State of women's jails shames Britain, says prisons inspector

Britain should be "aghast and ashamed" at the way it is treating some of the most disturbed women in its jails where levels of self-mutilation remain shockingly high, the HMCIP said last night.

Nick Hardwick said he had been kept awake at night by scenes he had seen at Styal women's prison and said too little had done since a groundbreaking report sparked by the deaths of six women at the jail between 2002 and 2003. He cited the example of one private prison near London which recorded more than seven cases of self-harm a day, and the case of one woman who had harmed herself 93 times in one month.

Paul Peachey, The Indpendent, Thursday 01 March 2012

Prison governor locks out probation staff in G4S joint bid to privatise jails

The governor of three prisons HMPs Lindholme, Moorland and Hatfield in South Yorkshire has ordered all probation staff off the premises after discovering that the local probation trust had formed an alliance with the private security company, G4S, to take over the running of his jails.

Bob Mullen, who is in charge of Lindholme, Moorlands and Hatfield prisons, told South Yorkshire probation trust last Friday that he was excluding all probation staff to protect the commercial confidentiality of the rival public sector bid to run the cluster of jails near Doncaster. "The probation staff in the public sector prisons were effectively marched off the premises and had their identity badges and keys taken away and were effectively locked out of their place of work," reports an internal probation service email seen by the Guardian.

Alan Travis, The Guardian, Thursday 1 March 2012

Government faces revolt over "secret justice" expansion

The Government is facing widespread revolt over plans to expand “secret justice” laws to ensure controversial court cases and inquests can be held behind closed doors. Senior figures from all parties have condemned the move with some likening the “alarming” proposals to the behaviour of despotic states such as Iran and North Korea. Under the plans “closed material” will be allowed to be heard in secret in civil courts if it is deemed to have the potential to “damage the public interest”.Security services support the significant extension as they feel in the past they have been unable to defend themselves properly in open court for fear of disclosing sensitive intelligence. Conservative MP David Davis, the former shadow home secretary, said the Government’s plans should “appal all those who value our traditional civil liberties”. He added: “If these proposals become law, closed material procedures would be legal not just in terrorism cases, but in any civil case where the government claims ‘sensitive information’ is involved. By James Orr, The Telegraph, 01 Mar 2012

Hostages: Duane King, Leon Chapman, Tony Marshall, Anthony Jackson, David Kent, Norman Grant, Ricardo Morrison, Alex Silva,Terry Smith, Hyrone Hart, Glen Cameron,Warren Slaney, Melvyn 'Adie' McLellan, Lyndon Coles, Robert Bradley, Sam Hallam, John Twomey, Thomas G. Bourke, David E. Ferguson, Lee Mockble, George Romero Coleman, Gary Critchley, Neil Hurley, Jaslyn Ricardo Smith, James Dowsett, Kevan Thakrar, Jordan Towers, Peter Hakala, Patrick Docherty, Brendan Dixon, Paul Bush, Frank Wilkinson, Alex Black, Nicholas Rose, Kevin Nunn, Peter Carine, Simon Hall, Paul Higginson, Thomas Petch, Vincent and Sean Bradish, John Allen, Jeremy Bamber, Kevin Lane, Michael Brown, Robert Knapp, William Kenealy, Glyn Razzell, Willie Gage, Kate Keaveney, Michael Stone, Michael Attwooll, John Roden, Nick Tucker, Karl Watson, Terry Allen, Richard Southern, Jamil Chowdhary, Jake Mawhinney, Peter Hannigan, Ihsan Ulhaque, Richard Roy Allan, Sam Cole, Carl Kenute Gowe, Eddie Hampton, Tony Hyland, Ray Gilbert, Ishtiaq Ahmed.

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MOJUK: Newsletter ‘Inside Out’ No 361 (04/03/2012)

Restrictions on leave for jailed mothers are unlawful Solicitors Journal, 20/02/12

High Court condemns 'inflexible policy' that ignores individual circumstances

Government policy on restricting childcare resettlement leave (CRL) for jailed mothers is unlawful, the High Court has ruled. CRL allows prisoners who have sole caring responsibility for children under 16 to spend up to three days at home every two months.

The court heard in R (on the application of MP) v Secretary of State for Justice and R (on the application of P) v the Governor of HMP Downview and the Secretary of State for Justice [2012] EWHC 214 (QB), that the two women involved were imprisoned for serious drugs offences.

MP, who has three children aged from four to 13, was sentenced to ten years for conspiracy to import cocaine. P, who is the sole carer of a 15-year-old girl, was sentenced to 14 years for importation of cocaine. Mrs Justice Lang said that, in the cases of both women, an “inflexible policy in relation to CRL was routinely applied, which did not involve consideration of the merits of individual cases and did not permit of any exceptions. This was unlawful.” She said the justice secretary had misinterpreted current policy on the grant of CRL by “taking the view that CRL was only ever intended to be available to prisoners who were in the final stages of their custodial term”.

Lang J also said he had failed to have regard to article 8 of the ECHR and article 3(1) of the UN Convention on the Rights of the Child, which states that the best interests of the child should be a “primary consideration” in any action taken by a public authority involving them. She said the justice secretary “fettered his discretion by applying a blanket policy without considering the individual circumstances of prisoners”.She did not believe it would be “unduly onerous” for prisons to have proper regard to individual applications for CRL. She ordered that the decisions refusing CRL to the two women were unlawful and should be quashed, and should be reconsidered by a different decision maker as soon as possible.

Camilla Pandolfini, legal caseworker at the Prisoners’ Advice Service, acted for MP and P. She said jailing parents could have “devastating consequences” on children and lead to their criminalisation. “The children of both these women are suffering and the impact on them could be ameliorated in some way by CRL,” she said. “CRL is quite different to prison visits, where the children have to go through security.” Pandolfini said the government had announced during the High Court trial that it would be carrying out a policy review within three months. I hope a better balancing exercise will come out of this and prisons will have regard to article 8 rights,” she said. “It is well established that prisoners do not lose their human rights just by being prisoners.”

MoJ said that ministers would consider the judgment and decide whether to appeal

Justice for Philmore Mills

A vigil to mark the two-month anniversary of the death of Philmore Mills who died in Wexford Park hospital after being restrained by Thames Valley police; took place on Friday 2nd March 2012 outside Slough Police Station

Philmore Mills was admitted to the intensive care unit at Wexham Park Hospital on 21 December 2011, and on Christmas Eve was moved to a respiratory ward. In the early hours of Tuesday 27 December, an incident occurred in which hospital security and then police were

called to the ward. Mr Mills was handcuffed to the rear and restrained. He then became unresponsive. He was pronounced dead shortly afterwards after failed resuscitation attempts.

The family of Philmore Mills have instructed Hickman and Rose solicitors to act for them in relation to the necessary investigations and the inquest. A second post mortem examination has been commissioned at their request.

The family look to the Independent Police Complaints Commission (IPCC), the Health and Safety Executive (HSE) and Wexham Park Hospital to explain to them as soon as possible why and how their very frail father died. Those inquiries by the IPCC and HSE have now begun, though Wexham Park Hospital has not yet stated to the family whether it will investigate, and if so on what terms.

Rachel Gumbs, Mr Mills' eldest daughter said: "We are determined to get justice for our father, which means getting to the truth. We will do this for the family and for the community because what happened to our father affects us all. We trust that all investigations will be full and fearless and that there will ultimately be transparency and accountability. The wait for answers is agonising "

Kate Maynard, the family's solicitor said: "For any family to have to face the news that their loved one has died after restraint by the police is devastating, but for it to happen in a hospital setting is very hard for them to comprehend. The delay in bereaved families getting information from the investigators breeds suspicion and mistrust. The family hopes that all investigations into how Mr Mills died will be truly robust and that they will be given the answers that they need as soon as possible."

Drug trafficker cannot keep legitimate assets, Supreme Court rules

Solicitors Journal, 22/02/12

A convicted drug trafficker cannot keep legitimate assets acquired after his release from prison if they are needed to pay a £274,000 confiscation order, the Supreme Court has decided. The court heard that the total value of Mark Peacock's assets at the time of his sentence in 1997 was only £823. A confiscation order was made for that amount but the High Court later issued a certificate increasing it to £273,717, the amount he was held to have benefited from his drug trafficking. Peacock challenged the lawfulness of the certificate, but his arguments were rejected by the Court of Appeal.

Giving the leading judgment in In the Matter of Peacock [2012] UKSC 5, Lord Brown said that if Peacock's offences were committed after 24 March 2003, the Proceeds of Crime Act 2002 (POCA) would apply and there would be no doubt that a further court order could increase the amount. Since Peacock's offences were committed before this date, Lord Brown said they had to be dealt with under section 16(2) of the Drug Trafficking Act 1994.

Following his release from prison in November 2000, Peacock "went into the property business with his father and acquired very substantial further assets".

Lord Brown said: "The main argument in support of the appellant's case is that it is unfair and counter-productive to increase the amount of a confiscation order by reference to after-acquired assets. This, it is said, would militate against his reform and rehabilitation and be likely to discourage him (once he has satisfied any initial confiscation order and been released from any sentence of imprisonment) from engaging in lawful and openly profitable employment. And, of course, the longer after conviction it is sought to confiscate after-acquired assets, the more unfair it may appear."

Lord Brown said he recognised that parliament could have chosen a different policy with

Community Care

PAS's Community Care Caseworker represented an elderly prisoner (B) who had suffered from a stroke, resulting in his being unable to care for himself or communicate easily with other prisoners. Other prisoners had to feed him, wash him and generally care for him at a basic level. Upon being contacted by one of these prisoners, the PAS caseworker commissioned an independent care report for this case. The resulting recommendation was that the prison should be providing a carer to carry out these basic services for the elderly prisoner.

The PAS Caseworker threatened legal action against the Prison Service if they did not fulfil this recommendation. Within a week, a carer was being provided three times a day to feed, wash and care for B.

A medical prognosis then revealed that B in all probability had only a matter of days and weeks to live, and so the Community Care Caseworker began a compassionate release application on his behalf. The case was typical insofar as B could not be considered for release until appropriate accommodation became available; the extent of his care needs entailed that supported nursing accommodation would be required in his case, and the Probation Service were unaware of how to access this for him.

Despite B's condition, the Secretary of State did not deem the situation urgent due to the absence of suitable release accommodation. Furthermore the Primary Care Trust that conducted B's assessments would not consider the situation urgent until there had been a decision to release the prisoner. The Local Authority refused to undertake a Community Care Assessment, or to provide a care plan which would allow release to be considered.

A legal challenge to the Secretary of State was made in regard of this matter, on the additional grounds that B did not pose any risk to the public, and that the relevant local authorities were statutorily obliged to provide the community care services that B was due under law. Proceedings issued in relation to The Local Authority eventually produced a care plan and provision of services and this fed into his successful application for compassionate release, two weeks following the prognosis.

B was released and transferred to London, where he spent the last few weeks of his life with his family. Such instances of compassionate release sadly remain very rare – the hospice that serves the HMP Norwich elderly lifer unit said that this was the first such case that they were aware of.

Police apologise to Mark Duggan's family for not telling them of his death

Diane Taylor, guardian.co.uk, Wednesday 29 February 2012

The Metropolitan police has apologised to the family of Mark Duggan, whose shooting triggered last summer's riots, for failing to inform them of his death. The apology was revealed after the Independent Police Complaints Commission (IPCC) upheld a complaint by the family that neither the Met nor the IPCC formally notified them.

Duggan was shot and killed by Metropolitan police officers on 4 August last year in Tottenham, north London. The IPCC is still conducting a separate investigation into the full circumstances of the shooting. The IPCC commissioner Rachel Cerfontyne said: "The investigation is complete and has found that Mr Duggan's parents were not informed of his death by the Metropolitan police service (MPS), whose responsibility it was, and I have upheld that complaint."

The Met's north area commander, Mak Chishty, said: "We recognise that it was the responsibility of the MPS to keep the family informed immediately following the shooting and up until it was handed over to the IPCC family liaison managers. We acknowledge and apologise for the distress caused by not speaking directly to Mark Duggan's parents.

actual operations. She has a specialist paralegal qualification in criminal law and is the author of No Smoke; The Shocking Truth about British Justice. Sandra is a trustee of the charity organisation Wrongly Accused Person.

Each member of the team will take on a case load that she or he thinks is practical. Casework will be discussed regularly with other team members, who will support and learn from each other. If a case is taken on by a member who appears to be less experienced than others, that case will be reviewed to the same standard as any other case through these sharing and consultation arrangements.

Research: We intend to use the information contained in the cases for research purposes, to be carried out by members of the casework team. From the outset the team will include scholars (see above) who have a track record of qualitative research into miscarriage of justice cases, and who, like the rest of the team, have personal experience of involvement in joint enterprise cases that have led to the conviction of innocent people.

We will only use cases for research purposes with the clear permission of those whose cases they are. We will only identify the persons concerned if they wish us to do so.

We will use the information from the cases to discover how the use of the joint enterprise law by police, prosecutors and judges leads to the conviction of innocent people. We will aim to explain how the law has been developed with the result that it now has these effects, exposing the root cause of the problems we find in the cases.

We hope to attract funding for our research, which may be carried out by individuals who are members of our casework team and in conjunction with an established university department.

Our research results will be made freely available for everyone to use. We hope that they will be used to change how the general public view joint enterprise prosecutions, through media coverage that is more sympathetic to the victims' point of view.

We hope that judges and prosecutors will become more aware of how easily injustice can occur in joint enterprise prosecutions, and take steps to prevent injustices. As a result, the police will have to work harder and better to find out who really is guilty.

We hope that when politicians change the law, they will be better informed about the dangers of the present law, and make better law as a consequence.

Race Discrimination

PAS's Race Discrimination Caseworker frequently deals with cases where prisoners report that they have been assaulted by prison staff. Due to the way in which Legal Aid is structured for prison law, aid cannot be claimed for cases of assault. PAS is able to take such an assault claim on as a pro bono case, and will immediately (i.e. within 24-48 hours) do the following, rather than waiting for the case to be referred to a specialist, which would cause an unnecessary and unacceptable delay:

* Contact the prison governor to demand that the CCTV coverage for the relevant time be preserved;
* Help the prisoner with his complaint, and with referring this to the police for criminal investigation;
* Help the prisoner to follow this complaint through to the ombudsman;
* Make a record of the prisoner's injuries, and arrange for photographs to be taken for evidence;
* Help with, and advise on, the prisoner's adjudication hearing;
* Work to have the prisoner taken off the 'E' list (escape list) – frequently in such cases, the prisoner will be placed on the 'E' list by the prison in order to justify the officers' behaviour.

Only after all this has been achieved would PAS refer the prisoner to a civil litigator.

regard to after-acquired assets. “But it seems to me perfectly understandable that in fact parliament decided (as indisputably it did when later enacting POCA) to leave it open to the courts as a matter of discretion to mulct a defendant of his criminal gains on an ongoing basis irrespective of precisely how and when he came by any increased wealth.”

Lord Brown held that the section 16(2) certificate was lawfully issued by the High Court and that the section required that after-acquired assets are “properly to taken into account”. He dismissed the appeal. Lords Wilson and Walker agreed. However, Lord Hope and Lady Hale dissented.

Lord Hope said that reading section 16(2) in the way suggested by Lord Brown could penalise a defendant for the “efforts of his own enterprise and hard work” after his release from custody. “That objection can indeed be made in this case,” Lord Hope said. “The appellant was released from prison in November 2000. There is no suggestion that the increase in the value of his assets that has accrued since then has had anything to do with his previous offending. The assumption must be that the assets that he has acquired as a result of his business activities are entirely legitimate. I think that to deprive him of the increase can properly be described as confiscation.”

Lord Hope said this kind of situation “ought not to be assumed” to have been what parliament intended unless it provided for it in clear terms. The general principle of construction is that a statute should not be held to take away property rights without compensation unless the intention to do so is expressed in terms which are clear and unambiguous.”

Lord Hope allowed the appeal and set aside the section 16(2) certificate. Lady Hale agreed.

Sentencing guideline for drug offences comes into force

A new definitive guideline on drug offences will be used in all courts in England and Wales from 27 February 2012. The Sentencing Council’s guideline brings sentencing guidance together for the first time to help ensure consistent and proportionate sentencing and provide effective guidance for sentencers and clear information for victims, witnesses and the public on how drug offenders are sentenced. It covers the most commonly sentenced offences - importation, production, supply, permitting premises to be used for drug offences and possession. All drugs from class A to C are covered by the guideline.

The guideline reinforces current sentencing practice in relation to most types of drug offence, but there are some changes to sentence levels for large-scale production offences and for drug ‘mules’. Under the new guideline there are likely to be increased sentence lengths for those found guilty of large-scale production offences. The top of the range for production of class B drugs such as cannabis has been set at 10 years’ custody. The guideline does not make changes to current sentencing levels for smaller-scale production offences.

Among importation offences, sentence lengths for drug mules will have a starting point of six years’ imprisonment, a reduction of around four years from current sentencing levels. These are substantial jail sentences, reflecting the seriousness of importation offences, but they also reflect the reduced culpability of drug mules who are usually naïve individuals who have been exploited by organised criminals to carry drugs. They do not understand the consequences of what they are doing and are treated as disposable by their exploiters. Sentencing for other importation offences will remain unchanged so there will be no reduction for anyone higher up in any importation operation. If an offender has played a more significant role in importing drugs, the guideline sets out appropriate sentence ranges with 16 years as the top of the range for the most serious cases.

The guideline does not propose any change in current sentencing levels for drug possession

or supply offences and reinforces that where an offender profits from selling drugs, a prison sentence can be expected. Street dealers who have a significant role in selling class A drugs, particularly those who sell drugs for profit can expect a custodial sentence with a starting point of four and a half years. The sentence range goes up to 16 years for the most serious supply offences. The guideline also introduces a new aggravating factor to supply offences to ensure that where offenders are dealing drugs to those under the age of 18 they are treated more severely.

In terms of assessing the culpability of offenders, the guideline distinguishes them according to three types of role – leading, significant and lesser. A leading role in a supply offence would be characterised for example by the offender directing or organising the buying and selling of drugs on a commercial scale, while a significant role could be illustrated by someone with an operational or management function in a supply chain. Offenders are likely to fall into a role described as lesser if they are coerced into offending and have no influence on those above them in the chain. For supply offences, lesser offenders could be 'social suppliers', for example, sharing minimal quantities of drugs with peers on a non-commercial basis.

Levels of harm are assessed through four categories generally relating to quantities of drug involved. The quantities are indicative, and sentencers would use their discretion in deciding on an appropriate sentence that reflects the precise amount of drugs involved in a particular case. However, there are some exceptions. Where the offence is supply, the Council took the view that quantity is not necessarily indicative of the harm caused by the offence. Therefore, where the offence involves selling directly to users or where the offence is the supply of drugs in a prison by a prison employee, the starting points are not based on a quantity.

For possession offences, the seriousness of the offence is determined by the class, not the quantity, of drug involved.

Secret justice = Injustice Frances Webber, Institute of Race Relations February 2012

Frances Webber assesses proposals in the coalition's Justice and Security green paper to extend secret evidence regimes to any civil proceedings.

'I can still recall my deep feeling of shame when I heard the appellant ask the judge the question: why are you sending me to prison? To which the judge replied: I cannot tell you that. I could not believe that I was witnessing such an event in a British court. I could not believe that nobody protested or made a fuss. They simply took him to jail, without any explanation at all.' So said Dinah Rose QC, a former special advocate, at a public meeting in parliament in March 2009 called to discuss the use of secret evidence.[1] The government's green paper, Justice and Security, published in October 2011, proposes withholding evidence from claimants in all civil proceedings, from eviction to wrongful imprisonment and assault, and in inquests too, if 'sensitive material' is relevant. The proposals, overshadowed by Leveson and media misdeeds, received little publicity, and when the consultation ended in January 2012, only ninety responses had been received. But they threaten further injustice and insecurity for those affected by government illegality.

The victims of state security action, police shootings, deaths in custody are always the most powerless in society and almost always minorities - Muslims, Black or Irish - who are vulnerable both to racist assumptions about their behaviour and to extra-judicial punishments by police and other officials. That is why the proposals to extend the highly prejudicial secret evidence regimes currently operating in national security deportations and Terrorism Prevention and Investigation Measures (TPIM) cases into civil actions and inquests, and to create a special court along the lines of the Special Immigration Appeals Commission (SIAC) to hear such cases, are so dangerous.

work takes a lot of time but does not need much money. We hope to obtain some help from sympathetic organisations.

Who we are

Dr Andrew Green: Andrew has 20 years' experience of analysing miscarriage of justice cases, many of them involving joint enterprise. He works mainly with INNOCENT on appeals and applications to the Criminal Cases Review Commission, with some successes. He is Chairperson of United Against Injustice and Deputy Director of the University of Sheffield School of Law Innocence Project. His PhD was awarded for a thesis on the construction of wrongful convictions. He is the author of Power Resistance Knowledge: the Epistemology of Policing.

Ange Drozdowski: Ange has been involved with United Against Injustice for over 8 years, and has been part of the planning and running of the National UAI days on the last five occasions, including chairing the meeting in Birmingham in 2011. She is an active member of Innocent and Yorkshire and Humberside against Injustice and will consult with members privately if they are nervous of speaking in a group. Ange is a qualified plumber and plumbing instructor and taught a practical plumbing course in HMP Ranby for two and a half years.

Ashleigh Towers: Ashleigh campaigns on behalf of her brother Jordan Towers, who was wrongly convicted under Joint Enterprise for murder. For the past 5 years she has worked hard to progress Jordan's case. She is part of team that has secured a Judicial Review in the near future for Jordan, which hopefully will lead to an appeal against his conviction. Ashleigh has experience in working closely with solicitors, advising them and attending meetings. She has experience with CCRC applications and extensive knowledge of Joint Enterprise and Human Rights law. Ashleigh lobbied the Government on the yourGov website in relation to Joint Enterprise which played a crucial part in Lord Ouseley raising the subject with Parliament, and which played a significant role in the Parliamentary Justice Committee's decision to inquire into the Joint Enterprise doctrine. Ashleigh also has experience in advising others on various subjects in relation to the law where a miscarriage of justice has occurred and will give any case she works on as much hard work and dedication as she has given her brother's and others alike.

Audra McKenna: Audra Currently campaigning on behalf of her son Wesley Porter wrongly convicted under joint enterprise for murder. Audra has experience liaising with solicitors and communicating with appropriate contacts for advice and information on various specialist aspects of a given case. What she doesn't know herself, she seeks to find out, and is never afraid to draw on the knowledge of others in the team. The compassion and commitment she shows in her 9-5 job is evident in the work she does for others suffering injustice. Founder member of AIM (Against Injustice Merseyside) and represents it at United Against Injustice (UAI).

Billy Middleton: Billy founded the Wrongly Accused Person organisation in 2009 following his own experience with the justice system. He has been reviewing cases ever since and where appropriate helping people highlight their plights to in a way capable of changing public opinion with some success. Many are Joint Enterprise case. He has assisted with appeals and applications to the Criminal Cases Review Commission liaising with solicitors, expert witnesses and the Media.

Sandra Lean: Sandra has 9 years experience of investigating and researching wrongful convictions. She works with individuals and families, as well as professionals in the legal and voluntary sectors, assisting with appeals and applications to the S/CCRC. A PhD candidate, funded by the Scottish Centre for Crime and Justice Research (SCCJR) at Stirling University, she is about to submit a thesis on the gap between public perceptions of the CJS and its

National Joint Enterprise Casework Service (NJEC)

Everyone involved in or interested in supporting joint enterprise cases welcome.

Joint enterprise is the short term for a legal 'doctrine' according to which anyone who joins with another person to commit a crime, is equally responsible for any crime that comes within the scope of that enterprise: the lookout in a robbery is as guilty of robbery as the people who enter premises and steal money or goods. The more controversial part of the doctrine says that anyone who joins a criminal enterprise is responsible for any crime that is committed in the course of the enterprise, even if it is far more serious than the planned crime, as long as he or she foresaw that such a crime might be committed.

What NJEC plans to do

We would assess cases for their eligibility. This depends on two matters:

- That the person seeking our help (the applicant) has been convicted through use of the joint enterprise law (see above) rather than a similar law such as conspiracy or any other law. The words 'joint enterprise' or 'common purpose' should appear in the trial summing up, applied specifically to the applicant as a defendant.

- That the person claims to be innocent of the crime of which she or he is convicted, under the law as it stands at the time of the conviction.

This means that we would be prepared to help people who may be guilty of a less serious offence than the offence of which they were convicted (such as theft rather than murder).

We will consider cases where the law may have been applied unjustly, such as those in which prosecution evidence appears to be clearly inadequate.

But we would not be able to help people who are guilty of a serious crime according to the law, however unfair we may think the law is: for example, people who play a minor part in a crime but know that the crime is going to take place.

We would next assess whether we can offer assistance with the applicant's case. We may either work on the case ourselves, or we may refer it to another organisation if we think that organisation could do more to help than we can. We may continue to work on a case together with another organisation, such as a university student innocence project.

We would keep all applicants informed about the progress of their case and we would seek their approval, suggestions and permission before undertaking any important work or referring their case to another organisation. By 'applicants' we mean applicants and their families or other supporters acting with the consent of the applicants.

How quickly we can work and respond to applications depends on how many applications we receive and how many competent people we can find to join our team. We cannot make any promises about how quickly we will respond, and if we cannot handle cases for practical reasons, we will tell people honestly what the problem is.

All applications, supporting material and any fresh material we obtain will be treated as confidential, unless we have obtained permission from applicants to share the material or use it for agreed publicity purposes. But it should be noted that none of the casework team are qualified lawyers and none of our communications are legally privileged.

This is a free service. We will not ask applicants, their families or their supporters for money to support the work we do. If we find additional sources of help, such as experts and lawyers, we will aim to find these at no cost to applicants.

We believe that innocent victims of miscarriages of justice should not have to pay to put right the mistakes of the criminal justice system. In our experience, case-

The government fought hard, fortunately unsuccessfully, in Binyam Mohamed's case to prevent disclosure of confidential intelligence reports which proved his claim that confessions to terrorist activity which he made in Pakistan in 2002 were obtained under torture, and that British intelligence agents provided questions and information to the US interrogators.[2] Denial of access to the documents would have prevented him from proving the ill-treatment in the US court, which would have meant a real risk of conviction and execution as a terrorist.

The government has cited Azelle Rodney's case as justification for seeking to widen the secret evidence regime to inquests. On 30 April 2005 Azelle Rodney had eight shots fired at him at close range by Met police firearms officers as he sat unarmed in his car. Although the Independent Police Complaints Commission investigated the killing and passed a file to the Crown Prosecution Service (CPS) to consider prosecuting the officers responsible, not only were no charges brought but an inquest stalled in 2007; the family wanted to hear evidence of the police pursuit but the police wanted to keep the evidence secret, and the coroner could not continue. A public inquiry, which has wider powers to restrict attendance and to close hearings, started in 2010 - but Sir Christopher Holland, the inquiry chair, said that much of the 'secret' evidence did not need to be secret.His observation undermines the government's assertion that a secret evidence regime would enable an inquest to take place, and for more civil claims to be brought. The point is that, particularly given the history of black deaths at the hands of the police, both the family and the public have a right to know why he was shot. It is very hard to understand what legitimate interests can override that of open justice and accountability in cases such as this.

It is not surprising that groups like the Campaign Against Criminalising Communities, Coalition Against Secret Evidence (CASE) and INQUESTstrongly oppose the government's proposals, which would prevent the obtaining of such documents in the future. The government proposes taking the issue of disclosure out of the court's hands in cases like Binyam Mohamed's - if a minister claimed that national security or relations with a friendly state would be compromised, the court would have no power to order disclosure.

Many of the responses to the green paper and the written submissions to the Joint Committee on Human Rights (JCHR) inquiry on the proposals talk about 'function creep' - how a secret evidence procedure, once established for so-called exceptional cases, becomes routinely used. They point out that power already exists for courts to protect national security by the 'public interest immunity' (pii) procedure, whereby the judge looks at sensitive material and if he or she agrees that it cannot be disclosed, neither side can use it. In the procedures which the government proposes to extend, one side, the government, uses the documents but the other side, the claimant or appellant, and his or her lawyers are excluded from the hearing, from seeing all relevant documents and even from knowing the reasons why he or she has won or lost the case. The government argues that the claimant or the appellant is protected by the fact that an independent judge sees the material. But as the supreme court has acknowledged, this is of little use if the only person who can really challenge it - the person the evidence relates to - cannot see it or comment on it. Rejecting the government's argument for secret evidence in the damages claim brought by former Guantánamo detainees, the court ruled: 'Evidence which has been insulated from challenge may positively mislead.'[3]

This is precisely the argument used by CAMPACC to oppose the secret evidence regime in SIAC: special advocates, who hear the secret evidence, can't challenge it without knowing the accused person's response to it, and the accused person can't be told. But the govern-

ment points to the SIAC special advocate regime as a model of fairness which can be replicated across the board in cases involving 'sensitive' evidence. Fifty-seven special advocates have signed a response to the green paper, that the SIAC system is in fact inherently unfair, does not work effectively and does not protect appellants.[4]

The courts' record on protecting the right to open justice against the claims of national security is a very mixed one. The courts have ruled that people subject to a control order (now a TPIM) are entitled to know the gist of the allegations against them (but not the evidence), but that people facing deportation on national security grounds are not. Even evidence about the risk of torture to them on their return can be withheld from this group. And when in 2001 Lord Saville, chairing the inquiry into Bloody Sunday, rejected British soldiers' requests for anonymity and to give their evidence in London rather than in Derry, the Court of Appeal overruled Saville, holding that the soldiers' rights to anonymity and security were more important than the families' and the community's right to see and hear the soldiers' evidence in their own city. The court's conclusion was premised on the assumption that the men were at risk from violent, revenge-seeking families nearly thirty years after the death of their loved ones.[5] The fact that killing in the service of the state should confer the unique privilege of not being named and publicly shamed turns accountability on its head.

Already, as Scotland Yard and the CPS start their investigations into Libyan former dissidents' allegations that British intelligence agents helped in their abduction and rendition to Gaddafi's torture cells, and families begin civil claims, it seems justice will be denied and agents granted legal impunity. The government has indicated that the agents' actions were authorised by ministers - and ministerial authorisation for crimes committed abroad by members of the security services makes their perpetrators immune from criminal and civil liability in the British courts.[6] Presumably the Justice and Security green paper proposals are designed to ensure that in the future, such activities are not even known about, let alone punished. The secrecy proposals make it far too easy for serious state crimes to go undetected and unpunished. The families of those subjected to abuses of power, whether kidnapping and complicity in torture and wrongful detention abroad or deaths in custody, police shootings of members of the public, assault or wrongful arrest at home, know how vital transparency is for justice and for the prevention of further abuses.

Prison union calls for strip searches rethink Troops Out Movement, 23/02/12

Republican groups have been campaigning for an end to strip searches for some time and have found an unlikely ally in the prison officers' union.

The prison officers' union has called for a rethink on the routine use of full body searches in Ulster's jails. Finlay Spratt of the Prison Officers Association (POA) believes the practice can never be dispensed with completely, but is angry at the lack of progress on introducing new technology. The POA chairman described the justice minister's failure to introduce state-of-the-art search equipment as "completely unacceptable" – claiming the delays were causing unnecessary tensions within our prisons. The governor of a prison must always reserve the right to authorise a full body search but, in this day and age, there's no excuse for not introducing the type of search equipment used in airports. If these new machines are good enough to stop people bringing things on to aeroplanes, with hundreds of people on board, then they should be adequate for prison establishments." Mr Spratt said. "The fact is, the prison officers on the wings have to deal with the problems caused by these decisions which are not of their making, yet they are the ones who bear the brunt of the backlash," Mr Spratt said.

lenient terms of imprisonment. The growing European consensus, however, could does raise the potential for a successful challenge to be made at the European Court of Human Rights that the current law breaches the right to liberty pursuant to Article 5. Until then, would-be absconders are advised to ensure that they flee no further than the boundaries of the European Union and to avoid the temptations of more exotic locales.

Author: Richard Wingfield specialises in crime, extradition, and human rights.

'Prisoners – Law and Practice' - Not a Prohibited Item

Prisoners Advice Service (PAS) recently won an Ombudsman's judgement on behalf of a prisoner at HMP Wakefield, who was being refused possession of a book he had bought because it was not obtained from an approved supplier.

The book – 'Prisoners – Law and Practice' – had been purchased via an advert in a prisoners' newspaper by means of a cash disbursement, as agreed beforehand with the prison, but when it arrived it was placed in stored property. There was, however, nothing in the book's contents that made it inappropriate for the prisoner to own, and it was also freely available in the prison library.

The Ombudsman upheld the complaint. There was nothing inappropriate in the content of the book, and the prison's decision was unnecessarily bureaucratic. Given that there was no objection to the book in principle, it was recommended that the prisoner should be allowed to keep it in his possession.

Dealing With Emergency Issues

The PAS clinic at HMP Send gives face-to-face advice to women prisoners on a Saturday every four to six weeks. The following case study illustrates its importance.

One recent client, Ms B was in prison for ten months for her first offence. She was also fighting deportation back to Jamaica on the basis that her two children are settled in the UK. Although their relationship had long been over, Ms B's former partner Mr G, had moved in with her children, along with a relative, Ms C, while Ms B had been in prison.

Ms B's immigration solicitor, who had previously helped Mr G (an Iranian national) to obtain asylum in the UK, told her that Mr G had not yet returned child A's original birth certificate and status documents because they were with the Iranian Embassy.

This raised suspicions with the PAS caseworker, amplified when Ms B said that Ms C had found two flight tickets to Tehran for the following Saturday belonging to Mr G. The PAS Caseworker promised Ms B she would find her a specialist solicitor to ensure Mr G did not flee the country with her child.

The Caseworker then telephoned Ms C, who tells her that Mr G left the flat with the child and two large suitcases that morning. The Caseworker attempted to obtain emergency orders from the High Court, and finally managed to contact one of the top child abduction specialists in the country, who told here that if the child has left Ms B would never see her again.

The Caseworker, now panicked, continued to call the High Court, while checking with Ms C to see Mr G had returned with the child. Finally, at 10pm, the child was returned to the house.

Flights to Tehran leave every Saturday, so the child abduction specialist took on the case, and on the following Tuesday obtained a court order protecting the child from abduction. Ms B was released soon after and returned to her home with her children - her appeal against deportation was also allowed on all grounds

ward five reasons for his rejection of the argument that Stafford was wrongly decided:

1. It was unlikely that Parliament, in 1952, contemplated time spent by an absconder detained abroad would count towards the sentence, save where the Secretary of State exercised his discretion. To interpret section 49 in such a way would be to do so through the prism of European developments that post-date the Act.

2. The decision in Stafford had not been overturned and had, instead, been held as good authority in recent decisions such as R (S) v Secretary of State for the Home Department [2003] EWCA Civ 426.

3. The decision in Stafford was logically cogent. There was insufficient causal connection between the original sentence and the order of the Trinidadian/Swiss authorities detaining the individual pending extradition. Only in a "but for" sense was the claimant in the current case detained pursuant to the order of the Swiss authorities.

4. There were policy considerations for adopting a narrow approach to questions of causation in this area of the law. Mr Woolley, as an absconder, was the author of his own misfortune.

5. The words "detained in pursuance of the sentence" were not redundant. The proviso covered situations where the person was detained in the United Kingdom pending their return to the place where they were required in law to be detained. In any event, sentencing legislation was not sufficiently consistent for arguments based on redundancy to be given much weight.

The judgment of Mr Justice Irwin included the second and fourth reasons. Whilst not rejecting as unarguable the interpretation of section 49 put forward by Mr Woolley, as Lord Justice Gross did in his fifth reason, Mr Justice Irwin nevertheless agreed that construction of sentencing legislation "perhaps beyond legislation in all but a few areas of law, has provided highly problematic" and that the phrase "in pursuance of" could be interpreted narrowly or broadly. These "obstacles" meant that he rejected the argument as being of sufficient merit to amount to a point of general public importance and therefore refused leave to appeal.

Conclusion: The former fashion in legislative drafting for single clauses containing numerous subclauses makes the Parliamentary intention behind section 49(2) difficult to discern. The High Court in Stafford andWoolley was faced with competing, plausible, interpretations but ultimately found against those put forward by the claimants. The High Court in Woolley explicit admits the policy considerations that form part of its decision including the reluctance to overturn long-standing case-law, but perhaps most tellingly the fact that it was Mr Woolley's own fault that he was in the situation in which he found himself, and so that such persons will seldom be given the benefit of sympathetic legislative interpretation. (This would seem to run counter to the long-standing presumption that punitive legislation should be interpreted in the manner most favourable to the defendant however that presumption was never discussed)

What some of the arguments deployed Woolley do reflect, however, is that at a European level there is a growing sense that it is unfair to treat of the period of detention of a person pending extradition as being additional to, rather than part of, their sentence of imprisonment. The Committee of Ministers of the Council of Europe in its 1986 Recommendation and the European Union in the European Arrest Warrant Framework Directive are both clear that detention pending extradition should be considered as part of the sentence. In extradition from other EU member states, this will be the case. However if the extradition is from non-EU member states – even European states such as Norway, Iceland or, indeed, Switzerland, it will not.

Just like his prison cell, the door to the Supreme Court seems locked to Mr Stafford. Parliament is unlikely to rush any time soon to legislate to give extradited prisoners more

The NI Prison Service is currently undergoing a radical overhaul following recommendations made by a review panel. Although the POA agrees with the vast majority of the suggested changes, Mr Spratt is opposed to some aspects of the process. "The arrogant attitude of senior management in implementing the changes is breathtaking. The whole prison review process is overly expensive, yet they're creating an impression that the existing prison officers themselves are poor value for money," he said. "The proposed £18,000 starting salary for the new custody officers does not reflect the true nature of the job, particularly for those required to work with protesting republican prisoners in Maghaberry. A prison officer in the Republic will be earning double that of a new custody officer in Northern Ireland." Mr Spratt said almost 600 officers had volunteered for redundancy due to low morale. "The review is a waste of public money. We already have a highly-paid director general yet they're paying over £130,000 to a 'change manager,' as well as other staff, to oversee the process. They're also forcing through unpopular shift changes based on a private sector model and the whole process will achieve very little other than create more jobs for civil servants. As well as that, we feel we're being used as a political football and that our history is being taken away from us at every turn."

A spokeswoman for the NI Prison Service said "alternative technologies" to body searches were being explored including the possibility of low-dose X-ray technology. In relation to the cost of the prisons' review she said: "Reviews completed to date have demonstrated that there are widespread efficiencies and savings which can be implemented without detriment and indeed with improvements to front-line services. The current cost of delivering services is highly disproportionate due to the high salary levels for existing prison officers." The spokeswoman added: "The starting salary for new custody officers is highly competitive within the local and national markets. Those who successfully complete the first year will progress over a number of years to the top of the scale at £23,000 which compares very favourably with other jurisdictions. The role also carries additional benefits in pension, security of employment and future promotion prospects."

Extradition and extra detention a comment on R (Woolley) v Ministry Of Justice

Introduction: Each year, thousands of people are sent to prison. Many of them do not particularly want to be there. Some attempt to escape. A determined few succeed. In order to exclude the period of time spent at liberty by those who escaped prison from their sentence of imprisonment, Parliament enacted section 49(2) of the Prison Act 1952 which provides (as amended) that:

Where any person sentenced to imprisonment ... is unlawfully at large at any time during the period for which he is liable to be detained in pursuance of the sentence ... then, unless the Secretary of State otherwise directs, no account shall be taken, in calculating the period for which he is liable to be so detained, of any time during which he is absent from the place in which he is required in accordance with law to be detained.

Paragraph (a) of section 49(2) provides that the subsection does not apply to: any period during which any such person as aforesaid is detained in pursuance of the sentence ... or in pursuance of any other sentence of any court in the United Kingdom in a prison or remand centre, in secure accommodation or in a young offenders institution.

In R (Woolley) v Ministry of Justice [2012] EWHC 295 (Admin), the High Court looked at the situation whereby a prisoner escapes to another country and is later caught and detained there pending extradition to the United Kingdom to complete their sentence. The High Court was asked whether the period of time spent detained in the other country pending extradition should count towards the length of the sentence. The answer came back as 'no'.

Sunnier climes: The leading authority on this point is R v Leeds (Governor), ex parte Stafford. In July 1956, Dennis Stafford was sentenced to seven years' imprisonment. Mr Stafford was distinctly unhappy at this turn of events and, on 8th November 1956, escaped from prison and fled to the island of Trinidad in the Caribbean. There he enjoyed the local cuisine and temperate weather until 5th April 1957 when – following a warrant for his arrest being issued at Bow Street magistrates' court on 28th March 1957 – he was apprehended by the Trinidadian authorities and detained on the island for 66 days before being returned on 10th June 1957 to the rather less tropical surroundings of HMP Leeds.

Mr Stafford accepted that the period of time from the date he escaped to the day that he was apprehended should not, by virtue of section 49(2), count towards the seven year sentence. He disputed, however, that the further 66 days that he had spent detained in Trinidad should also not be counted and brought a claim of habeas corpus against the Home Secretary.

His claim was based on two arguments, both on the construction of section 49(2). The first was that the term "unlawfully at large" in section 49(2) meant "at liberty" and that the period during which a person is "absent from the prison" should be interpreted under the "umbrella" of "unlawfully at large". In other words, section 49(2) only applied when a person was "unlawfully at large" and since Mr Stafford was not "unlawfully at large" (at liberty) during the period of his detention in Trinidad, section 49 did not apply. The fact that he was absent from the prison was irrelevant.

The respondent Secretary of State, while accepting that "unlawfully at large" meant "at liberty", submitted that the term "unlawfully at large at any time during the period for which he is liable to be detained" should be construed as a condition precedent and that, if the condition were satisfied, then the period of time for which no account should be taken was any period during which the person was absent from the prison, not just the period during which the person was unlawfully at large. As Mr Stafford had been unlawfully at large during a period of time when he was liable to be detained, the condition was satisfied, and therefore the entire period during which he was absent from the prison (whether detained or otherwise) should not be counted.

Lord Justice Parker preferred the Secretary of State's submissions and rejected the claimant's argument. In reaching that conclusion, Lord Justice Parker referred to the proviso in paragraph (a) of the subsection. Mr Stafford's submission was that the phrase "unlawfully at large" should be interpreted as meaning "at liberty" and was an umbrella heading, incorporating "absent from the prison". If that were correct, then a person detained pursuant to the original sentence or pursuant to another sentence imposed by a court in the United Kingdom would not be "unlawfully at large" and so would never come within section 49 making the proviso in paragraph (a) redundant and unnecessary. On the contrary, Parliament had been very explicit in setting out which specific periods of detention would form an exception to the general rule in section 49(2).

The second argument was that his detention in Trinidad was pursuant to the original sentence and therefore fell within paragraph (a): but for his original sentence, the arrest warrant at Bow Street Magistrates' Court would never have been issued and that the latter was therefore in pursuance of the former.

This, too, was rejected by Lord Justice Parker who held that Mr Stafford's arrest and detention were in pursuance of the arrest warrant and not in pursuance of the original sentence of imprisonment.

Going round: Fifty years later and, despite the significant improvement in prison conditions since the 1950s, Raymond Woolley was not much enjoying his time at HMP Sudbury. Having been convicted in 2002 of MTIC fraud and sentenced to nine years' imprisonment, he escaped in February 2005 and fled to Switzerland. Shortly afterwards, Birmingham Crown Court issued a Confiscation

Order against him in the sum of around £9,500,000 to be paid by 3rd April 2006; in addition, a consecutive prison sentence of four years was imposed in default of payment.

In February 2008, Mr Woolley's extradition was sought. He was arrested on 19th June 2008 by the Swiss authorities and detained there for 266 days before being extradited on 10th March 2009. The nine year sentence finished on 15th April 2010 and on 6th May 2010 Mr Woolley wrote to the Secretary of State asking for the 266 days to be deducted from the consecutive four year sentence. On 9th June 2010, the Secretary of State replied stating that he would not be exercising his discretion to do so. Mr Woolley appealed against that decision.

The claimant put forward three arguments in support of his appeal.

Arguments 1 and 2: the European dimension

Recommendation No. R (86) 13 of the Committee of Ministers of the Council of Europe concerns the application of the European Convention on Extradition in respect of detention pending extradition and states that the Committee:

I. Recommends the governments of member states party to the convention:

a. To be guided by the following principles:

1.Time spent in custody pending extradition should be deducted from the sentence in the same manner as time spent in custody pending trial.

The first argument was that the Secretary of State was obliged to exercise his discretion in conformity with the Convention as interpreted by the Council of Europe and that the time he spent in custody in Switzerland pending extradition should be deducted from the sentence unless there were exceptional reasons.

The second argument was that Article 26 of the EU Framework Decision on the European Arrest Warrant (which provides that the issuing Member State "shall deduct all periods of detention arising from the execution of a European arrest warrant from the total period of detention to be served in the issuing Member State as a result of a custodial sentence ... being passed") supported his construction of section 49(2).

Mr Justice Irwin, giving the leading judgment, deftly rejected both of these propositions. He held that the Recommendation of the Committee of Ministers had no compulsive legal force: it was solely a recommendation; there was no treaty obligation to enforce it, and no domestic legislation incorporating it into national law. The European Arrest Warrant Framework Decision, he held, only applied to member states of the European Union and since Switzerland was not a member state, it was irrelevant.

Argument 3: R v Leeds (Governor), ex parte Stafford

The final argument put forward by the claimant was that Stafford was wrongly decided. Avoiding the temptation to re-argue the submissions put forward in Stafford, the claimant put forward a new one: the interpretation of section 49(2) in Stafford, rendered the words "detained in pursuance of the sentence" in the provision in paragraph (a) meaningless. The argument went as follows: if a person was detained in pursuance of the sentence in a prison, he could never be "unlawfully at large" or "absent from the place in which he is required in accordance with the law to be detained" under the interpretation in Stafford. There had to be some situation in which a person was "unlawfully at large" or "absent" from the prison and yet at the same time "detained in pursuance of the sentence" or else that part of the proviso was meaningless. That situation could, arguably, include detention in a prison or similar institution outside of the United Kingdom.

This argument was also rejected. In a concurring judgment, Lord Justice Gross put for-