

# The claims against wcc law general essay

Law



Adam might be able to request an objection to being handcuffed at the next hearing in human rights and trespass to the person in tort. The Weyford Gazette might be fined for contempt of court. Adam can request a quashing order in judicial review against the Crown Prosecution Service. There are no human rights claims for the Sexual Offences Act 2003.

## **Adam's Objectives**

Adam wants an objection to be made against Weyford Crown Court for handcuffing. One aim is to sue the WG for publishing Adam's name. He wishes to ascertain if he has a claim against the CPS. Adam wants to know whether he has human rights claims under S. 5 SOA.

## **Claims against WCC**

### **1. Human Rights**

#### **If WCC wants to handcuff Adam at the next hearing, can an objection be made in human rights?**

(a) Article 6(1) of the Human Rights Act 1998 states that everyone has the right to a fair trial.[1](b) Adam should not be in handcuffs. The case of R v Vratsides held that only defendants who are violent or likely to escape should be handcuffed.[2]If Adam was violent or an escape risk then perhaps he should have been handcuffed.(c) Even if Adam was violent, according to R v Horden the court should consider alternative measures to handcuffing such as having dock officers to guard Adam.[3](d) The jury should not be prejudiced (R v Mullen).[4]WCC has a policy of handcuffing defendants which would make the jury think that Adam was a dangerous person.(e) It is unlawful for a court to act in a way which is incompatible with a convention right (S. 6(1) HRA).[5]LP13-6955(f) If Adam was handcuffed unnecessarily,

<https://assignbuster.com/the-claims-against-wcc-law-general-essay/>

then WCC might have breached S. 6.(g) The claimant must be a victim (S. 7(1) HRA).[6](h) Adam is a victim of the unlawful handcuffing. Perhaps, there is an article 6(1) breach.(i) Article 3 of the HRA, inhuman and degrading treatment, can also be considered.[7](j) In *Gorodnichev v Russia*, the claimant was handcuffed in court suffering mental distress.[8]The European Court of Human Rights held that this was a breach of article 3.(k) Adam was ‘upset’ so he might suffer mental distress which could affect him in the long – term as he is only 14.(l) It is unlawful for a court to act in confliction with a convention right (S. 6 (1)).[9](m) If Adam was handcuffed unnecessarily, then there is perhaps a breach of S. 6.(n) Adam satisfies the victim test (see (g) above).[10]There might be a breach of article 3.(o) Remedies: A prohibitory injunction can be requested to not use handcuffs at the next hearing. S. 34(A) of the Children and Young Persons Act 1933 says that parents should be allowed to attend court.[11]Counsel can make an objection requesting that Adam’s parents attend court as an alternative to handcuffs. In *Gorodnichev v Russia* the claimant was compensated for emotional distress.[12]Adam should be compensated for mental distress as he was ‘upset.’

## **2. Trespass to the person in tort: Battery**

### **Can an objection be made against WCC in Battery?**

(a) Adam should not be in handcuffs. Battery is the intentional direct application of unlawful force. LP13-6955(b) The force must be intentional (*Wilson v Pringle*).[13](c) WCC has a policy of handcuffing defendants, so the force was intentional.(d) For the force to be direct it must flow immediately from the defendant’s actions.(e) It is likely that the force used was direct.(f)

The force must be unlawful (F v West Berkshire).[14](g) When the defendant is present in court, it is for the court to decide whether or not the defendant should be handcuffed (R v Cambridgeshire Justices, ex p. Peacock).[15](h) WCC has a policy of handcuffing defendants, so the force might be lawful if Adam was violent or an escape risk.(i) However, a warning from a prison that there is a risk of escape does not mean that the risk is great enough to justify handcuffing in court (R v Horden).[16](j) Hence, even if Adam was an escape risk, he possibly should not have been handcuffed in court so the force might be unlawful.(k) Also handcuffing a defendant without justification is a civil trespass (Bibby v Chief Constable of Essex).[17](l) WCC has a general policy ‘insisting’ that defendants charged with serious offences are handcuffed in court. Thus, if Adam was not unruly but still handcuffed this would constitute a trespass. There are no defences.(m) Remedies: A prohibitory injunction can be requested disallowing the use of handcuffs at the next hearing. Rowlands v Merseyside Police held that damages for humiliation can be awarded in tort.[18]Adam was ‘upset’ as he was possibly humiliated by being handcuffed in court. LP13-6955

## **Claim against the WG**

### **Contempt of Court**

#### **Is there a claim in Contempt of Court for the publication of Adam’s name?**

(a) S. 39(1) CYPA says that child defendants should remain anonymous.

[19]The WG named Adam in their report.(b) So there is a claim in contempt of court, if the proceedings are active, there is a substantial risk of serious prejudice to the trial and if the WG will not rely on defences.(c) The

proceedings must be active (S. 2 (3) and (4); schedule 1 Contempt of Court Act 1981).[20]Adam will reappear in court in 3 weeks.(d) To see if there is a risk to the trial (S. 2 (2))[21], the court will look at the nature of the publications and the proximity to the hearing (Attorney General v News Group Newspapers).[22]The WG is a local newspaper and the hearing is proximate as it is three weeks away.(e) Account can be taken on the effect of the publication on the claimant (AG v Hislop[23]). Adam is young, he might be disturbed by the publication of his name so would want to avoid further coverage by dropping his case. It is possible there is a risk to proceedings.(f) The defences of S. 3, S. 4 and S. 5 below must not apply. The defendant must not know about the active proceedings (S. 3).[24]S. 3 does not protect publishers who knew about the proceedings, but were unaware of the prejudicial effect of the publication (R v Evening Standard).[25]The WG published a report the day after the trial so they may have known about the proceedings but were perhaps unaware of the prejudicial effect of their report. S. 3 does not apply. The report must be published contemporaneously (S. 4).[26]The WG published the report the day after the trial, so the report was contemporaneous. LP13-6955However, contemporaneous reporting may not apply. The court can prohibit the publication of certain matters (R v McCann).[27]The WG breached the court order by publishing Adam's name. S. 4 might not apply. For S. 5 to apply, the report must be part of a discussion in good faith of public affairs (AG v English).[28]We need to read the report. If Adam was named in conjunction with information relevant to a wider discussion in the public interest, the WG may not be liable. If Adam was named in a report of the case not relevant to the public interest, the WG are liable.(g) Nevertheless, the WG might still

<https://assignbuster.com/the-claims-against-wcc-law-general-essay/>

appeal against the restriction of reporting Adam's name which is contrary to open justice. R v Winchester Crown Court ex p. B said that it is possibly in the public interest during criminal proceedings to have the accused identified.[29]Rape is a serious crime so perhaps Adam should be identified. However, R v Leicester Crown Court ex p. S decided that the reporting ban should remain for minors.[30]Adam is a minor.(h) Contempt of Court is a strict liability offence so the courts will be hesitant in lifting the ban. It ensures liability for publishers who interfered with proceedings (S. 1). [31]The WG might be convicted for strict liability.(i) Remedies: The court can fine the defendant (S 39(2) CYPA).[32]The WG might be fined. Adam should receive compensation. LP13-6955

## **Claim against the CPS**

### **Judicial Review**

#### **If the CPS failed to take certain steps, can action be pursued in JR?**

(a) Adam might have a successful claim.(b) This is a public law issue as it concerns criminal proceedings. The CPS must satisfy the source of power test in R v Panel on Takeovers ex. p Datafin.[33]The CPS derives its powers from the Prosecution of Offences Act 1985. It also satisfies the nature of power test (Datafin)[34]as the CPS performs a public function by prosecuting potential criminals. The claimant must have standing (S. 31 (3) Senior Courts Act 1981).[35]Adam has standing because he will be affected by the CPS' decision.(c) The grounds in CCSU v Minister for Civil Service apply, namely, illegality.[36]The CPS may not have taken into account relevant considerations (Roberts v Hopwood),[37]specifically failing to take steps

before charging Adam because of his age. Procedural impropriety is another ground: the case of *R v Chief Constable of Kent ex p. L* states that if the Code for Crown Prosecutors policy has not been properly applied a child can make a claim.[38] If the CPS failed to properly apply the code, Adam can make a claim. Before deciding to prosecute, the CPS will decide if there is enough evidence for a prosecution, and if it is in the public interest to pursue the case.[39] They must get the views of the Children's and Young Peoples Service and a risk assessment conducted by the local authority, get background information on the parties and the views of the families.[40] The CPS must consider the relevant ages of both parties, and the nature of the relationship. The CPS should consider if there was a breach of duty by either party, their level of maturity and if there was an element of exploitation (Code for Crown Prosecutors).[41] The CPS should have taken the aforementioned steps when charging Adam, but we are not told if they did. LP13-6955 Furthermore, cases should be brought to trial as soon as possible. In *R v TBF*, convictions for sexual offences were quashed after a long delay. [42] The facts show that Adam was charged on the 16/10/11 but arrested on the 16/10/12. It is important to inquire into the reasons for this delay. If there is no acceptable explanation, then Adam's proceedings can be quashed.(d) Remedy: In *R v Chief Constable of Kent ex p. L* proceedings were discontinued.[43] Adam's proceedings should be discontinued with a quashing order.

## **Human Rights for s. 5 SOA**

### **1. Checking the law relating to S 5 SOA**

Actus Reus:(a) Penetration of the vagina, anus or mouth of another person with the penis (S. 5 (1) (a)).[44]Adam ‘ entered’ Amy with his penis. The other person is under 13 (S. 5 (1) (b)).[45]Amy is 12. Mens Rea:(b) The intention to penetrate (S. 5 (1) (a)).[46]The word ‘ entered’ suggests intention.

### **2. Do human rights issues arise under s. 5 SOA?**

(a) Human rights issues might not arise.(b) The relevant case is R v G, involving sex between minors. The court looked at articles 6(2) and 8(1) of the HRA.(c) Article 6(2) states that everyone is innocent till proven guilty. [47]LP13-6955(d) R v G looked at whether the presumption of mens rea (reasonable belief in consent) in S. 5 SOA making it a strict liability offence breached the presumption of innocence in article 6(2).[48](e) The court in G thought there to be a distinction between legal and evidential presumptions. It was claimed legal presumptions would breach article 6(2), but evidential presumptions would not.[49]On the facts, there is unlikely to be an interference with article 6(2).(f) Article 8(1) claims that everyone has the right to his private and family life, home and correspondence.[50](g) In R v G, Lady Hale and Lord Hoffman argued that article 8 was not engaged. [51]On the facts, there is not a breach of article 8. LP13-6955Research DiaryPlanningI explored: Human RightsJudicial ReviewContempt of CourtCriminal LawTort LawIn this area, I looked at: Articles 3, 6 and 8 of the Human Rights Act 1998. The Children and Young Persons Act 1933Contempt of Court Act 1981Sexual Offences Act 2005Code for Crown



Prosecutors Battery Initial Strategy and how this developed My first aim was to identify the relevant areas of law. Thereafter, I read introductory textbooks including Tort Law: Texts and Materials (Lunney and Oliphant) for areas such as trespass to the person.[52] I also searched for cases using Blackstone's. [53] My strategy developed by looking up relevant cases on Lexis and Westlaw and using Halsbury's Laws to check definitions on terms, such as battery. Before writing the report I gave myself a 300 word limit for each section. However, when I began writing I realised that this was unrealistic for areas including contempt of court and judicial review which required more detailed analysis. So, I had to rethink the word limits for these sections.

Reflections I did certain things well, such as deciding to start by reading introductory textbooks and spending longer planning my research strategy. I drew a bubble map which was helpful because it allowed me to think broadly about the legal issues. For my informal coursework, I was criticised for not writing in full sentences and for posing questions when writing the law. Hopefully, I rectified these faults. It was also suggested that I should use case law or statutory authority when discussing remedies, where appropriate. ILP13-6955 ensured that I used relevant case law or statutes for remedies. However, I feel I could have done certain things better. For instance, my hard-copy research took longer than necessary because of my failure to search for key words in the glossary. Also, perhaps using clearer search terms would have helped me find online cases quicker. Moreover, I had to think about which areas of law were appropriate. For example, at one stage I had to decide whether judicial review was relevant to the handcuffing claim. A claim in human rights was more pertinent as most of the law for handcuffing was centered on article 6 and article 3 of the HRA. I also had

<https://assignbuster.com/the-claims-against-wcc-law-general-essay/>

problems with finding cases for contemporaneous reporting. I solved this problem by using hard copy materials. One case which I found hard to understand was R v G. After reading it five times, I managed to find the ratio of the case to apply for a potential human rights claim. The textbook Criminal Law by Michael Allen also helped me clarify the points made in R v G.[54]To ensure the law being used in my project was relevant and up to date I used lexis and Westlaw, and Blackstone's.