

# Asylum and Immigration Tribunal

## THE IMMIGRATION ACTS

Heard at Field House  
On 20<sup>th</sup> February, 2006 and 8<sup>th</sup> May 2006

Determination Promulgated  
21st July 2006

**Before**

Senior Immigration Judge Batiste,  
Senior Immigration Judge Chalkley,  
Sir Jeffrey James KBE CMG

**Between**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

## DETERMINATION AND REASONS

*There is clear evidence that in general the Government of Jamaica is not only willing, but also able to provide through its legal system a reasonable level of protection from ill-treatment to its citizens who fear criminal acts in Jamaica and to those who fear retribution for testifying against criminals.*

1. This is a "second-stage" reconsideration of a determination by an Adjudicator, as he then was, Mr I T Sanderson, promulgated on 20 July 2004, following a hearing at Bennett House, Stoke, on 20 May 2004 in which he dismissed an appeal brought on asylum and human rights grounds against the earlier decision of the respondent, taken on 26 February 2004 to refuse to vary leave to enter or remain.
2. Mr H Allison, a representative with Immigration Advisory Service appeared on behalf of the appellant and Mr S Ouseley, a Home Office Presenting Officer, appeared on behalf of the respondent.
3. At a "first-stage" reconsideration hearing on 3 October 2005, the panel comprising Mr P S Aujla, Immigration Judge, Mr D R Bremmer, JP and Mrs M L Roe, found the following:

- "1. *The appellant is a citizen of Jamaica born on 18 December 1958. She arrived in the United Kingdom on 15 September 2002, as a visitor and claimed asylum on 5 December, 2002. She claimed that she feared persecution and ill-treatment from a group of men who wanted to rape her daughter and who were not happy with her relationship with her boyfriend. A gun man came into her house on 2 November 1999, and after not finding her daughter in the house, he shot her son and killed him and the appellant was shot in the eye. She became unconscious and was in a coma until January 2000. The appellant also claimed that her other son was shot by police and killed on 20 December 2001.*
2. *The respondent refused her claim and she appealed to an Immigration Judge [Mr I T Sanderson] who heard the appeal on 20 May, 2004. He dismissed it in his determination promulgated on 20 July 2004. He found that there was a sufficiency of protection available to the appellant from the authorities. He also found that the option of internal relocation was open to the appellant.*
3. *Mr Allison made submissions on behalf of the appellant. He submitted that there was a material error of law on the part of the Immigration Judge. He referred to paragraph 23 of the determination where the Immigration Judge had stated that the appellant's fear was not subjectively well-founded and that there was a sufficiency of protection. He submitted that relevant objective evidence was placed before the Immigration Judge which clearly indicated that there was no sufficiency of protection. He referred to various documents in the appellant's bundle that was placed before the Immigration Judge [sic], in particular the Amnesty International report, on page 94 of the bundle, where it was stated that there was no general sufficiency of protection for victims of criminal violence in Jamaica. He also referred to paragraph 7.6 of the judgment of the Court of Appeal in the case of McPherson (page 82 of the appellant's bundle) where the report of Professor Le Frank was referred to by their Lordships and which stated that the police were quite unable to provide adequate protection for any one. Mr Allison submitted that the Immigration Judge had made a material error of law in overlooking to consider the objective that was placed before him.*

4. *Mr Allison submitted that the Immigration Judge had also made an error in his consideration of the internal flight options. He did not apply his mind to the general inefficiency of protection in his consideration of the internal flight option.*
5. *Mr Johnson made submissions on behalf of the respondent and invited us to find that the determination was sustainable. The grounds of appeal were a simple disagreement with the findings made by the Immigration Judge. The Immigration Judge considered the existence of the Jamaican Constabulary Force and made his findings. He took all the evidence into account in finding that the police were able to provide a sufficiency of protection. He also submitted the internal flight option was probably considered by the Immigration Judge. The findings made by the Immigration Judge were open to him and he invited us to find that there was no error of law.*
6. *We considered the submissions made by both representatives and examined the determination. We found that there was a material error of law on the part of the Immigration Judge. Objective material was placed before him which clearly indicated that there was no sufficiency of protection. It is clear from the findings of the Immigration Judge that he did not engage with the objective materials. He found in paragraph 23 that there was a sufficiency of protection but did not comment on the objective material presented to him which clearly indicated otherwise. We find that that was a material error of law.*
7. *Connected with the error relating to sufficiency of protection, the Immigration Judge also made an error as regards the internal flight option. His consideration of the internal flight option was inadequate and therefore a further error of law. We are satisfied that there is a material error of law on the part of the Immigration Judge.*
8. *We could not complete the consideration today since the appeal would have to be heard afresh when the appellant would want to give oral evidence and factual findings would have to be made.*
9. *The matter is adjourned and kept at Field House Hearing Centre where further reconsideration will resume in due course. There will be a complete rehearing of the appeal when both parties will be able to argue all aspects of their respective cases.*
10. *The matter is placed before the country guidance group to consider whether this case, which we have linked with another file where an error of law was found today, should be listed for country guidance.*
11. *We gave a direction at the hearing that both parties serve on each other and on the Tribunal at least 14 days before the resumed hearing any documentary evidence to be relied upon, including any witness statements and skeleton arguments.*

12. *We reminded both parties that further directions may follow.*
  13. *The list office should liaise with the appellant's representatives to enquire whether oral expert evidence is to be called since it was not made clear at the hearing before us.*
  14. *An interpreter will not be required.*
  15. *The list office should refer to the country group to find out how much time should be allocated to these two cases which may be heard together."*
4. The other case which was linked did not come for hearing before us.
  5. We agree with the representatives that they and we have the same documents.
  6. Both representatives confirmed that there had been no challenge to the finding in the determination that there was no 1951 United Nations Convention on the Status of Refugees Convention reason. They agreed that the Tribunal was concerned only with the appellant's human rights claim under Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.
  7. Both representatives agreed with the Tribunal that sufficiency of protection is applicable to Article 3 in the same terms as for asylum, per auld Bagdanavicus and Bagdanaviciene v SSHD [2003] EWCA Civ 1605.
  8. We referred the representatives to the position of the adjourned panel which is set out in paragraph 3 above. Neither representative had received a copy of it and we therefore gave them a copy and gave them an opportunity of reading it. We indicated to them that we read paragraph 6 of that judgment to mean that the material error of law on the part of the Adjudicator was his failure to engage with that strand of the objective evidence that stated that there was no sufficiency of protection. Both representatives agreed.
  9. We pointed out to the representatives that paragraph 7 of that decision concluded that the further material error of law on the part of the Adjudicator was the inadequacy of his consideration of the issue of internal flight. We pointed out that the question of internal flight in relation to an asylum claim was not strictly relevant to an Article 3 appeal, following WD, (WD (Iraq) [2005] UKIAT 00034) and AE and FE (AE and FE v Secretary of State for the Home Department [2003] EWCA Civ. 1032). The Adjudicator should have assessed whether the appellant would face a breach of Article 3 on arrival and in any part of Jamaica.
  10. Mr Allison confirmed that Ms Yvonne Sobers, the author of the "expert" opinion, is related to the expert who wrote the report for the Tribunal in the case of DW (Homosexual Men; persecution; sufficiency of protection) Jamaica CG [2005] UKIAT 00168 and who was described by the Court of Appeal in Michael Atkinson

v SSHD [2004] EWCA Civ 846 as a distinguished member of the bar and expert on gang related activities. Ms Sobers confirmed that she is the mother of that expert and herself also provided a report to the Court of Appeal in Michael Atkinson.

11. The Tribunal pointed out to Mr Allison that the Court of Appeal referred to a "Dr Yvonne Sobers" but that the author of the expert opinion does not describe herself as a doctor although she does say she has a first degree. He pointed out to us that the case of A also refers to her as "Ms Sobers" and he cannot clarify her qualifications beyond what she says in her report.
12. We enquired of Mr Allison about the gang which attacked the appellant. We pointed out to him that the gang apparently comprised five people, of whom three were brought up with the appellant and were treated as brothers. Three of the attackers had been killed. We asked him to identify which three had been killed and whether any of the attackers are known to the appellant. We told him that we would like to know whether the police were aware of their identities and whether there were sufficient findings of fact on this matter. Mr Allison responded that there were no findings and that these were relevant matters. He explained that he would need to take instructions and prepare a witness statement. We adjourned and on resuming the hearing were supplied with a copy of the appellant's more up to date witness statement.

### **Appellant's evidence**

13. Both representatives agreed that we should take oral evidence. The appellant advised us that she was fasting today but that she was feeling well enough to give oral evidence. She confirmed her full name and address and confirmed that she had made a statement today which she had signed. She identified her signature and confirmed that it was a true and accurate statement. She adopted it.
14. For completeness, we set out the statement below:

*"I,[...] , make this statement as follows:*

*The names of the three "brothers" were "Scubo" (now deceased), "Little" and "Biggie". "Little and Biggie" are twins. The others are "Tarzan" and another whose name I do not know. "Tarzan" is dead. One of "Little" and "Biggie" is dead, but I do not know which one.*

*There is sixth person. Is the one who told my daughter what they were planning to do. This group did not have a particular name as a gang but were part of the PNP.*

*I have also heard from my son since I have been in the UK that my 7 bedroom house has been completely burnt down. I fear so much for my family still in Jamaica. This statement is the truth to the best of my knowledge and to the best of my belief and knowledge."*

## Cross examination

15. Cross examined by Mr Ouseley, the appellant explained that she did not know the surnames of the twins called Little and Biggie. She had known them since the appellant was about 10 years of age, some 20 years. They were next door neighbours and they and the appellant grew up together. Their mother had 18 children and Little and Biggie were always fighting. Their mother's name was Icy. The appellant did not know her surname. Little and Biggie always lived next door to the appellant but now she does not know where they live. They do not live in the same yard any more but the appellant maintained that, "*they still hang around on the street corner.*" The appellant was unable to say which of the gang members had died. Her daughter-in-law had advised her of their death but apart from saying it was one of the twins she did not explain who had died. Scubo is also dead and there are only two of the five still alive. One of the survivors is one of the twins and the other one, the appellant did not know. The appellant was unable to name the sixth member of the gang.
16. In Jamaica the appellant has a son, Kevin Robinson who himself has two children. He lives at in Kingston, Central District. He lives close to where the appellant used to live. Her sister lives in Bull Bay in the country.
17. Mr Ouseley asked the appellant why the appellant could not go and live with her sister in Bull Bay, to which the appellant replied, "they would not trouble her", by which we understood the appellant to indicate that her sister would not be in any difficulties as a result of what had happened to the appellant. But the appellant added, "PNP have friends all over", by which we understood her to mean that she could not go and live with her sister, because she would be found and would then be at risk. The appellant was asked if she would go to the police and she replied that she would if she thought it would make a difference. She agreed that she had on a previous occasion gone to a traffic post. In her statement this was described as being a traffic police station but it was for traffic wardens. She pointed out that she had not said police station to her solicitor. She went there because it was the nearest place for her to run for her life when two men were chasing her. The appellant was shaking at the time she ran to the Warden's Office. She said that she had wet herself. She told the Traffic Warden what had happened and one of them looked outside and said that there was no one there. He asked for the appellant's address and when she told him they took her to the bus stop. She had not explained to the Traffic Warden that the men who followed her were the men who had been involved with her shooting.
18. The appellant had never disclosed the identity of the gang members to the police. She said that she would have done so if she had thought that the police would help, but she had never done so. Her sister had, however, told the police. She agreed that her sister was not a witness, but said that the police took a statement from her sister after the shooting. The appellant had been told by a neighbour of hers, the names of the five men. The police knew who these five men were. The neighbour

was an eye witness. The neighbour had not said anything to the police, because she feared for her life. The appellant never had contact with the police following the shooting. She did not know the name of the officer in charge of her case.

19. At this stage the appellant became rather distressed and indicated that she would like a break for a few moments to recover. On her regaining her composure we recommenced the hearing.
20. The appellant was asked whether anything had happened to her son who lives in Jamaica. She replied that there were places he could not go to and that he felt like a prisoner. He had never been to the police but he feared for his life.
21. In order to clarify the appellant's evidence, the Tribunal asked her several questions. She confirmed that the attack on her had taken place on 2 November 1999 and that she had remained in a coma until January 2000 when she left hospital. She then went to Camden to live with her son. That is in part of Kingston but not where she had used to live in Bridge View. She had been chased by two men in February 2002, and went back to her son's house in Camden afterwards. She remained there until she left for the United Kingdom in September 2002. During this time the appellant maintained that she remained in-doors except when she was accompanied by Church members to hospital.
22. The appellant said that she had lived in her grandmother's house. Her house that had been burnt down was one that her son lived in. He was living there at the time when it was gassed. She said that the same men who had shot her also set fire to the house. When asked how she knew this, she said that people had seen them. The appellant believed that her son would have told the police about this. He now lives with a friend in another community in Jamaica. The gang members were not members of any particular gang but they were members of the PNP political party. There was no re-examination.

### **Submissions**

23. Mr Allison addressed us at length. He asked for positive credibility findings to be made in respect of the appellant's evidence. He maintained that her evidence was consistent and not fabricated. We asked Mr Allison what we should make of the fact that the appellant did not know the surnames of the five men even though she had known them for some 20 years. He said that in giving evidence that she had given the names by which these men were known. These men would only use their surnames for official purposes. He believed that police records would include their aliases. He relied on his skeleton argument, particularly sections 2 and 3 and on the list of essential reading. The risk posed by the men in terms of their reach was, Mr Allison, submitted, due to their political connections, although the crime itself did not appear to have any political connotation.

24. Mr Allison took us to the objective evidence. He asked us to consider paragraph 1.3 of the letter from Amnesty International of 21 September 2005 which deals with the background to the existence of armed gangs. Many of those gangs are said to have political affiliations and their activities include drug trafficking, extortion and serious violent crime. It was necessary, he suggested, to see how these five men fitted in with this background. These five attackers were all "foot soldiers" and were known within the district as being affiliated to the PNP. He referred us to 2.1.3 of the same letter from Amnesty International which showed that politicians relied on "local dons" to ensure support at election time and to provide protection. In return, local dons, supported by area leaders and "foot soldiers" drawn from the local community, would receive political protection.
25. Mr Allison suggested that an effective police force would investigate a murder and shooting whether one of the victims had approached the police or not. The lack of contact by the police with the appellant was, he suggested, a manifestation of their lack of effectiveness. Foot soldiers might not be part of any formal gang provided they can run errands on behalf of the gang. Two of this gang are still at large. One of the twins and the other we do not know the name of.
26. Mr Allison pointed out that gangs migrate. It was clear, he submitted that dons had developed networks throughout Jamaica. Even for someone to be seen going into a police station would put them at risk as being seen as a potential informer. While the police may not be able to act without clear evidence there is a problem in that the local community will not trust the police and give evidence. This shows a perception amongst the community of an ineffective police force. The community knows that they are going to put themselves at risk if they are seen as being an informer and given information to the police.
27. We adjourned for lunch and following the lunch adjournment Mr Allison continued with his submissions.
28. The appellant's aunt supported the JLP. The appellant's statement at paragraph 7 refers to the fact that her former partner was a supporter of the PNP who moved from a JLP area. The appellant's risk was because she had a daughter who herself was having a relationship with someone from another area. The gang saw this as disrespect on the part of the appellant's daughter and saw their own action as protecting their community. The group propagates crime in that it protects itself by intimidating people and thus preventing the reporting of their criminal actions. The appellant's failure to report crime herself reflects this context. First she believed that the police would not do anything and there was no point, therefore, in going to them because of their inefficiency and secondly there is complicity between the gangs and the police. She would be in further fear of her life were she to go to a police station since she would then be perceived as being an informer. The objective evidence shows that gangs are complicit with the police. At paragraph 38 of Ms Sobers report, she refers to a police officer as having publicly criticised his colleagues for ignoring criminal activities which he described as taking



place under their noses. He said that peace and tranquillity exists in certain divisions because of a non interference with the police with criminal activity of druggists, gunmen and prostitutes and that sometimes police know that guns and drugs are being sold sometimes right under their noses and they do nothing about it just to maintain what they call peace and tranquillity. This, suggested Mr Allison, shows corruption. There was reference to paragraph 41 of Ms Sobers report to the police having planted weapons evidently to subvert justice. One police officer, the head of the police forensic laboratory, was quoted as saying that he would not rule out that a dishonest policeman would plant a gun on someone, because there is corruption in every stratum of society and the police force is no exception. The Jamaican police were, said Mr Allison, ineffective and this is borne about by the Amnesty International report in paragraph 3.2 and 3.3 which talks about corruption and inadequate investigation of human rights abuses.

29. There is the further risk attaching to the appellant as a perceived informer and this is a crucial aspect of this case. People who informed take on a higher degree of risk. There was a difference, he suggested, between the appellant as a victim of crime and the appellant as an informer. As an informer this was an additional aggravating feature. It would add to the determination of the gang to seek out this appellant. 4.1 of the Amnesty International report and paragraph 4.2 point out the risks to informers and the failure to protect witnesses.
30. It was therefore, suggested Mr Allison, clear why the appellant had not gone to the police to give them the information which he had.
31. Mr Allison suggested that it would not be dons who would necessarily take action on the grounds it was much more likely that the soldiers would do the "dirty work". The dons would not themselves necessarily want to be identified. The degree of incompetence, corruption and complicity evident in the objective material means simply that the Jamaican police force would not be able to offer any effective or adequate protection to the appellant.
32. He confirmed again that he relied on his skeleton argument and asked that the appeal be allowed.
33. Replying, Mr Ouseley asked us first to consider Ms Sobers' report. Ms Sobers is referred to by the Court of Appeal but only in neutral terms. It is said that she is an expert but it is not clear what aspect of her evidence had been considered previously by the Court of Appeal. Her activities focus mainly on what might be described as "anti-government" activity. Her objectivity is not accepted on behalf of the Secretary of State. She chairs an organisation known as FAST. This is an organisation known as "Family Against State Terrorism". Whilst it is accepted that Jamaican police have used excessive force in the past, Ms Sobers proceeds on the assumption that the state is a terrorist organisation. Paragraph 7 describes families against terrorism. In paragraph 7(a) she says:

*"Families against state terrorism (FAST). I presently lead this organisation and need to be regularly in contact with social services agencies that can provide victim support and counselling, as well as care and protection for children and young persons. Membership is drawn mainly from those whose children police have killed or those (including minors) whose rights have been infringed by agents of the state. This organisation provides support for bereaved families and lobbies for systems to hold police to account or for breaches of peoples human rights. FAST maintains close links with low income communities where the police killings and abuses usually take place. The organisation has built a reputation for pursuing justice on behalf of people outside circles of power, affluence, and influence. FAST has campaigned most notably on behalf of the families of the Braeton 7 - seven young men killed by police in 2001."*

34. This, with respect, shows some bias on her part. Mr Ouseley produced a copy of inter-press service agency news report entitled Jamaica: police acquittals revives spectre of impunity written by Dionne Jackson Miller which refers to Ms Sobers being on the local human rights groups and being against state terrorism and said that she had mixed feelings about the outcome of a trial. It quoted here as saying

*"I had wanted enquiry at the highest level, and to that extent we go it. We got it at the Supreme Court [with] the Chief Justice [presiding], the DPP [Director of Public Prosecutions] himself doing the prosecutions, the best of defence lawyers, Scotland Yard doing investigations, forensic evidence which was really very sophisticated" she said. "We got it past the no submissions, and it went to a jury that did not come back in 45 minutes. The evidence was circumstantial, and from that point of view, if there was doubt, then according to our process, the doubt has to be resolved in the favour of the accused person, so that is why I am saying the system worked".*

Her concerns stem from what she said was a systematic refusal to hold police accountable for their actions.

*"I am absolutely for anybody defending himself or herself but I am not convinced that this was what was occurring in this case, although, acknowledge the jury's right and the decision that they came to... but I am very concerned by the message that it is sending."*

said Makal Sobers, who was present in Court throughout the trial."

35. Mr Ouseley said that this shows that the witness was campaigning for police to go on trial, but after an investigation, which was followed by a trial, the officers were acquitted. However, Ms Sobers' comments are very mixed in that, on the one hand she says that the system worked, but on the other hand that she did not get the result that she wanted. This, he suggested, hardly displays an objective attitude. Mr Ouseley said that this show that Ms Sobers is partisan. She plainly has no love for the police and is biased in her outlook. He submitted that there had been a major sea change in Jamaica which Ms Sobers was not prepared to recognise. One of the most notorious criminals has recently been convicted and sentenced to some 90 years but she only describes it as "the limited success". That is simply not fair

and unbiased. In her report, Ms Sobers goes on to say that there is a lack of public confidence, but her view is based on a newspaper survey in which people openly gave their names and all but one said that they would not go into a witness protection programme. The witness protection programme is described at paragraphs 5.102 to 5.110 of the CIPU report and the Jamaican Gleaner was quoted as having reported on 30 January, 2005, that the Jamaican government was in discussions with the British government to find ways to strengthen the witness protection programme. Concerns were expressed about public confidence in the facility, especially since one recent witness expressed fear and on account of this the case against the accused was dismissed.

36. The Tribunal enquired whether the appellant would be eligible for the programme. Mr Ouseley was unable to assist us but said that there were some 300 people being protected under the programme and he suggested that that showed it was a wide ranging initiative. The budget was said to be some 80 million Jamaican dollars and that as a consequence of this programme one major criminal has been convicted.
37. Mr Ouseley emphasised that the past situation is poor but there has been a major sea change. The violence in the past has given way to politicians and police disowning and cracking down on criminal gangs. Included amongst the documents submitted on behalf of the appellant is a letter, dated 21<sup>st</sup> September, 2005, from Amnesty International, commenting on the appellant and her claim. Commenting on it, Mr Ouseley said that Amnesty has always tried to put a political spin on this case, because the aunt was a member of the JLP. However, this appears nowhere in the appellant's evidence. There does not appear to be any political link whatsoever in this appeal. The appellant was targeted because of the relationship which her daughter had with an outsider. Even if the gang members were only foot soldiers it is clear that they were acting as individuals and not as part of any orchestrated action on part of a much bigger gang against the appellant and her family. Money appears to have been demanded. The appellant knew the identity of several of the gang members but was not able to give the name of the gang the men belonged to. She lived with a number of the PNP gang members for some years and regarded three of her attackers as being like brothers. There is, he submitted, no clear or established link between these five men and any one else and certainly no evidence that they were acting in except of their own volition.
38. He asked us to take into account the report in the Jamaica Observer on Operation Kingfish. This shows that in one year of intense activity Operation Kingfish has wiped out one of 12 major criminal gangs, severely disrupted or impacted 7 others, arrested 235 people, some for alleged murder, and seized a number of significant go fast boats, firearms, Cocaine and Ganja. Gangs can no longer rely on political parties for support, the circumstances in Jamaica have changed and the state is now acting against gangs. There has been past corruption: again the government recognises this and is taking action against it. He asked us to note in particular paragraphs 6.47 to 6.49 of the CIPU report. Were the appellant now to return to Jamaica and go into the Witness Protection programme, she would not be justified

in having any fear. She may well have been justified in the past, but not now with the change in attitudes in Jamaica. Even if she were not to be taken into the witness protection plan it, was not accepted that the two surviving members of the gang would be able necessarily to locate her.

39. The Tribunal enquired whether there was any evidence as to who may or may not qualify under the Witness Protection plan. Mr Ouseley suggested that there were some 300 people on it, none of whom had been killed. That, of itself, appears to suggest that it is effective. Mr Ouseley asked for a brief adjournment in order that he might obtain some information about the criteria for those who wished to go on to the Witness Protection programme. After a brief adjournment Mr Ouseley suggested that he might be able to obtain more information were he to be given further time. Mr Allison indicated that he had spoken to Ms Sobers, who said that the witness must be a witness to a crime where the witness's life is threatened, the accused must be either a noted government employee or policeman and the protection is linked simply to the appellant's appearance in Court. He was not able to confirm that protection stops following the giving of evidence. We deal with the Jamaican Witness Protection programme in paragraphs 68 and 69 below, but could find no confirmation of those qualifications for entry into the programme as indicated by Ms Sobers to Mr Allison.
40. Mr Ouseley emphasised that there was a sufficiency of protection in general and in particular to those on the Witness Protection scheme for a witness to murder. There is clear evidence that strong action is being taken by the government against gangs as evidenced by Operation Kingfish. There would be nothing to prevent the appellant moving to the area of rural Jamaica where her sister lives and where she has social contacts. The question of migration of gang members is hardly relevant in this case since there are only two members left and there is no real evidence that there would be any risk that they would migrate to the rural area.
41. By way of reply, Mr Allison suggested that so far as Ms Sobers objectivity was concerned, paragraph 80 of her report clearly shows that the police have had a measure of success in policing. The Country Information and Policy Unit report at paragraph 5.104 clearly shows there was some concern in some quarters at the success of the witness protection programme. In her report, Ms Sobers accepted that 371 people have been protected in the witness protection programme, but there is still a lack of public confidence. Ms Sobers report does not show bias. Her comments on the child and the police officer were fair. There were only four convictions obtained from some 2,109 cases referred by the internal oversight branch of the police. There is a 30 year history of gun violence in Jamaica and the history of the country is part of the context in which this case should be seen. Recent action should not be seen in isolation. Far from being a crackdown on the gangs, the objective evidence shows that gangs continue to operate in the areas that have been attacked by the police. Kingfish is only one of the many previous initiatives over the past 30 years and it does not of itself undo all of what has happened in the past and changed the perception in the minds of the local people.

The Witness Protection programme is funded to the tune \$80,000,000 Jamaican. That is very approximately £700,000 to £1,000,000 sterling. The CIPU report, at paragraph 5.109, identified deficiencies in the Witness Protection programme in terms of its number and staff and under funding. The Secretary of State believes that the appellant could go and live near her sister, but she could not. If she does not live with her sister then she will be seen as a stranger in the area since she has no social contacts. If the police were to visit the home of someone then they would be seen as an informer. In our case the police did not go to the appellant's home.

42. We gave directions that each representative should be at liberty to provide further written evidence and written submissions to the Tribunal on or before 26 February, 2006, concerning the Witness Protection programme. Copies could also be sent direct to the other representatives. Each representative would then have until 12 noon on 6 March, 2006, to make any written additional submissions if they wished to do so. By way of guidance, we pointed out that we wanted to know who might qualify under the Witness Protection scheme, when protection starts and when it finishes. Also we thought it might be helpful to know whether a lapse of more than 5 years from the date of the commission of the crime might disqualify an applicant. We indicated that we would like a copy of the relevant statutory frameworks setting up the Witness Protection programme and reminded the parties that the appellant's name must be kept confidential from the Jamaican authorities. We directed that submissions should be addressed personally to Mr Chalkley and evidence not submitted before 12 noon on 6 March, 2006, would be ignored. Both representatives indicated that they understood those directions.
43. We subsequently received further evidence and a skeleton argument from the appellant's representatives. The further evidence consisted of a copy e-mail message from a Research and Information Officer of the IAS detailing his attempts to obtain information from Mr Robertson, Director of the Witness Protection programme in Jamaica. The skeleton argument referred to the Witness Protection scheme and commented on correspondence from the British High Commission, Kingston, submitted by the respondent. The respondent's further evidence consisted of copy correspondence between the British High Commission in Kingston, Jamaica, and the Home Office and copy of an e-mail together with a copy of the Jamaican Justice Protection Act and extracts taken from the Internet from a webpage entitled: "Black Information Link" detailing Ms Shurland's appeal hearing and describing her claim. The skeleton argument referred to the fact that the following day after the adjourned hearing, Mr Ouseley was advised of an Internet link giving details of Ms Shurland's asylum claim. It disclosed all the facts of her case and indicated that she was available to give interviews. The submission made by Mr Ouseley was that it undermined the appellant's claimed fear of being identified in Jamaica. Following receipt of both skeleton arguments we concluded that we would need to reconvene the hearing.
44. The hearing was reconvened on 8 May when, in answer to questions put to him by the Tribunal, Mr Allison indicated that there had been a representative of the press

at the last hearing and confirmed that the appellant had not herself taken any steps to have the information about her claim published on the Internet, the article which appeared on the Internet had not been written by the appellant but instead by a reporter. He referred to the copy e-mail submitted with his further evidence and skeleton argument and advised that there was no further information available in relation to the Witness Protection programme. None of the enquiries made by the Immigration Advisory Service met with any response.

45. We reserved our determination.

### The law

46. It is for the appellant to show that there will be a violation of her human rights if she is returned to Jamaica now. The appellant must demonstrate that there is a reasonable degree of likelihood or a serious possibility or a real risk that the matters upon which she relies are true. This is a lower standard of proof than the civil standard and applies both to the history of events as well as to the assessment of future risk.

47. The principles for assessing sufficiency of protection as originally described in Horvath v The Secretary of State for the Home Department [2001] 1 AC 459, have been refined in various cases since. The present position, so far as is relevant to this appeal, was assessed in Bagdanavicius and Bagdanaviciene v The Secretary of State for the Home Department [2003] EWCA Civ 1605, which was upheld in the House of Lords at [2005] UKHL 38. In the judgment of Auld LJ in the Court of Appeal at paragraph 55, he summarised the position as follows:

#### "Asylum claims ...

4) *Sufficiency of state protection, whether from state agents or non-state actors, means a willingness and ability on the part of the receiving state to provide through its legal system a reasonable level of protection from ill-treatment of which the claimant for asylum has a well-founded fear; Osman, Horvath, Dhima.*

5) *The effectiveness of the system provided is to be judged normally by its systemic ability to deter and/or to prevent the form of persecution of which there is a risk, not just punishment of it after the event; Horvath, Banomova, McPherson and Kinuthia.*

6) *Notwithstanding systemic sufficiency of state protection in the receiving state, a claimant may still have a well-founded fear of persecution if he can show that the authorities know or ought to know circumstances particular to his case giving rise to his fear, but are unlikely to provide the additional protection his particular circumstances reasonably require; Osman.*

#### Article 3 claims ...

10) *The threshold of risk required to engage Article 3 depends on the circumstances of each case, including the magnitude of the risk, the nature and severity of the ill-treatment risked, and whether the risk emanates from a state agency or non-state actor; Horvath.*

- 11) *In most, but not necessarily all, cases of ill-treatment which, but for state protection, would engage Article 3, a risk of such ill-treatment will be more readily established in state agency cases than in non-state actor cases – there is a spectrum of circumstances giving rise to such risks spanning the two categories, ranging from breach of a duty by the state of a negative duty not to inflict Article 3 ill-treatment to a breach of a duty to take positive protective action against such ill-treatment by non-state actors; Svazas.*
- 12) *An assessment of the threshold of risk applicable in the circumstances to engage Article 3 necessarily involves an assessment of the sufficiency of state protection to meet the threat of which there is such a risk – one cannot be considered without the other whether or not the exercise is regarded as ‘holistic’ or to be conducted in two stages: Dhima, Krepel, Svazas.*
- 13) *Sufficiency of state protection is not necessarily a guarantee of protection from Article 3 ill-treatment any more than it is a guarantee of protection from an otherwise well-founded fear of persecution in asylum cases – nor, if and to the extent that there is any difference, is it eradication or removal of risk of exposure to Article 3 ill-treatment; Dhima, McPherson, Krepel.*
- 14) *Where the risk falls to be judged by the sufficiency of state protection, that sufficiency is judged, not according to whether it would eradicate the real risk of the relevant harm, but according to whether it is a reasonable provision in the circumstances; Osman.*
- 15) *Notwithstanding such systemic sufficiency of state protection in the receiving state, a claimant may still be able to establish an Article 3 claim if he can show that the authorities there know or ought to know particular circumstances likely to expose him to risk of Article 3 ill-treatment; Osman.*
- 16) *The approach is the same whether the receiving country is or is not a party to the ECHR, but in determining whether it would be contrary to Article 3 to remove a person to that country, our courts should decide the factual issue as to risk as if ECHR standards apply there – and the same applies to the certification process under Section 115(1) and/or (2) of the 2002 Act.”*

### **Objective Background Information**

48. We confirm that we have carefully considered the objective background information placed before us. We were given an IAS Research Analysis prepared by IAS in relation to Jamaican sufficiency of protection, which referred to the Home Office CIPU Report pointing to various initiatives and reforms within the police in Jamaica, including, the new crime plan which formularised the role of the Jamaican Defence Force and the Jamaican Constabulary Force who co-operate in crime reduction, Operation Kingfisher which was launched as a crime fighting initiative and an announcement by the Prime Minister to increase efforts in fighting crime. The research analysis suggested that a new report in the Jamaican Gleaner noted that, "Police have made arrests in only twenty six per cent of the murders committed this year [2005]". That report went on to state that it had been reported that the explosion of murders outside the corporate area was as a result of, "migrating criminal gangs punching holes in the government's crime initiatives". The Jamaican Observer also reported on the Witness Protection programme and suggested that

during a visit by a team of British experts it was recognised that the programme, "needs to increase its staff by fifty per cent". There were also several reported cases of killings of witnesses and it was suggested there was little trust in the Witness Protection scheme. Few Jamaicans were said to be willing to put their trust in the scheme and many instead opted not to testify. It confirmed that none had, so far under the programme, been killed.

49. The report also spoke of concern regarding the incidence of fatal killings by members of the police force and lack of prosecution of those responsible. Jamaica was said to have one of the highest per capita rates of legal police shootings in the world and on average one hundred and forty people per year have been shot and killed by the police in the last decade. It was not clear to us, however, to what extent this simply reflected the amount of gun crime in Jamaica. The Superintendent of the Professional Standards Branch of the Jamaican Constabulary Force was reported as saying that corruption has not gone down and that it was actually increasing. Again, there did not appear to be any information to indicate whether detection rates might have improved.
50. We read the UK Home Office Science and Research Group, Country of Origin Information Service COI Report of October, 2005. The Jamaica Constabulary Force was said to have been formed in 1865. It remains semi-military in character and comprises a system of gazetted and non-gazetted ranks. Gazetted Rank officers are drawn from Jamaican Officers, who are promoted through the ranks from constable. The force is responsible for the maintenance of law and order and prevention and detection of crime, the protection of life and property, the investigation of alleged crime and the enforcement of all criminal laws in Jamaica. The Commissioner of Police is responsible to the Ministry of National Security for the command and superintendence of the force.
51. The US State Department Report for 2004 noted that:-

*"[The Jamaica Constabulary Force] maintains divisions focusing on community policing, special response, intelligence gathering, and internal affairs. Faced with a rapidly increasing rate of killings the JCF generally was not effective. The country experienced the highest level of violent crime in its history and the perception of corruption and impunity within the force were serious problems that contributed to the lack of public confidence in the institution. Human rights groups identified systematic poor investigative procedures and weak oversight mechanisms. Failure to protect witnesses led to the dismissal of criminal trials."*

The Commissioner is said to have described the force as being a "reactive, fire brigade, style of policing".

52. A Financial Times article, reported by BBC monitoring of 14 February, 2003, referred to:-



*"Plans are being formulated for major restructuring of the Jamaica Constabulary Force (JCF) including new guidelines to deal with the problems of corruption within the service".*

The Police Commissioner said,

*"In addition JCF is drafting a new training manual and the establishment of training units across the island and retraining of trainers."*

He said that,

*"Members of the force will have to undergo annual training and certification for the use of firearms as it moves to modernise its operations".*

The Jamaican Gleaner, dated 8 October 2004, reported that:-

*"The ability of Jamaica's security forces to tackle the island's flourishing drug trade and spiralling crime rate is to be enhanced through a training initiative to be administered by the United Kingdom armed forces. Adam Ingram, State Minister with responsibility of the United Kingdom's armed forces, disclosed during a tour of the HMS Richmond yesterday [7 October 2004] that he had met with the National Security Minister, Dr Peter Phillips, to discuss possibilities for, "training the Jamaica Defence Force and the law Enforcement Agencies to be able to bring those people and their society to justice and to squeeze their organisational capabilities".*

While not divulging details of the training initiative, the UK State Minister said that the training exercise will be *"even more intense from the ones we have had before"*.

53. In the Jamaica Gleaner of 3 February, 2005, it was reported that a senior British law enforcement agent was joining the ranks of the Jamaica Constabulary Force. The Jamaica Gleaner of 11 February, 2004, reported that a senior Scotland Yard detective had been seconded to the JCF with effect from 4 March, 2005.
54. On 14 February, 2005, the Jamaica Gleaner quoted the Prime Minister as announcing that the government will be stepping up the fight against crime, *"with new vehicles, new police stations, new technology, a new coastguard base and new foreign expertise"*. He announced that crime and violence continue to be a most troubling aspect of national life pointing to the wanton killing of children and the elderly. One hundred new motorcycles were said to be on the streets in a further week, in addition to one hundred and fifty new "all terrain vehicles" which would arrive the following month. The government was also proceeding with legislative action, as well as the acquisition of new technology, to facilitate greater reliance on forensic science in solving crime. Five new police stations have recently been opened and another one was due to be opened in March 2005. Several existing police stations have been repaired and refurbished, he said. On 1 March, 2005, JCF launched its new corporate strategy for 2005 to 2008, with a commitment to curb organised crime and general criminality and to improve the performance standards of the police. In July 2005, the

Jamaican Gleaner noted that the Senate had passed the Firearms Bill to establish a centralised and independent Gun Licensing Authority to grant and revoke gun licences, permits and certificates. The Jamaica Gleaner in August, 2005, reported that at least five policeman implicated in a controversial shooting at Flankers, St James', would be charged with multiple offences by the Bureau of Special Investigations. In January, 2005, the Jamaica Observer reported that members of a UK company were now in the island training local policeman assigned to the newly formed anti-kidnapping unit, which had been established by the government in response to a spate of abductions.

55. The report referred to the Witness Protection programme and referred to the Justice Protection Act of 2001. It was clear from paragraphs 5102 to 5110, that the government was in discussion with the British Government to find ways to strengthen the country's Witness Protection programme. The National Security Minister was reported as saying that no witness has ever been lost from the programme and that a great deal of effort in preparing the protection programme had been spent. Operation Kingfisher was launched following a spate of killings which saw the island's murder rate go to a record high of well over twelve hundred. The aim of Operation Kingfisher is to break up organised and dangerous criminal gangs and the Security Minister was quoted as saying that known organised criminal gangs and their activities were specific targets. Operation Kingfisher was set up in October, 2004 and up to 22 November, 2004, it recovered seven stolen motor vehicles, seized thirteen firearms, seized over five hundred pounds of compressed ganja, destroyed two sophisticated ganja fields; arrested several persons for various offences including murder and illegal possession of arms; and seized in Caribbean waters, several go-fast boats and almost eight tons of cocaine destined for Jamaica. One well known gangster is said to have been arrested and another to have appeared in court facing trial for illegal possession of firearms and robbery. An Interpress Service News Agency report of 22 December, 2005, reported that two policemen have been acquitted of murder charges in the fatal shootings of four people. Yvonne Sobers of Families Against State Terrorism was said to have mixed feelings about the outcome of the trial. She was reported as saying:-

*"I had wanted enquiry at the highest level, and to that extent we got it".*

She was also quoted as saying:-

*"We got it at the Supreme Court [with] the Chief Justice [presiding], the DPP {Director of Public Prosecutions} himself doing the prosecutions, the best of defence lawyers, Scotland Yard doing investigations, forensic science which they said was very sophisticated. We got it past the no case submissions, and it went to a jury that did not come back in forty five minutes. The evidence was circumstantial, and from that point of view, if there was doubt, then according to our process, the doubt has to be evolved in favour of the accused person, so that is why I am saying the system worked".*

She went on to say:

*"I am absolutely for anybody defending himself or herself, but I am not convinced that this is what was occurring in this case, although I acknowledge the jury's right, and the decision they came to... but I am very concerned by the message that it is sending."*

56. The Jamaican Gleaner reported that police corruption was on the rise. This reported a Superintendent from the Professional Standards Branch who suggested that corruption had not gone down and based on the number of reports that he had been getting, it was increasing. It was unclear whether this was because improved police resources and intelligence had enabled the police to detect more corruption or whether in fact more officers are corrupt. The murder rate was said to have gone down in January 2006 by nearly twenty three per cent. The Police Commissioner made it clear that he was not complacent.
57. We very carefully read the expert opinion and addendum prepared by Yvonne McCalla Sobers. Ms Sobers describes herself as being, *"an educator, management consultant, community activist and human rights activist."* She said that the major focus of her work, *"is lobbying and advocating for changes in Jamaica's justice and security systems"*.
58. As an educator, Ms Sobers taught for nearly thirty years in primary, secondary and tertiary education and as a management consultant since 1992, she had provided services to Jamaican Government Ministries and assisted in programmes intended to build students' self esteem as a means of preventing substance abuse. She had also conducted research in Jamaican schools island-wide to evaluate child guidance and counselling programmes and written guidance and counselling teaching units for use in schools. She has been commissioned by Jamaica's, National Council on Education to assess levels of achievement/under achievement in schools and provided consultancy support for children's rights organisations as well as grass roots organisation targeting young people at risk in inner city communities.
59. As a Community Development Practitioner, she has provided training, planning and research to support NGOs and community based organisations involved in mother and child issues in the broader context of overall community development. She has also been a human rights activist in organisations such as "Families Against State Terrorism" (FAST) and "Brother's Keeper". She currently leads Families Against State Terrorism and needs to be in regular contact with Social Service agencies that can provide the support and counselling, as well as care and protection for children and young persons. The organisation provides support for bereaved families and lobbies for systems to hold police accountable for breaches of human rights. She chairs Brother's Keeper, which lobbies for the rehabilitation of prison inmates and the integration of former inmates into society. She acts as a host on a talk show on an inner city community radio station called Roots FM. The focus of the programme is the extent to which human rights and justice are observed in the inner city environment and inner city residents call in and share their experiences. Ms Sobers describes being educated at the University of the West Indies and holds a first degree in Arts together with diplomas in Education and Management Studies. She has

taught in Ghana, England, and Jamaica and has prepared previous reports in the past for British tribunals including the Court of Appeal. She describes herself as being familiar with the Jamaican Social Service systems, of being in a position to gather information because of her previous working relationships with Social Services agencies, in particular with those links to her work in Jamaica as an educator, consultant, community development practitioner, human rights activist and talk show host.

60. There has been no indication that Ms Sobers holds a Doctorate and we assume therefore that the reference to "Dr. Sobers" was a typing error.
61. We found, having carefully read Ms Sobers' report, that, reluctantly, we must agree with the comments of Mr Ouseley; Ms Sobers' report does lack balance and objectivity. We have said in several previous cases that, just because someone is a human rights activist, does not mean that they cannot be an impartial expert, but Ms Sobers' evidence did not appear to us to be fair or objective. Whilst objective evidence clearly shows that in the past the Jamaican Police have used excessive force, Ms Sobers appears to proceed on the much more sweeping assumption that the Jamaican State is some form of terrorist organisation. That assumption is not reflected in any of the established background country materials. Furthermore, in our opinion, her two reports also betray a biased approach to certain matters of evidence. In the press report of 22 December, 2005, (which we have set out in full at paragraph 41 above) the witness describes having called for an enquiry of the highest level and says that that is precisely what happened. However, when the accused police officers were subsequently acquitted by a jury after what we can only believe must have been a fair trial, she appears to be upset with the verdict and describes herself as being, "*very concerned by the message that it is sending.*" That did not appear to us to be the view of somebody who could possibly be said to be unbiased. Ms Sobers appeared to us to be partisan and not consistently objective.
62. We noted that in paragraphs 4 to 10 of Section A of her report, Ms Sobers refers to the island's escalating murder rate. However, she appears not to have been aware that the murder rate actually *dropped* during January 2006. In Section B, in describing the Jamaican Police, Ms Sobers refers to the failure of various crime initiatives in the past, but makes little reference to recent successes. The address by the Minister of National Security which he gave on 5 November, 2005, referred to the success of the police in tracking down Jamaica's most wanted criminals. He spoke of the arrests that had been made and the individuals facing extradition to the United States to answer charges of drug trafficking; the dismantling or severely disrupted major criminal networks including Gideon's Warriors, the One Order, the Clansman as well as other gangs; the hundreds of firearms and thousands of rounds of ammunition that had been seized; the success of Operation Kingfisher which has resulted in the arrest of two hundred and fifty five people by November 2005 in relation to murders, firearms, drugs and ammunition; and the seizure of over twelve metric tons of cocaine. He reported on the increase in gang and drug related murders and spoke of the government intensifying their intelligence driven focus on what they call hot

spots of crime. A further three hundred and fifty more officers were being released for active duty and the establishment of the police force was to increase to over ten thousand in the next eighteen months. This would put an additional fifteen hundred policeman on the street.

63. We also noted the Jamaica Observer Report of 21 September, 2005, describing one well known gang member being imprisoned for ninety years. The report of the Jamaican Observer of November, 2005, suggested that Operation Kingfisher had wiped out one of the twelve major criminal gangs and severely disrupted or impacted on seven others. In a report in the Jamaican Gleaner of December 19, 2005, thirty five people were arrested by Operation Kingfisher. None of these successes were reported in Ms Sobers' report. She did refer to the March, 2004, Jamaica Observer Report that the police were grappling with a severe shortage of motor vehicles, but failed to report additional resources made available by the government to which we referred earlier. In discussing police corruption, Ms Sobers thought it was noteworthy that Jamaican constabulary *"has had to solicit the assistance of Scotland Yard and the Royal Canadian Mounted Police to investigate shootings of four persons by the CMU (Crawle case) in May 2003"*. However, the fact that the Jamaican Government did call on the resources of the Royal Canadian Mounted Police and Scotland Yard was, we thought, a clear indication of the government's willingness to do what was necessary to investigate corruption.
64. We read what Ms Sobers said about the fate of informers and the Witness Protection programme. It was said that the Jamaican Witness Protection programme had still not served to install public confidence so that the safety of witnesses can be assured. However, according to the information before us, the Witness Protection programme has been highly successful. No one entering the Witness Protection programme has been lost.
65. We noted from the information supplied by the British High Commission in Kingston, Jamaica, in its facsimile of 22<sup>nd</sup> February, 2006, that the Jamaican Government is currently expanding the programme and that the United Kingdom has been asked to provide assistance to help train newly recruited social workers. The Metropolitan Police Service have in the past provided expert advice and training. In the addendum to her report under the heading "Jamaica's Witness Protection System" Ms. Sobers has written a sub-heading entitled "Limited Success" and then quoted Mr Gilbert Scott of the Ministry of National Security who announced that not a single witness had been lost to any kind of violence. Quite why she would describe that as being "limited success", we simply did not understand. The Witness Protection system has, on any view, been highly successful. Ms Sobers then referred to a local newspaper receiving responses to questions asked about participation in the Witness Protection scheme and sets out the names of individuals who say that they would not go on the scheme. We thought it hardly surprising that people would say that they were not prepared to go into such a scheme and give evidence when their names were being published in a newspaper.

66. We concluded that Ms Sobers' report and addendum could not be described as being consistently objective and unbiased. We concluded that we could place little reliance upon the opinions expressed by her.
67. We have, as we believe has been demonstrated by the length of this determination, given very careful consideration to all the objective evidence and not simply to that which we have referred and from which we have quoted. It should not be assumed that because we have not referred to a particular document or piece of evidence, that we have not considered it.

### **The Jamaican Witness Protection programme.**

68. According to the copy facsimile of 22<sup>nd</sup> February, 2006, from the Press and Political Affairs Officer at the British High Commission in Kingston, any witness to a crime who testifies in court and fears for his life is eligible to enter the Jamaican Witness Protection Scheme. The witness is evaluated to ensure that protection is needed and that the witness is able to follow the rules of the programme. A witness is required to remain in the programme until after the case is tried and it is deemed safe for that person to leave the programme. Several people who have participated in the programme in the past are now living normal lives in Jamaica or overseas. It confirmed that almost four hundred people have participated in the programme since its inception in 1997 including over one hundred primary witnesses and two hundred and seventy dependants. None has been harmed. The United Kingdom has been asked to consider providing assistance to help train newly recruited social workers and in the past the Metropolitan Police Service have provided expert advice and training to establish the scheme.
69. The Justice Protection Act of 2001 established the Justice Protection Programme for the purpose of providing to participants protection or assistance or both and established an administrative centre to develop, manage and maintain the Justice Protection Programme and to be responsible for deciding whether the prospective participant is to be afforded protection or assistance or both under the programme. The administrative centre may offer protection or assistance or both under the Justice Protection Programme in respect of civil matters and offences set out in the Act. Those offences include murder, manslaughter, treason, treason felony, sedition, piracy or hijacking, possession or use of firearms and ammunitions with intent to injure, possession or use of firearms in furtherance of any criminal offence, aggravated assault, shooting or wounding with intent to do grievance bodily harm, robbery, robbery with aggravation, arson, any sexual offence, any offence involving drug trafficking or dealing, kidnapping, domestic violence, money laundering and any offence involving fraud, dishonesty or corruption.

### **Findings of Fact**

70. It was against the background which we considered at paragraphs 48 to 69 above, that we considered the evidence before us and on which we made our findings of

fact, bearing in mind that the burden of proof is on the appellant and the standard of proof is of a "reasonable degree of likelihood" or of a "real risk". We first reminded ourselves that the Adjudicator (as he then was) found the appellant to be a credible witness who had given a consistent account of her experiences in Jamaica. Having considered all the evidence before us we make the following findings of fact:-

- (a) We find of the six attackers involved in the appalling attack on the appellant and her family, one was called "Scubo" who is now deceased; there are (two) twins, one called Little and one called Biggy, one of whom is now dead; and there was an assailant called Carson who is also dead. The other two assailants' names are not known to the appellant.
- (b) We find that the appellant has known Little and Biggy since she was approximately ten years of age, that they were next door neighbours and that they and the appellant grew up together.
- (c) We do not believe that the appellant is being truthful when she says she does not know the surnames of any of the attackers. We do not believe it to be credible that having known the twins, Little and Biggy, since she was approximately ten years of age and having grown up with them together, that the appellant did not know their family name. She told us that they had always lived next door to her and although, at the time of the assault, they no longer lived next door, she maintained that they "*still hang around on the street corner*". If the appellant had lived in close proximity to Little and Biggy and their sixteen siblings for any length of time, as this appellant claimed, we thought it simply not credible that she would not have known their surnames. There was no background evidence indicating that surnames are not commonly known to a person's friends or neighbours.
- (d) We do not accept that the attack by these five or six individuals was in any way politically motivated or condoned, sanctioned or approved of by any political party in Jamaica. There is no credible evidence before us to support that possibility. We find that the attack was carried out by five or possibly six individual thugs acting on their own volition, simply because they did not like the appellant's daughter associating with someone regarded by them as being an outsider. The robbery associated with the attack was opportunistic. We believe that the secondary motive for the attack was robbery. Those members for the gang who were known to the appellant appear to have been living locally to the appellant. Had they been known locally to have been part of a larger criminal gang, then we believe that the appellant would have known this and would have known the name of it. For those reasons, we do not accept that the attack was carried out at the direction of, or with the knowledge or at the instruction of any gang leader or political leader, or that it was carried out on behalf of any gang or political party.

- (e) The appellant told us that her house had been burnt down and that at the time her son had lived in it. She told us that the house was "gassed". She said that the same men who had taken part in the shooting had set fire to her house and she knew this because "*people had seen them*". While we accept that the adjudicator who heard the appellant's appeal found the appellant to be a credible witness, this was fresh evidence which had not been given to Mr I T Sanderson and, consequently, evidence upon which we have to make findings. We do not believe that this is true. This evidence was given to us almost as an afterthought by the appellant. It may or may not be that her house was burnt down, but we do not believe that if it was, that it was the subject of an attack by the same thugs who attacked the appellant and killed her daughter. If "*people has seen them*" as the appellant alleges, then they would have needed to describe the attackers to the appellant, but the appellant failed to tell us how these people had described the attackers sufficiently well enough for the appellant to know that it was the same people.
- (f) We do not accept that the appellant's assailants were all members of the PNP Party. The appellant could not even name these assailants and she gave us no plausible explanation for how she had known that they were all members of the PNP political party, yet at the same not even know their names.
- (g) We do not accept that if she were to return to her home area in Jamaica, there would be a real risk that now, more than six years after that attack on her, the appellant would face any persecutory harm, or of treatment which would breach her Article 3 rights. Only one of the twins is still alive and the appellant does not know the identity of the other one, or possibly two, members. We do not accept that there is a real risk that they would have any continuing interest in her. The appellant gave the excuse that the PNP have friends all over Jamaica and that she would not be safe. We do not accept that the assailants who took part in the attack were members of the PNP, or that the attack was in any way politically motivated. Neither do we accept that there is a reasonable degree of likelihood that if the appellant were to go and live with her sister in Bull Bay, she would be troubled by the surviving members of the gang responsible for the attack.
- (h) The appellant said that she had been out one day when she had seen two men chasing her. She sought sanctuary at a traffic warden's office. Despite having told us that she was distressed at being chased and "wet" herself, the appellant told us that she had not explained to the traffic warden why the men who were following her were doing so. We accept that the appellant may have thought that she saw two men chasing her, but we do not believe that, at the time, the appellant thought that these



two men had anything at all to do with the attack on her home. We believe that if she thought this, she would have been fearful for her life and having sought sanctuary in the traffic wardens' office, would have told them precisely why she needed their protection. This lady has suffered the most appalling injuries and suffered a most dreadful personal loss and it is because of that, that we believe that had she thought these two men were involved in the attack, she would have told the traffic wardens and asked for protection.

- (i) The appellant claimed, in giving evidence to us, that she never made any complaint or statement to the police following the shooting. She claims that they were not interested in investigating the attack. We do not believe this to be the case. We believe, having very carefully examined the objective evidence, that even in 1999, the police in Jamaica would have been interested in investigating the murder of her daughter and the assault on the appellant and would have wanted to question her. We also believe she would have known that. The appellant told us that her sister (who was not a witness to the attack) had told the police the identity of the gang members, but if that was the case the police would hardly have acted on the say so of someone who had not actually witnessed the events.
- (j) The appellant maintained that the police knew the identity of the five assailants. She maintained that they were simply not interested in helping her. Our consideration of the objective evidence leads us to believe that they most certainly would have been interested in investigating the matter and that if the appellant had chosen to co-operate with the police, there is every possibility that criminal charges may have been made. As it is, this appellant chose not to make a complain herself and chose not to seek protection from the Jamaican authorities, but instead, to seek international protection. We do not find that the objective evidence supports her assertion that the police would not be interested in her case.
- (k) We did not believe there to be a reasonable degree of likelihood that the appellant's son who lives in Jamaica was in fear for his life. There was no credible reason, on the evidence before us, for him to be. He had not been attacked.

### **Credibility**

- (l) We accept the appellant's core account of the attack on herself and her daughter. We also accept that some her views may be honestly held. However, her evidence on key aspects, as we have indicated above, lacked credibility. Her views were also at odds with the objective evidence on such issues as police willingness to help her.

### **Assessment of Risk on Return**

71. Our consideration of the objective evidence leads us to believe that were the appellant to return to Jamaica she would not be at risk of retribution from the surviving members of the group who were responsible for the attack on her and her daughter's murder. There are now only two, or at most possibly three, surviving members of the gang left. We do not believe that there is a reasonable likelihood that the motive for the attack was political, or that it was directed by some organised gang leader, as the appellant would have us believe. Rather, we believe that the appellant was the victim of an attack by local thugs acting on their own initiative and motivated by a desire to impose their will on her daughter.. We do not believe that the surviving members of this group of opportunist thugs would retain any motive or reason to focus on the appellant six years later. Accordingly, we do not believe there is any reason to think that, were the appellant to return to her home area of Jamaica, she would be at any risk of persecutory harm or Article 3 ill-treatment. We can quite understand why, having lost a child in the most awful circumstances, that she might not wish to go there, but we are satisfied that were she to do so there would be no real risk to her. It follows that were the appellant to return to Jamaica and go and live with her sister, she would not be at any risk of persecutory harm or Article 3 ill-treatment there either.
72. In any event, even if we had believed that there was a risk to this appellant of serious harm or Article 3 ill-treatment, it was quite clear to us, from our very detailed and careful examination of the objective material, that there is not only a willingness, but also an ability on the part of the Jamaican state, to provide through its legal system a reasonable level of protection from ill-treatment to its citizens. The initiatives announced over the past few years, while perhaps not initially being as effective as had been hoped for, have been added to by initiatives such as "Operation Kingfisher", which have been successful. The Government of Jamaica has demonstrated very clearly that it is determined to reduce the level of crime and to prosecute its perpetrators and it is achieving a significant level of success. The further initiatives set out at paragraph 54 of this determination demonstrate that the Government of Jamaica is not complacent and is genuine in its aims. In short, the evidence before us in our view clearly demonstrates that the Jamaican authority is committed to reducing levels of crime and violence and to the investigation and prosecution of criminal activity.
73. We believe that there is, as Mr Ouseley describes, a sea change in attitudes in Jamaica, such that the government are determined to put an end to rising crime and to the incidents of violence and do now appear to be achieving considerable successes.
74. We believe that, had we found this appellant to be at risk in her home area, she would have been able to look to the Jamaican authorities for protection which would have been provided. That is not to say that in every case requiring protection, the Jamaican authorities are either willing, or able to provide it and each case will need to be carefully considered on its own facts, but we believe that in general, those in

fear of retribution from criminal gangs and thugs in Jamaica would be offered effective protection by the authorities. We do not believe that our decision in any way conflicts with that of the decision of the panel in DW (Homosexual Men; persecution; sufficiency of protection) Jamaica CG [2005] UKIAT 00168, where, at paragraph 8 the Secretary of State for the Home Department made a concession that:

*“.....as a general rule, he would not argue that the authorities would provide a Jamaican homosexual with a sufficiency of protection.”*

75. Had we found this appellant to be at risk of serious harm on her return to Jamaica, we believe that she would, in any event, have been eligible for protection in the Jamaican Government’s Witness Protection scheme, should she decide to give evidence against those responsible for her daughter’s murder. The Witness Protection scheme appears to have been effective in protecting some one hundred and twenty primary witnesses and members of their families. The Jamaican authorities have clearly been anxious to ensure that the scheme is effective and are able to offer protection to witnesses and appear to be committed to developing the scheme’s effectiveness by seeking means of providing training assistance for newly recruited social workers.

### Conclusion

76. We have concluded that whilst the Adjudicator did materially err in law, the decision we must substitute is **to dismiss the appellant’s asylum claim and her Article 3 claim**. We do not believe that on her return to Jamaica, this appellant will be at any risk of persecutory harm or a breach of her Article 3 rights. As an alternative, even if we had found that the appellant would have been at risk, we believe that the objective evidence before us clearly demonstrates that there is in Jamaica both a willingness and an ability on the part of the state to provide through its legal system a reasonable level of protection from ill-treatment.
77. For all these reasons we find that the original Adjudicator did make a material error of law. The following decision is accordingly substituted: **the appellant's asylum appeal is dismissed and the appellant's human rights appeal is also dismissed**.

### Decision:

**For all these reasons we find that the original Adjudicator did make a material error of law. The following decision is accordingly substituted: the appellant's asylum appeal is dismissed and the appellant's human rights appeal is also dismissed.**

Senior Immigration Judge Chalkley

## APPENDIX

### List of Objective Evidence Considered by the Panel of the Tribunal

1. October 2005 Jamaica Country Report published by Country Information and Policy Unit.
2. 21 September 2005 letter from Amnesty International relating to this appellant.
3. 28 February 2006 memorandum from Immigration Advisory Service re: "Witness Protection Programme Information".
4. Undated copy Interpress Service News Agency report entitled "Jamaica: Police Acquittals Revive Spectre of Impunity" written by Dionne Jackson Miller.
5. 11 January 2006 Operational Guidance Note Jamaica published by the Home Office.
6. 5 November 2005 Jamaica Information Service Broadcast by National Security Minister, Dr the Hon. Peter Phillips.
7. 21 September 2005 report from Jamaica Observer entitled "Richie Poo gets Ninety Years".
8. 13 November 2005 report from Jamaica Observer entitled "One Gang Down, Eleven to go, says Kingfisher Commander".
9. 25 September 2005 report from Jamaica Gleaner entitled "Gangs and Books - Kingfisher Disrupting and Dismantling Gangs".
10. 19 December 2005 extract from Jamaica Gleaner entitled "Kingfisher Raid Nabs Fifty Five Detainees".
11. 22 February 2006 copy letter from British High Commissioner Kingston to Country of Origin Information Service, Home Office, entitled "Jamaica: Witness Protection Scheme".
12. 2001 Justice Protection Act.
13. 8 February 2006 IAS Research Analysis entitled "Jamaica: Sufficiency of Protection".
14. 1 November 2004 UK Home Office Science and Research Group Country of Origin Information Service Jamaica COI Report October 2005.
15. 5 January 2006 HJT Research "Murders in 2005 Reach Record Levels".

16. 25 September 2005 HJT Research "Maxfield Avenue, Central Village Killings Continue: Jamaica Gleaner Calls Jamaica 'an incredibly dangerous country to live in'."
17. 22 December 2005 Interpress Service News Agency Report "Jamaica: Police Acquittals Revive Spectre of Immunity".
18. 25 May 2005 Amnesty International Report 2005: Jamaica.
19. 18 March 2005 Jamaican Gleaner "Security Minister calls out the National Reserves in All out Assault against Criminal Gangs".
20. 18 March 2006 HJT Research, "National Security Minister Declares 'we are at war'."
21. 18 April 2005 HJT Research, "New Information in killing of witness suggests no link to 100 Lane Massacre".
22. 6 February 2006 HJT Research, "Police Corruption on the Rise".
23. 2 February 2006 HJT Research, "Murder Rate down in First Month of 2006.
24. 24 August 2005 HJT Research, "Primary School Principal Killed, Police Suspect Connection with Role as Murder Witness."
25. 14 March 2005 HJT Research "British Experts Review Witness Protection Scheme".
26. 5 February 2006 Jamaica Observer "We Could Cut Murders by 50 per cent!" by Andrew Hollness.
27. 5 February 2006 Jamaica Observer "From Victims to 'Shottas' - Women Emerging as Dangerous Criminals" by Luke Douglas.
28. 1 January 2006 Jamaica Gleaner "the mother of all Verdicts" by Sybil Hibbert.
29. 30 January 2005 Jamaica Gleaner.com "Reinforced Refuge - Jamaica Seeks to Strengthen Witness Protection Programme" Report by Glenroy Sinclair.
30. 25 September 2005 Jamaica Gleaner "Xmas Present?" by Orville W Taylor.
31. 29 December 2001 Jamaica Gleaner "Police Killing Questioned" Report by Petulia Clarke.
32. 30 September 2005 "Expert Opinion" Yvonne McCalla Sobers.
33. 15 September 2006 Expert Opinion Addendum to earlier Expert Report, Yvonne McCalla Sobers.