutory framework or the reliability of particular supergrasses, these three major stages provide the framework for the analysis which follows. The ultimate lesson of the past in both England and Northern Ireland is that, in order to achieve legitimacy, each of these stages must be successfully institutionalized. In other words, it must accord with the most fundamental values to which the criminal justice system and State aspire. As revealed by Greer's comparative analysis of the Northern Ireland process with other initiatives in Italy, America and England, institutionalisation requires mechanisms for accountability and minimum respect for the values of due process.[43] In Northern Ireland the process "emerged from the murky world of intelligence-gathering, which parliament had little interest in seeking to regulate" and was "grafted on to a special non-jury court system" which initially accepted uncorroborated supergrass testimony.[44] This was in stark contrast to America and Italy, where the process was, and still is, regulated by the legislature and where the corroboration requirement and jury have remained central.[45] By failing to achieve institutionalization, the supergrass process in Northern Ireland resulted in the wrongful conviction 66 defendants,[46] caused further damage to the integrity of the criminal justice system and spolit the supergrass's potential to combat criminal organisations. ***Crim. L.R. 279***

The discussion now seeks to answer whether we have learnt from the past, by achieving legitimacy through the successful institutionalisation of the three major stages of the process.

The pre-trial stage: lessons learnt

This initial stage is extensive in length[47] and comprises several key events, including: the prosecution's decision to enter into an agreement with the supergrass; the court's sentencing of the supergrass in light of their assistance; and the de-briefing interviews by the police.[48] While the absence of corroborating evidence provided by prosecutors remains problematic, as further discussed in Part IV, institutionalisation at this stage has been largely achieved through the creation of a legislative framework for entering into deals with supergrasses (SOCPA) and tighter regulation of the police. This has ensured respect for the key public law values of *transparency*, *accountability*, and *independence* that ought to govern the relationship between the State and its citizens.[49]

One of the major problems with the troubled Northern Irish process was the secrecy that surrounded the substance of arrangements made with supergrasses and how these deals had come about.[50] Not only did this encourage all kinds of allegations of police misconduct, including threats and inducements made to supergrasses, it also served to undermine the defence case by precluding access to these official details, which play a crucial role in enabling the judge/jury to assess the credibility of the supergrass.[51] Moreover, as a point of principle it was, and still is, the case that citizens should know what is being done in their name and how the State is conducting its behaviour with serious criminals.[52]

In stark contrast, the new process under SOCPA (ss.71 – 75) boasts much greater *transparency*. First, deals with supergrasses must now be brought within one of the four statutory agreements,[53] which are signed by the prosecutor and the supergrass. This clearly sets out the terms of the arrangement and what is expected of the supergrass.[54] As suggested by Hyland, the fact that an agreement has been made and its precise terms "will almost invariably fall to be disclosed [at trial] subject to any public interest immunity issues".[55] Indeed, the formality of the agreement also offers much greater certainty and clarity for supergrasses themselves. Secondly, supergrasses must admit the full extent of their own criminality in order to enter into a SOCPA agreement, allowing the court to better assess the supergrass's credibility at the trial stage.[56] Finally, the statutory provisions ***Crim. L.R. 280*** also provide much greater clarity surrounding the sentence reduction the supergrass may receive in reward for their assistance. In contrast to the past processes, the judge must now state in an open court the length of the lesser sentence and what the original sentence would have been, but for the assistance.[57]

The well established PACE 1984 Codes of Practice have also enhanced the transparency of scoping and debriefing interviews. For example, the police are now required to tape-record interviews to help ensure an impartial and accurate recording of the interview[58] and to keep accurate and contemporaneous notes of each interview.[59] The value of these detailed records was made clear in the *Haddock* trial. Defence counsel relied heavily on these records to identify inconsistencies in the supergrasses' debriefing interviews and their state of mind when initially entering the SOCPA

agreement. Indeed, it was the handwritten police notes, recording an off-the-tape interview requested by the Stewart brothers which revealed their early intention to strike a deal with police.

As argued by Greer, effective channels of *accountability* are also crucial if the supergrass process is to be justified in a democracy.[60] The current process has largely overcome the accountability deficit of the troubled past. The PSNI, for example, has "become one of the most accountable and highly scrutinised organisations", overseen by a total of 18 agencies.[61] These include the Police Ombudsman, tasked with investigating complaints against the PSNI and the Northern Ireland Policing Board, providing independent oversight and scrutiny of the PSNI through regular reports and public meetings.[62] Importantly, in Northern Ireland there is also much improved accountability of the process as a whole due to the devolution of power back to Stormont, in particular policing and justice powers. This has enabled the Northern Irish Justice Committee to question and challenge the locally elected Minister on the use of supergrasses and the potential for law reform.[63]

However, despite these advances in accountability arrangements, recent examples demonstrate that the risk of unethical and illegal conduct by authorities still remains. During the *Haddock* case, for example, it was revealed that one officer had been making small cash payments to one of the prosecution's key witnesses.[64] More seriously, in the *Eaton* case, the trial judge revealed grave misconduct by the Met, who had "prompted and coached" the supergrass, pressured him into implicating two defendants, and paid him £72,000 over a year-long period before the trial.[65] The risk of such behaviour has important implications for the legal safeguards required at the trial stage. ***Crim. L.R. 281***

Finally, the introduction of *independence* at two important junctures has greatly improved the integrity of the new process. First, there is now a separation of roles within the police during the de-briefing stage. A "sterile corridor" operates between the team that de-briefs the supergrass and the investigating officers, in order to prevent suggestive questioning and supergrasses being fed information in light of investigative evidence.[66] As demonstrated by the *Eaton* case, it is crucial to the reliability of the evidence that this independence is maintained. Secondly, the decision to enter into an agreement with a supergrass under SOCPA, and to prosecute on the basis of their evidence, is now made independently by the prosecution service,[67] rather than the police. This helps ensure the integrity of the process by introducing further scrutiny of the value of the evidence and dispersing the power the police once monopolised at this stage.[68]

The trial and post-trial stages: ghosts from the past

The trial stage

Successful institutionalisation at the trial stage requires that the process respect the key values of the criminal justice system. Perhaps the most fundamental of all is that the alleged criminal or terrorist is:

"not an object to be acted upon, but an independent entity in the process, who may ... force the operators to demonstrate to an independent authority that he is guilty of the charges." [69]

This is reflected in the "golden thread" running through the criminal law that the prosecution must prove the defendant's guilt beyond reasonable doubt.[70] These due process requirements of burden and standard of proof also reflect the core principle that the innocent defendant must be protected from wrongful conviction and punishment.[71] In this section it is argued that successful institutionalisation of these values has been undermined by the absence of two crucial safeguards: the jury and corroborating evidence.

To understand the significance of their absence in the context of supergrass trials, it is necessary to begin by explaining the inherent dangers of supergrass testimony. First, unlike a typical accomplice, the supergrass is driven by a "highly developed sense of self-interest".[72] Determined to secure a deal with the authorities the supergrass is likely to "pretend he knows as a matter of fact about things which are only gossip or rumour" and "give the police the evidence which he thinks they want to hear".[73] In *Haddock*, for example, Justice Gillen stated that the Stewart brothers were not motivated by contrition, as they claimed, but rather "fear of ***Crim. L.R. 282*** impending death at the hands of their former associates in the UVF", which led them to seize the opportunity of appearing as assisting offenders in return for protection from the State.[74] Secondly, because supergrass initiatives target organised criminal and terrorist organisations, the characters that emerge are often the most serious

criminals, with especially bad character. Indeed, the "plethora of criminal offences" committed by the Stewart brothers was described by Justice Gillen as presenting "an overpowering and piercing image of unspeakable random violence and mean spirited deceit ... which even for the court made wincing listening".[75] Thirdly, and again differing from the ordinary accomplice, the supergrass offers information about various events, occurring long ago and involving many people. In *R. v Haddock* the incidents dated back 11–17 years. Research has shown that not only is the accuracy of this evidence affected by the considerable time lapse, but also by stress and violence at the time of the incident.[76] Moreover, post-perceptual information being introduced, often quite properly, by the de-briefing team can have the effect of unintentionally distorting the accuracy of original memories.[77] Fourthly, there is the proven danger of police corruption, as illustrated by the Eaton case, where supergrasses are provided with the names of those the police wish to implicate. Finally, the new SOCPA provisions may further motivate the supergrass to "beef up" their testimony and continue to claim its truthfulness at trial. Under the Act, the prosecution has the discretion to refer the supergrass back to the sentencing court, which can review their sentence downward if further assistance is offered,[78] or upward if the supergrass knowingly fails to offer assistance to any extent pursuant to the agreement.[79]

The absence of the jury

The recent supergrass trial in Northern Ireland has been conducted by a single judge, acting as both tribunal of fact and law, due to the danger of jury intimidation.[80] Given the nature of the crimes with which defendants in supergrass trials are often accused of committing and their suspected membership of criminal or terrorist organisations, there is increased likelihood that these trials will fall within the legislative provisions in both Northern Ireland and England and Wales, discussed further below, which allow for trial by judge alone. Admittedly, trial by judge alone may not always amount to an erosion of due process. As suggested by Jackson,[81] the defendant's counsel can obtain a clearer idea of how the judge is approaching the evidence and case than they could with a jury, enabling them to deal more effectively with the issues that arise. Moreover, the requirement for judges to justify their verdict in the form of a reasoned judgment imposes a much ***Crim. L.R. 283** greater constraint on judges when deciding guilt in comparison to the verdict of juries.[82]

Nonetheless, the current absence of trial by jury in the context of supergrass testimony can be seen to weaken due process in two respects. First, the effect of the discretionary suspect witness warning is greatly diminished. Usually, the judge will issue this warning to the jury, making them aware of the dangers of supergrass testimony and the wisdom in seeking supporting evidence. However, in their absence, the judge is forced to issue this warning to themself.[83] When issued to a jury, this judicial direction is likely to be treated with a degree of severity and importance, "bringing home the moral anxiety they should have about such evidence".[84] However, the warning loses its weight in the latter situation, merely serving as a reminder to the judge to be careful in their assessment.[85] Secondly, the jury offers the collective wisdom and life experiences of 12 people, who can debate the credibility of the witness and importance of supporting evidence at length.[86] This offers much greater protection than the current approach, where guilt rests on the wisdom of one person, who cannot consult with others.

Whilst intimidation by serious criminal organisations is a real danger,[87] there should be greater reluctance to authorise non-jury trials. Although non-jury courts are now available in exceptional circumstances in England and Wales[88] the position in Northern Ireland remains especially troubling. The Director of Public Prosecutions has especially wide discretion to order a non-jury court; all that is required is a mere suspicion that the defendant is a member of a paramilitary organisation,[89] rather than any real and present danger of jury tampering, as in England and Wales. Moreover, attempts have already been made to ensure jury trials can operate in the province for other serious offences through juror anonymity and countrywide jury selection.[90] Even where trial by jury is prevented by intimidation, the situation could still be improved in both jurisdictions by instructing a panel of two or three judges to hear the case.[91] This would provide an important safeguard, with each judge having to explain and justify their perception of the supergrass to their colleagues.[92]

The absence of corroborating evidence

Central to protecting the innocent is the requirement of reliable, relevant, and compelling evidence to prove the defendant's guilt beyond reasonable doubt. ***Crim. L.R. 284** [93] The sufficiency of supergrass evidence *alone* to satisfy the standard of proof is summed up well by McDermott J. in

Sayers (1985) [94]:

"... it is at least probable that [the supergrass] has correctly identified the accused as being his partners in the serious crimes ... But these cases are not decided upon the balance of probabilities".

Considering the inherent dangers of the supergrass, their testimony must always be open to doubt, making it insufficient for proving the guilt of the defendant. In order to ensure the protection of the innocent, it is crucial that this testimony should be corroborated, that is, supported by independent evidence that not only shows that part of the testimony is true, but also implicates the accused in the alleged offence.[95]

The legal position in both countries seems to allow the defendant's guilt to be proven on supergrass testimony alone, if the supergrass is considered sufficiently credible. Whilst the recent trials resulted in acquittals because of the considerable weakness of the supergrass testimony, the absence of corroboration is of serious concern. In *Haddock*, the core prosecution case rested on the Stewart brothers' testimony, with only minimal supporting evidence that fell "far short" of restoring the supergrasses' credibility.[96] Worse still, the prosecutors in the Eaton trial relied solely on the testimony of the supergrass.[97]

In England, a modus vivendi established through negotiations between the Court of Appeal and prosecuting authorities during the 1970s[98] ensured that supergrass evidence was corroborated.[99] While the common law has never had any general requirement for the corroboration of accomplice testimony, in the cases of *Turner (1975)* [100] and *Thorne (1978)*,[101] the Court of Appeal were highly critical of offers to grant immunity from prosecution, and expressed reluctance to accept uncorroborated testimony. Almost forty years later, it seems difficult to identify any clear guidelines, or due process protections, issued by the senior judiciary or Parliament surrounding the use of supergrass testimony despite the introduction of SOCPA 2005 and the re-emergence of the supergrass process. The requirement to give a corroboration direction to the tribunal of fact, warning of the dangers of acting on uncorroborated evidence, has now been abrogated by s.32 of the Criminal Justice and Public Order Act 1994. This warning is now discretionary, being exercised where the judge considers the witness to be potentially unreliable.[102] In the recent Court of Appeal case of *R v Daniels (2011)*,[103] it was stated that the dangers inherent in accomplice testimony under SOCPA could be adequately met by ensuring the jury were given a proper warning.[104] There was no mention of ***Crim. L.R. 285** corroborating or supporting evidence, or the implications of such warnings in non-jury trials.

In Northern Ireland, after great controversy, the Court of Appeal held that although it was possible to convict on uncorroborated supergrass testimony, the supergrass would have to be "really impressive" [105] and capable of "standing up to the sternest criteria".[106] As suggested by Greer, this rigorous standard was "tantamount to a prohibition on convictions on uncorroborated supergrass evidence".[107] However, the standing of this rule been questioned by the recent *Haddock* judgment. Although drawing on a number of the previous supergrass judgments during the 1980s, Justice Gillen did not recognise or confirm the high standard established by the Court of Appeal, stating instead that these principles must be read in light of the general rule that there is no requirement that accomplice evidence be corroborated and the new context created by the 1996 Statutory Order,[108] which also abrogated the legal requirement for a mandatory warning direction in respect of accomplice testimony.[109] After acknowledging the absence of this requirement and issuing the discretionary suspect witness warning, Justice Gillen stated that he recognised:

"the wisdom of seeking supportive evidence before relying on anything [the Stewart brothers] said. The weaker that I found their evidence, the greater was the need to find strong independent supportive evidence if I was to be convinced beyond reasonable doubt." [110]

Although providing an accurate statement of the law and displaying an acute awareness of the dangers of relying on supergrass testimony without supporting evidence throughout his careful judgment, this sliding scale approach to reliability[111] adopted by Justice Gillen can be considered unattractive as matter of principle for two reasons. First, accepting supergrass testimony is *inherently* unreliable, it is difficult to understand why the requirement and degree of supporting evidence should be contingent on the credibility of the *particular* supergrass at trial. Whilst the characteristics of supergrasses may vary, such as the extent of their bad character, the associated dangers do not. Furthermore, as shown by the troubled past, the coherency of the supergrass's story and their demeanour are no guarantee of truthful testimony.[112] Secondly, supportive evidence falls short of the protection offered by corroborating evidence. Whereas the latter must actually implicate the

defendant, the former need only support part of the accomplice evidence testimony.[113] Whether "strong independent evidence" amounts to corroboration in the strict sense is unclear.

In summary, the current position in England and Northern Ireland whereby a single judge can, in law, convict on the uncorroborated evidence of a supergrass, ***Crim. L.R. 286*** poses a considerable challenge to the fundamental principles of proof beyond reasonable doubt and protection of the innocent. Indeed, it raises the question of compatibility with the right to a fair trial enshrined art.6 of the European Convention on Human Rights (ECHR). Although concerned with the fairness of the trial as a whole, rather than specific rules of admissibility and the assessment of evidence,[114] the European Court of Human Rights has made clear that corroboration and thorough examination of Queen's evidence are a primary means of achieving fairness in supergrass-style trials.[115] Whether the criticisms made in the recent judgments surrounding the reliability of the particular supergrasses and the limited supporting evidence serve to influence the decisions of prosecutors and the police investigations of organised criminal and paramilitary activity, similar to the "negotiations" in England during the 1970s, is yet to be seen. In the absence of guidance from the senior judiciary on the court's willingness to convict on the basis of supergrass testimony, which, as argued earlier, is inherently distinct from the "run of the mill" accomplice, it is suggested that clear CPS guidelines, or even statutory regulations, ought to be introduced to help ensure their testimony is corroborated by independent and compelling evidence.

The post-trial stage

This final stage of the process concerns the State's relationship with the supergrass after the trial has concluded. Once again, there are two aspects of the current process which undermine institutionalisation at this stage.

Immunity from prosecution

The new SOCPA legislation has enabled the Director of Public Prosecutions to offer supergrasses full immunity from prosecution[116] and confessional immunity in the form a "restricted use undertaking", whereby the Direction of Public Prosecutions agrees not to use certain evidence in proceedings against the supergrass.[117] The most recent figures reveal that the CPS has granted two full immunities and seven restricted use undertakings to assisting offenders.[118] The concept of granting immunity to serious criminals and terrorists clashes with the most basic principle of criminal justice; those guilty of criminal offences, especially those of a serious nature, should be convicted and punished for their crimes. Whilst the utilitarian justification for leniency in these situations is sound, this should extend no further than a reduced sentence, for at least then these criminals and terrorists are summoned before a court of law and held to account for their actions. Supporting this, the Court of Appeal in *R. v Blackburn (2007)* has stated, obiter, ***Crim. L.R. 287*** that it cannot envisage any circumstances where an offender can or should escape punishment altogether.[119]

Successful institutionalisation is also challenged by the arbitrary nature of the Director of Public Prosecution's statutory power. Under s.71(1) of SOCPA, the Director can grant immunity to any person, regardless of the offence they have committed, provided the he considers it "*appropriate*" for the purposes of the investigation or prosecution. Furthermore, the Director does not have to explain to the court or any political body why, or how, he decided that immunity should be granted. Despite having the power to suspend the effect of criminal law on certain individuals, the Director is only indirectly accountable to Parliament through the Attorney General.[120]

Witness protection arrangements

As a consequence of testifying against powerful criminal organisations, supergrasses and their families will require considerable financial, physical, and psychological support and protection from the State to ensure their safety and wellbeing.[121] From the limited information available[122] there are two major threats to the institutionalisation of witness protection. The first is the absence of a requirement for legal authorities to provide protection to supergrasses under domestic law. According to s.82 of SOCPA, a senior police officer *may* make arrangements if he considers it appropriate for the purposes of protecting the supergrass. Whilst it may seem unlikely that the supergrass will enter into an agreement without some promise of protection, senior police officers retain the power to vary, or even cancel, any protection arrangements if they consider it "*appropriate*".[123] Considering the

ECtHR ruling in *Osman v United Kingdom (1998)*,[124] which established that the State has an obligation to protect the life of someone the authorities know to be in danger, the compatibility of this provision with the right to life under art.2 of the ECHR is questionable.[125]

The second threat to institutionalisation has stemmed from the government's rejection of a national witness protection programme in 2004, which has meant protection programmes are established, monitored, and funded by regional police departments across the UK.[126] This lack of uniformity has led to varying standards of protection, with the quality of arrangements depending on the geographical location of the supergrass rather than any principled rules.[127] Furthermore, there are no specific statutory requirements for senior police officers to account for their ***Crim. L.R. 288*** particular witness protection programmes.[128] The inadequacies of the current arrangements may be responsible for the deaths of several former supergrasses, whilst others have complained of witness protection leaving them "isolated and abandoned".[129]

This lack of coherence and accountability is in stark contrast to arrangements in Western Europe and North America. In Italy, for example, the Central Commission, comprising politicians, judges and experts, determine the content and duration of each supergrass's protection programme.[130] A Central Protection Service is then responsible for implementing the protection programme.[131] In terms of accountability, the Commission must report bi-annually to parliament regarding the application and efficiency of their current programmes.[132]

In light of these obvious benefits and the current domestic failings, the recent creation of the Protected Persons Service set to be launched in 2013 is a welcome development.[133] While the precise details are still emerging at the time of writing, this UK wide protection scheme appears to offer a greater attempt at achieving coherency and improved co-ordination, with the National Crime Agency now co-ordinating the service and the introduction of national quality standards.[134] However, from the information available, the management and delivery of witness protection remain the primary responsibility of regional police forces, which continue to lack the robust organisational arrangements and institutional supervision demonstrated by their European and North American counterpart schemes. Whether the rather modest, one-off grant from the Ministry of Justice, amounting to just over £200,000, will be sufficient to install the mechanisms and personnel required to ensure greater coherency and standards across the UK is also questionable.[135]

Conclusion

In both England and Northern Ireland, the supergrass's potential to combat serious criminal gangs has been marred by an inability to overcome the challenges that arise when supergrasses and their evidence are introduced into the criminal justice system. The revival of the supergrass, primarily by police forces using the new statutory framework, has sparked controversy in both jurisdictions, which again questions whether current arrangements within the criminal justice system are sufficient to combat organised criminal and paramilitary gangs through convictions based on supergrass testimony, whilst also maintaining a basic commitment to due ***Crim. L.R. 289*** process, human rights and the principles of accountability and transparency that ought to govern the relationship between citizens and the State.

This discussion began by suggesting that in light of the troubled past, the core issue raised by this recent controversy is the legitimacy of the supergrass process. The ultimate lesson of the past is that in order to claim legitimacy, the process must accord with these fundamental values to which the criminal justice system and State aspire. Through identifying and analysing the three key stages in the process, it has been revealed that the extent of institutionalisation varies from the pre-trial to the trial and post-trial stages. The combined efforts of SOCPA 2005 and the PACE Codes have formalised the pre-trial stage, offering much greater transparency, accountability and independence. The supergrass is now convicted and sentenced before testifying, with the details of the agreement and the extent of the sentence reduction being officially recorded and made available to the court. However, institutionalisation has yet to extend further through the process. The trial stage remains ill-equipped to deal with the dangers of supergrass testimony in the absence of the jury and corroborating evidence, whilst post-trial immunity and regional witness protection sit uncomfortably with the State's responsibility to punish, but also protect, serious criminals. Although the recent judgments suggest an unwillingness to convict without supporting evidence, this discussion has argued that in light of the inherent dangers unique to supergrass testimony and the absence of any corroboration requirement in law, explicit guidelines ought to be issued which require prosecutors to corroborate the testimony of the supergrass.

As the Government seeks to increase the use of the SOCPA provisions as part of the post-charge questioning of terrorist suspects and prisoners in the UK,[136] and further supergrasses continue emerge in Northern Ireland, including a senior member of Loyalist group, the UVF, who has agreed to testify against the organisation's entire leadership,[137] an appreciation of the previous failings of the supergrass process used in both jurisdictions, and the lessons that can be learnt from it, are of growing importance if the ghosts of the past are going to be dispelled.

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1. S. Greer, "'Supergrasses' and the legal system in Britain and Northern Ireland" [1986] 102 L.Q.R 198.

2. Greer, "'Supergrasses' and the legal system in Britain and Northern Ireland" [1986] 102 L.Q.R 198, 222.

3. *T. Gifford, Supergrasses: The Use of Accomplice Evidence in Northern Ireland (London: The Cobden Trust, 1984).*

4. *Home Office, One Step Ahead—A 21st Century Strategy to Defeat Organised Crime (London: Home Office, 2004).*

5. N. Fyfe and J. Sheptycki, "International Trends in the Facilitation of Witness Co-operation in Organised Crime Cases" [2006] 3 European Journal of Criminology 319.

6. K. de Grazia and K. Hyland, "Mainstreaming the use of assisting offenders: how to make SOCPA 2005, section 73 and section 74 work" [2011] Crim L.R. 357.

7. *S. Greer, Supergrasses: A Study in Anti-Terrorist Law Enforcement in Northern Ireland (Oxford: Clarendon Press, 1995).*

8. *T. Thompson, "Supergrass system faces collapse", The Observer [online], 2001.*

9. Greer, "'Supergrasses' and the legal system in Britain and Northern Ireland" [1986] 102 L.Q.R 198.

10. *Home Office, One Step Ahead—A 21st Century Strategy to Defeat Organised Crime (2004).*

11. *Home Office, One Step Ahead—A 21st Century Strategy to Defeat Organised Crime (2004), p.iii, 45.*

12. *Home Office, One Step Ahead—A 21st Century Strategy to Defeat Organised Crime (2004), pp.39 and 47.*

13. Soon to be replaced by the National Crime Agency, which is operational from 2013. *Home Office, Policing in the 21st Century (London: Home Office, 2010).*

14. *Home Office, One Step Ahead—A 21st Century Strategy to Defeat Organised Crime (2004), p.33.*

15. An analysis of the statutory framework is offered by *K. Hyland, "Assisting Offenders" in R. Billingsley (ed) The "Unlovely" Face of Police Work (Hampshire: Waterside Press, 2009).*

16. *K. Hyland, "Assisting Offenders" in R. Billngsley (Ed) The "Unlovely" Face of Police Work (2009), p.48.*

17. Provided by the Attorney General in response to a written Parliamentary question. These figures were made available to the author after an e-mail request to a member of the CPS. They are dependent on internal reporting and should be treated with caution.

18. *S. Laville, "Met's supergrass system called into question by dismissal of Gary Eaton", The Guardian [online], 2011.*

19. de Grazia and Hyland, "Mainstreaming the use of assisting offenders: how to make SOCPA 2005, section 73 and section 74 work" [2011] Crim L.R. 357.

20. *Haddock [2012] NICC 5.*

21. *H. MacDonald, "Irish republicans and loyalists denounce new supergrass trial" The Guardian [online], 2011.*

22. Each received a 19 year reduction in their sentence (*BBC News, North Belfast UVF supergrass trial lasted 71 days [online], 2012*).

23. *Haddock [2012] NICC 5* at [292] and [532].

24. Amnesty International, for example, has expressed concern about the quality of justice available in such trials and their danger in undermining public faith in the administration of justice (*H. MacDonald, "Use of supergrasses questioned after Belfast terror cases collapse" The Guardian [online] February 22, 2012*). See also *G. Moriarty, "Result puts supergrass system on trial" Irish Times [online], 2012.*

25. *L. Clarke, "Up to six more supergrass cases considered by police", The Belfast Telegraph, March 1, 2012.* See also *BBC News "Justice Minister David Ford defends supergrass laws" [online], 2012* and *BBC News, "PPS head says supergrass system 'will continue'" [online], 2012.*

26. *S. Laville, "Met's supergrass system called into question by dismissal of Gary Eaton", The Guardian [online], 2011.*

27. *Laville, "Met's supergrass system called into question by dismissal of Gary Eaton", The Guardian [online], 2011.*

28. *S. Laville, "Supergrass convictions face legal challenges" The Guardian [online], 2012.*

29. *T. Tyler, Legitimacy and Criminal Justice: International Perspectives (New York: Russell Sage Foundation, 2007).*

30. *Tyler, Legitimacy and Criminal Justice: International Perspectives (2007), pp.10 and 14.*

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32. *Home Office, Facilitating witness co-operation in organised crime cases: an international review (Home Office, Online Report, 2005).*

33. D. Bonner, "Combating Terrorism: Supergrass Trials in Northern Ireland" [1998] 51 The Modern Law Review 23.

34. Bonner, "Combating Terrorism: Supergrass Trials in Northern Ireland" [1998] 51 The Modern Law Review 23.

35. J. Fagan, "Legitimacy and Criminal Justice" [2008] 6 Ohio State Journal of Criminal Law 123.

36. Greer, "'Supergrasses' and the legal system in Britain and Northern Ireland" [1986] 102 L.Q.R 198.

37. Greer, "'Supergrasses' and the legal system in Britain and Northern Ireland" [1986] 102 L.Q.R 198; *J. Jackson, "The Use of 'Supergrasses' as a Method of Prosecution in Northern Ireland" in Tenth Report of the Standing Advisory Commission on Human Rights for 1983–4 HC Paper No.175 Appendix C, 1984.*

38. *Greer, Supergrasses: A Study in Anti-Terrorist Law Enforcement in Northern Ireland (1995), p.173.*

39. *House of Lords, Northern Ireland: "Supergrass" System, Hansard, HL, vol.462, cols 306–35 (April 3, 1985).*

40. *G. Moriarty, "Result puts supergrass system on trial" Irish Times [online], 2012.*

41. See the discussion in S. Greer, "The rise and fall of the Northern Ireland supergrass system" [1987] Crim. L.R, 663.

42. *Greer, Supergrasses: A Study in Anti-Terrorist Law Enforcement in Northern Ireland (1995), p.272.*

43. *Greer, Supergrasses: A Study in Anti-Terrorist Law Enforcement in Northern Ireland (1995).*

44. *Greer, Supergrasses: A Study in Anti-Terrorist Law Enforcement in Northern Ireland (1995), p.275.*

45. *Greer, Supergrasses: A Study in Anti-Terrorist Law Enforcement in Northern Ireland (1995), pp.274–276.*

46. *Greer, Supergrasses: A Study in Anti-Terrorist Law Enforcement in Northern Ireland (1995), p.287.*

47. In *Haddock*, for example, there was a period of two years between the scoping interviews and the beginning of the trial.

48. *Hyland, "Assisting Offenders" in R. Billngsley, (ed) The "Unlovely" Face of Police Work (2009).*

49. *Administrative Justice and Tribunals Council, Purpose Vision and Values [online], 2012.*

50. *Jackson, "The Use of 'Supergrasses' as a Method of Prosecution in Northern Ireland" Tenth Report of the Standing Advisory Commission on Human Rights for 1983–4 HC 175 Appendix C (1984), p.87.*

51. *Jackson, "The Use of 'Supergrasses' as a Method of Prosecution in Northern Ireland" Tenth Report of the Standing Advisory Commission on Human Rights for 1983–4 HC 175 Appendix C (1984), p.87.*

52. *Jackson, "The Use of 'Supergrasses' as a Method of Prosecution in Northern Ireland" Tenth Report of the Standing Advisory Commission on Human Rights for 1983–4 HC 175 Appendix C (1984), p.87.*

53. These include: An agreement to grant immunity or partial immunity (s.71 & 72); an agreement to place before the sentencing court the supergrass's assistance (s.73(1)); the same agreement with an offender who did not originally provide information to investigators but post-sentence decides to offer information (s.74(2)(c)).

54. *P; Blackburn [2007] EWCA Crim 2290 at [7]; [2008] 2 All E.R. 684; [2008] Crim. L.R. 147.*

55. *Hyland, "Assisting Offenders" in R. Billngsley, (ed) The "Unlovely" Face of Police Work (2009), p.89.*

56. *R v P; R v Blackburn [2007] EWCA Crim 2290 at [27]; [2008] 2 All E.R. 684; [2008] Crim. L.R. 147.*

57. SOCPA 2005 s.73(3).

58. PACE 1984 Code E, 2.1.

59. PACE 1984 Code C, 11.7.

60. *Greer, Supergrasses: A Study in Anti-Terrorist Law Enforcement in Northern Ireland (1995), p.275.*

61. M. Cochrane and R. Monaghan, "Countering terrorism through the use of informants: the Northern Ireland experience" [2011] Behavioural Sciences of Terrorism and Political Aggression 26.

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65. *S. Laville, "Met's supergrass system called into question by dismissal of Gary Eaton" The Guardian [online], 2011.*

66. de Grazia and Hyland, "Mainstreaming the use of assisting offenders: how to make SOCPA 2005, section 73 and section 74 work" [2011] Crim L.R. 369.

67. SOCPA s.71(4).

68. *Greer, Supergrasses: A Study in Anti-Terrorist Law Enforcement in Northern Ireland (1995), p.256.*

69. *H. Packer, The Limits of the Criminal Sanction (Stanford: Stanford UP, 1968), p.3.*

70. *Woolmington v DPP [1935] A.C. 462; (1936) 25 Cr. App. R. 72.*

71. *Woolmington v DPP [1935] A.C. 462; (1936) 25 Cr. App. R. 72.*

72. Greer, "'Supergrasses' and the legal system in Britain and Northern Ireland" [1986] 102 L.Q.R. 198, 199.

73. Greer, "'Supergrasses' and the legal system in Britain and Northern Ireland" [1986] 102 L.Q.R 198; *J. Jackson, "The Use of 'Supergrasses' as a Method of Prosecution in Northern Ireland" in Tenth Report of the Standing Advisory Commission on Human Rights for 1983–4 HC Paper No.175 Appendix C, 1984.*

74. *Haddock [2012] NICC 5* at [346].

75. *Haddock [2012] NICC 5* at [267].

76. P. Hillyard and J. Percy-Smith, "Converting Terrorists: The Use of Supergrasses in Northern Ireland" [1984] 11(3) Journal of Law and Society 335.

77. Hillyard and Percy-Smith, "Converting Terrorists: The Use of Supergrasses in Northern Ireland" [1984] 11(3) Journal of Law and Society 335.

78. SOCPA 2005 s.74(5).

79. SOCPA 2005 s.74(6).

80. Provided for in England by s.44 Criminal Justice Act 2003 and Northern Ireland by s.1 Justice and Security (NI) Act 2007.

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