

**UNTO THE HONOURABLE SHERIFF OF GRAMPIAN, HIGHLAND AND
ISLANDS AT LOCHMADDY**

MINUTE

by

WILLIAM QUARM



HUMBLY SHEWETH

1. That the Minuter has been cited at the instance of the Procurator Fiscal to an intermediate diet in the Sheriff Court at Lochmaddy on 22nd September 2009.

2. That the Minuter seeks to raise a devolution issue within the meaning of Schedule 6 to the Scotland Act 1998 ("the Act") on the following grounds:

Article 6(1) of the European Convention on Human Rights ("the Convention") provides, *inter alia*, that "... everyone is entitled to a fair and public hearing within a reasonable time..."

On 20th May 1999 in terms of section 44 of the Act the Lord Advocate became a member of the Scottish Executive.

By virtue of section 57(2) of the Act, the Lord Advocate, and the Procurator Fiscal at Lochmaddy, has no power to act in a way which is incompatible with Convention rights.

3. That on 7th August 2008 the Minuter was interviewed by officers of Post Office Limited Investigation Team at Paible Post Office. He was interviewed on three occasions between the hours of 10.50am and 1.14pm. Throughout these interviews he was denied the right to legal representation.

4. It is anticipated that the Crown will found on answers to questions posed during the course of the Minuter's interviews in seeking to discharge the burden of proof against him. It is submitted that to do so is contrary to the Minuter's Article 6 rights, in particular Article 6(3)(c). Reference is made to the case of *Salduz v. Turkey* (36391/02) unreported November 27, 2008 (ECHR), in particular at paragraphs 50 – 63.

5. That the act of the Crown in seeking to lead the evidence from the transcripts of the interviews in the course of the Minuter's trial is an act incompatible with the Minuter's right to a fair trial.

6. *Separatim*. The interviews are inadmissible having been conducted unfairly and at a time when the Minuter was not fit to be interviewed.

7. *Separatim*. For the Lord Advocate to seek to support the prosecution by reliance on evidence of the Minuter's interviews would be for her to act in a way which would be

incompatible with the Minuter's rights under Article 6(1) of the Convention and accordingly *ultra vires*.

8. That a copy of this minute has been intimated to Her Majesty's Advocate and to the Advocate-General for Scotland conform to said executions of service attached to this minute.

MAY IT THEREFORE PLEASE YOUR LORDSHIP

To order that there be a diet and to assign a date for that diet

IN RESPECT WHEREOF



SHERIFFDOM OF GRAMPIAN HIGHLAND AND ISLANDS AT LOCHMADDY

I, WILLIAM GORDON SEATON, Solicitor, 22 Argyll Square, Oban Hereby Certify that I intimated the Devolution Minute on behalf of William Quarm on 21st September 2009 to the undernoted:

1. The Procurator Fiscal, Procurator Fiscal's Office, Lochmaddy Sheriff Court, Lochmaddy, North Uist, Western Isles.
2. The Lord Advocate, Crown Office, DX 540310, Edinburgh 37.
3. The Office of the Solicitor to the Advocate General for Scotland, DX 557008, Edinburgh 20.

