previous convictions for similar offences. In those circumstances we are entirely satisfied that, notwithstanding that counsel for the prosecution should not have given a final address in the circumstances of this case, the conviction is entirely safe and accordingly the appeal will be dismissed.

20. The appellant also seeks leave to appeal against sentence, leave not having been granted. We have already mentioned the sentence which he was given to him, one of 21 months' imprisonment after a contest. That is a sentence which clearly falls well within the wide parameters of the judge's discretion falling within the guidelines. It cannot be said in any sense to be manifestly excessive and leave to appeal against sentence is refused. *CrimeLine*

No Lynette White Inquiry into South Wales Police

Home Secretary Theresa May has ruled out a public inquiry into the collapse of a police corruption trial relating to the notorious murder of a woman in Cardiff on Valentine's Day in 1988. Three men were wrongly jailed for killing Lynette White at the docklands flat she used while working as a prostitute. In December 2011 the trial of eight police officers charged with perverting the course of justice was halted when evidence temporarily went missing. The Home Office said there would be no public inquiry "at this stage" but Mrs May would review her decision following completion of a related investigation by an outside force for South Wales Police.

No Perjury Charges Over West Midlands Police Riots Trial Officers

Two police officers will not face charges of perjury in connection with a murder trial in Birmingham last year, the Crown Prosecution Service has said. Det Ch Insp Anthony Tagg and former Det Insp Khalid Kiyani are the subject of an investigation by the Independent Police Complaints Commission. It followed a trial last year of eight men who were cleared of murdering three men during riots in Birmingham in 2011. During the trial, the judge accused Det Ch Insp Tagg of "inventing" evidence. In a hearing held in the jury's absence at Birmingham Crown Court, Mr Justice Flaux said Mr Tagg had lied under oath. It brought the trial almost to the point of collapse and later prompted strong criticism from community groups. Mr Tagg and Mr Kiyani faced allegations relating to statements made during the trial that immunity from prosecution had been offered to witnesses. Michael Gregory, specialist prosecutor for the CPS Special Crime Division, said allegations also included whether any such offer of immunity had been sanctioned by the police and when prosecution counsel were informed of the suggestion that such an offer had been made.there was "insufficient evidence for a realistic prospect of conviction of either officer". "While there was evidence that some procedures may not have been followed correctly by the officers in this case, that is not the test for a criminal prosecution," Mr Gregory said.

Hostages: Jamie Green, Dan Payne, Zoran Dresic, Scott Birtwistle, Jon Beere, Chedwyn Evans, Darren Waterhouse, David Norris, Brendan McConville, John Paul Wooton, John Keelan, Mohammed Niaz Khan, Abid Ashiq Hussain, Sharaz Yaqub, David Ferguson, Anthony Parsons, James Cullinene, Stephen Marsh, Graham Coutts, Royston Moore, 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, Neil Hurley, Jaslyn Ricardo Smith, James Dowsett, Kevan Thakrar, Miran Thakrar,Jordan Towers, Patrick Docherty, Brendan Dixon, Paul Bush, Frank Wilkinson, Alex Black, Nicholas Rose, Kevin Nunn, Peter Carine, 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.

Miscarriages of JusticeUK (MOJUK)
22 Berners St, Birmingham B19 2DR
Tele: 0121- 507 0844 Fax: 087 2023 1623

MOJUK: Newsletter 'Inside Out' No 445 (03/10/2013)

IPCC Have not Always Used Their Resources And Powers To Best Effect

One of our most important functions at the Independent Police Complaints Commission (IPCC) is the investigation of deaths following contact with the police. The importance of this work means that we (IPCC) need to be confident that we are carrying it out thoroughly, robustly and fairly. That is why we set up this review in 2012, and why we have engaged with a wide range of people, making sure that this included those who have been critical of our approach and our findings.

This has coincided with debates and discussions inside the IPCC about how we work, and how we can ensure quality and consistency. It also overlapped with Dr Casale's review of our investigation into the death of Sean Rigg, and the findings of the Home Affairs Select Committee's inquiry into our work. All have recognised that we operate within limited resources and powers; but they also pointed out that we have not always used those resources and powers to best effect.

We know that when we get this work right, the impact is powerful, for the individuals involved, for improved police practice and public confidence. But we also know that where we do not get it right, this adds to families' distress and to a lack of confidence in us and in the police service.

This review therefore provides us with an opportunity and a challenge. It is one that we are already responding to. We must ensure that we support, manage and train our staff to carry out this challenging and important role. As this progress report shows, we have already made changes to the way we work, and more are planned. We report on them under the three themes that emerged strongly from the review: independence, engagement and effectiveness – qualities that we must be able to demonstrate in our work and approach.

I am very grateful to all those who have given time to this review, or responded to the consultation, and for the assistance of the external reference group. I am especially grateful to bereaved families, for whom this has often meant a painful re-living of the worst time in their lives. At the end of this year, we will produce a final report, acknowledging in more detail all that has been said to us and setting out our full programme of actions in response. I know that we will be judged, not by the content of any report that we produce, but by the actions we take as a result and the quality and approach of the work we do.

Dame Anne Owers Chair IPCC September 2013

Introduction From the Review: In 2007-08, the IPCC carried out a review (the Stocktake) into the handling of complaints against the police, which resulted in recommendations for change in our own practices and those of the police. In February 2012, we announced that we would carry out a similar exercise in relation to our investigations of deaths during or after police contact – not least because we were aware of some of the criticisms of the way those deaths had been investigated and the outcomes of the investigations.

All deaths and serious injuries during or following police contact must, by law, be referred to the IPCC. They include: - road traffic fatalities involving the police - fatal police shootings - deaths in or following police custody - apparent suicides following police custody - other deaths where the actions or inaction of the police may have contributed to the death

We then need to decide whether these cases should be investigated, and if so, how they

should be investigated. Sometimes, the death is unrelated to the contact with police: for example where there has been an apparent suicide or a death by natural causes which was clearly unconnected to an earlier interaction between the individual and the police. Other deaths will require investigation, and we must decide whether to carry out a wholly independent investigation ourselves; to manage or supervise an investigation carried out by a police force; or to require the local force to investigate the death itself. Where we consider there may be a connection between police contact and the death, we will investigate independently.

Article 2 of the European Convention on Human Rights (ECHR) places an obligation on the state not to take life, except in very limited and defined circumstances, and to take reasonable steps to protect life where there is a real and immediate risk. If there is an indication that a death may be the result of police action, or failure to act, Article 2 requires there to be an independent and effective investigation to determine the circumstances and causes of the death.1 Our work is an important part of the way the state meets that obligation, alongside the work of coroners and the Crown Prosecution Service (CPS). The obligations arising from Article 2 shape the way that we investigate deaths involving the police. As well as determining how and why a person died, and whether any individuals are at fault, our investigations should seek to ensure that similar deaths can be prevented, and should effectively engage bereaved families in the investigative process.

Therefore, when we conduct an independent investigation into a death, we have a duty to the families of those who have died; we need to retain the confidence of the wider public in the independence and effectiveness of our work; and we must help the police learn the right lessons from these tragic incidents. As such cases inevitably – and quite rightly – attract a great deal of attention, our handling of them shapes public perceptions of the police complaints process and of our own role in holding the police to account. We need to be sure that our investigations are effective and thorough, fully independent of police and other interests, and that we proactively and sensitively engage with the families of those who have died.

Independence of the IPCC: A consistent theme in responses to our consultation is that the IPCC as an organisation, and its investigations, are not believed to be sufficiently independent of the police. Independence is a fundamental requirement of an Article 2 investigation into a death and the IPCC exists precisely for the purpose of providing independent oversight of the police complaints system. Perceptions of a lack of independence therefore have serious implications for public confidence in the organisation, the complaints system and also the police. As has been seen in other areas of public policy, trust in the effectiveness or independence of a regulator is closely aligned to trust in the service itself.

There are two main elements to this criticism: The IPCC is perceived as too close to the police institutionally and culturally. Many stakeholders were concerned about the number of IPCC staff – particularly IPCC investigators – who are former police officers and police staff. This was seen as resulting in favourable treatment of police officers by the IPCC during investigations. Concerns were raised that the IPCC has a tendency to believe police officers' accounts without question; that it under-uses its power to interview police officers under caution; and that it allows officers to confer before they give their account of an incident.

The active involvement of police forces in aspects of IPCC investigations is felt to undermine the independence of those investigations. There are two main ways in which this involvement of police in investigations arises:

- Before IPCC investigators arrive at a scene, the local police force is required to take control of the scene and preserve evidence. On arrival, the IPCC may continue to use the local police force

R v Paul (Accused Not Represented, Crown Should Not Make Closing Speech)

12. What arose was this. At the conclusion of the evidence counsel for the Crown made a final address to the jury in the usual way. It was only later that it occurred to the learned judge that, because the appellant was self-represented, the standard convention would not normally permit a final speech by the Crown. The judge then considered certifying the point to this court, but, for the reasons which he explained, he did not do so. This is the single ground which Miss Harris argues before us today and upon which we have granted leave.

13. We should interpolate this. There is a high responsibility on trial judges and trial counsel to guard against breaching this convention. Although we call it "a convention", it is in fact something more, and we need to consider the authorities.

14. We could begin with the case of Mondon [1968] 52 Cr App R, where this point was considered by this court. In that case Edmund-Davies LJ gave the judgment of the court. He drew attention to the impact which a speech might have had on the jury's determination of the issues in relation to facts which arose and the conviction was quashed. It appeared to be the case that where this convention -- if we may so call it -- was breached, the conviction would normally need to be quashed, though we note that in those days the proviso applied under the Criminal Appeal Act of 1968, whereas the determinative test which this court has to apply is as to the safety of the conviction.

15. In fact, the right for prosecution counsel to make a closing speech at all arose from section 2 of the Criminal Procedure Act of 1865, and a well-established rule developed whereby no such speech would be made where the accused person was unrepresented.

16. In the case of Stovell this court reconsidered the position, the judgment being given by the then Vice President, Rose LJ, [2006] EWCA Crim 27. In that case the Vice President said this: "So far as the prosecution's second speech is concerned, in the light of the procedural and evidential changes which have taken place since the decision of this Court in Mondon, we are by no means satisfied that in all cases ... it is necessarily inappropriate for prosecuting counsel to make a second speech."

17. We have been unable to find any other decision which takes this jurisprudence any further than that along this path, and in the later cases of Rabani [2008] EWCA Crim 2030 and Williams [2011] EWCA Crim 1739, this court declined to follow the path partly cleared by the earlier case, in both cases starting from the point that it had been improper for a final speech to be made.

18. We adopt the same course. Accordingly, the only question for us to consider is the same question which was considered both in Rabani and Williams, namely whether, in spite of this breach of the rule, the conviction can be said to be safe.

19. In this case we have no doubt whatsoever that this conviction was entirely safe. The evidence against the appellant was, as the learned judge noted in his sentencing remarks, overwhelming. The appellant's story, as the learned judge called it, was wholly incredible. There were many pieces of direct and circumstantial evidence to support the prosecution case: Mr Paul was not an employee or subcontractor of British Telecom; he was not authorised; he presented himself under a false name, used to reserve the hire car the subject of count 2 when it was delivered to him; he answered to that false name; he falsely claimed to have left his identity card at work when he had none; he represented that he lived at the bed and breakfast address to which the car was delivered; he had said "Oh shit" when the police attended; he was in possession of an e-mail confirming the booking of the other car; he was in possession of the keys to the count 1 car which was parked nearby; that car had been hired under another false name bearing similarities to the false passport. There were other overwhelming pieces of circumstantial evidence, not the least that he did not hold a full driving licence. He had

people as glamorous gangsters. "In my force area we have 43 organised crime groups on our radar. Most have their primary source of income in illicit drug supply, all of them are involved in some way. These criminals are often local heroes and role models for young people who covet their wealth. Decriminalising their commodity will immediately cut off their income stream and destroy their power," Barton said. "If the 'war on drugs' means stopping every street corner turning into an opium den and discouraging the mass consumption of laudanum, as was the case in the 19th century, then it has succeeded. But if the 'war on drugs' means trying to reduce the illicit supply of drugs, then it has failed."

Barton is one of the north of England's most experienced crimefighters and has pioneered initiatives to break up criminal networks in County Durham via his force's "Operation Sledgehammer". He also holds the national intelligence portfolio for the Association of Chief Police Officers across the UK. Under his watch as assistant chief constable of Durham prior to his appointment to the top post earlier this year, there was a recorded 14% drop in total crime figures for his region.

Barton joins a small band of senior UK police officers who have demanded a major rethink on drugs prohibition. They, in turn, are joined by the likes of Guatemala's president, Otto Pérez Molina, the entrepreneur Richard Branson, 500 top leading US business figures, the Economist magazine and the Observer in calling for an alternative, including an end to outright prohibition. It is estimated that some $100bn is spent fighting the "war on drugs" each year across the world.

The drugs policy reform group Transform Drugs Policy Foundation praised Barton's stance. Danny Kuschlick of Transform said: "We are delighted to see a serving chief constable who is willing to stand up and tell the truth – prohibition doesn't work. Chief constable Barton demonstrates a responsible attitude to drugs that is so often absent among professionals and political leaders. "He is that all too rare thing, a man who serves on the frontline, with principles and courage, who supports effective reform that best meets the needs of the communities that he serves. We must hope that this time more of his peers follow his lead."

Fraud Office to Examine Serco Tagging Contracts *BBC News, 27/09/13*

The government has handed information on security firm Serco to the Serious Fraud Office (SFO) following recent disclosures on overcharging. Two months ago, the Ministry of Justice said G4S and Serco had overcharged the government by "tens of millions" for electronic tags for criminals. At that time Justice Secretary Chris Grayling asked the SFO to consider a criminal case against G4S, and a file on Serco has now been presented. G4S did not to co-operate with an audit and was referred to the SFO. The Ministry of Justice said Serco allowed an "independent forensic audit", and information from that has now been passed to the SFO. "The SFO will consider whether an investigation is required into either or both suppliers," the ministry said in a statement. "As in any other case the decision as to whether an investigation is launched rests with the SFO."

An independent audit of all Ministry of Justice contracts with G4S and Serco is under way, and a wider review of all government contracts with the two firms is also being conducted. A Ministry of Justice spokeswoman said no new contracts would be awarded to either firm until its audit was complete. Serco said it "continues to believe that it has billed in accordance with the contract" with the Ministry of Justice, and would "repay any amount agreed to be due". Chief executive Christopher Hyman added: "We are fully co-operating with the Ministry of Justice and remain committed to doing the right thing to resolve their concerns." In July, G4S's chairman John Connolly told the BBC he felt the SFO had the appropriate powers to investigate alleged wrongdoing so the company requested that rather than an independent audit.

to undertake these scene-control and preserving tasks, under its direction, given the small number of staff the IPCC is able to deploy. - The lack of specialist skills within the IPCC results in the use of experts from local or neighbouring forces to assist independent investigations.

IPCC response to criticisms concerning lack of independence

Ensuring institutional and cultural independence from the police. Independence is a core value for the IPCC and it must be visible in all our work. We acknowledge the concerns that continue to be raised about our employment of former police officers and staff, and the impact this has on perceptions of our independence. Ex-police personnel bring valuable skills and expertise to the complex and challenging investigative work that we do. However, we need to ensure that their skills and experience are deployed as part of a diverse and multi-disciplinary staff team. For that reason, we have taken active steps to re-balance the investigative workforce to employ more investigations staff from non-police backgrounds, including in senior positions, and we will continue to do so as the organisation expands.

At the same time, we are ensuring that investigators work as part of a wider multi-disciplinary team, including lawyers, press officers and, crucially, commissioners. The IPCC's commissioners (who can never have worked for the police) provide independent oversight of all IPCC investigations and have overall accountability for this work. It is vital that their role is carried out effectively. For that reason, we have clarified and strengthened the role of commissioners in independent investigations, issuing new guidance earlier this year for our largely new commissioner team. Commissioners are a key part of the safeguards and assurances for families and the public about the independence of our investigations, but independence is not just the preserve of commissioners. It is essential that this is reflected in the culture and approach of all those who work for us, whatever their previous background.

The IPCC accepts that specific concerns are raised when ex-police staff investigate individuals in their former force. There are currently practical difficulties in ensuring this never happens, due to existing staffing and resource constraints in the Investigations directorate. New recruitment and the proposed expansion of the IPCC provide an opportunity to change our allocation procedures to address this concern directly. In the meantime, we have a process in place to actively identify and take action in relation to any direct conflicts of interest in each IPCC investigation.

Avoiding over-reliance on the police in investigations The IPCC recognises that taking early control of the scene of an incident involving a death or serious injury is an important part of ensuring public confidence in its investigative work. The time immediately following a serious incident, when the scene and evidence is initially secured and key accounts are taken, is vitally important for an effective investigation. The small size of the IPCC and its responsibility for the whole of England and Wales presents significant challenges for the fast deployment of IPCC investigators to the scene of an incident. The IPCC is reliant on the local police force to notify it of a death and to secure the scene and evidence initially. This will continue to be the case, even if the IPCC increases in size and has more investigators in more locations.

However, we propose to take steps to reduce our reliance on the police where possible and, where we have to rely on police, to be clear about what we require them to do and to hold them to account if they do not meet these requirements. We are doing more to ensure that:

- the police inform us about a death without delay
- IPCC investigators arrive at the scene as quickly as possible
- clear and confident direction and guidance is provided to police at the scene both before and after the IPCC arrive

- we use a wider range of experts in our independent investigations, including non-police experts and those who can provide advice on key issues in a particular investigation, for example relating to mental health or race.

IPCC engagement with bereaved families

Engagement with bereaved families is a fundamental aspect of all IPCC investigations into cases involving a death, and is essential in meeting the IPCC's Article 2 obligations.

Our approach to engagement with families attracted a great deal of criticism during the review. The listening days organised by INQUEST allowed some bereaved families to express their strong feelings about poor or insensitive practice in our interactions with them. We have also seen some examples of good practice, showing what can and ought to be done: offering condolences; giving clear advice about the IPCC's role; independence and the process of investigation; tailoring support to the families' needs and wishes; and maintaining open on-going communication with the family.

However, it is clear that this good practice has not been consistently applied across our investigations and that the families who responded to the review in general felt that they had not been treated sensitively enough or had sufficient involvement in the investigation process. Three themes emerged:

- Inappropriate and insensitive styles of interaction: Families undergoing the pain of recent and traumatic bereavement have reported occasions of being treated without sufficient courtesy, empathy or respect by IPCC staff.

- Lack of information: Bereaved families said that they had not always received the information they wanted and needed during the IPCC's investigation. For example:

- Many families felt that insufficient information was provided on the process itself including the roles and responsibilities of IPCC staff; how the family can participate in the investigation and what their rights are; and where to go for independent advice and support.

- Updates on the progress of investigations were not frequent enough, or were not provided when promised. Too often they took the form of impersonal template letters, simply listing actions being undertaken rather than providing meaningful information.

- information was not passed on to families and there was inadequate or inconsistent explanation about lack of disclosure.

Inadequate engagement: There were criticisms of the IPCC's general approach to engaging with bereaved families: - There is no clear protocol guiding IPCC staff's work with families. - Some families felt that those who had died were wrongly characterised or unfairly judged and in some cases that they themselves were under investigation. Inaccurate information in press releases was particularly distressing. - In some cases families felt they had too little part to play in developing the terms of reference and were not consulted about the direction the investigation took. - Families felt that they should have the chance to comment on the emerging findings and draft investigation reports but many were not given the opportunity to comment before reports were finalised. - Some families felt that the IPCC was too defensive in the face of criticism, which inhibited genuine dialogue and exchange between the IPCC and families. - IPCC response to criticisms around engagement with families

Improving our engagement with families: Families should be at the heart of any IPCC investigation into a death. Our investigations should seek to answer the questions they have about what happened to their relative who has died. It is vital to our effectiveness that families feel that they can trust the IPCC to find the truth about the circumstances leading to the death of their family member.

links that have been fostered with local groups and the community. Access to purposeful activity and visits also deserve to be singled out for praise. A clear positive culture and can-do attitude has been created and bought into by both staff and managers."

A Scottish Prison Service spokesman said: "SPS welcomes this report which the Chief Inspector of Prisons himself described as 'good and positive'. "We will consider and respond to all the recommendations contained in the report." He added: "SPS does not tolerate any acts of violence and procedures exist to reduce such risk to a minimum. Where appropriate, the circumstances are reported to the police for action."

John Hall Murder: Accused Paul Tate Dies in Prison Cell

One of three men jointly accused of killing Sunderland man John Hall has died in a prison cell. Paul Tate, 49, from Sunderland, was charged with murder after Hall's body was found by a dog walker in Durham. Mr Tate died inside a cell at Holme House prison in Stockton on Friday morning, Cleveland Police said. A Prison Service spokesperson said: "Paul Tate was found unresponsive in his cell by prison staff at 5:45am on Friday 27 September. Paramedics attended but he was pronounced dead at 8:26am. As with all deaths in custody, the Independent Prisons and Probation Ombudsman will conduct an investigation." Mr Tate, one of three people charged with Hall's murder, was due to appear at Newcastle Crown Court on Monday. A Cleveland Police spokesperson added: "Cleveland Police are investigating the circumstances surrounding his death on behalf of the coroner's office."

Time to End the War On Drugs', Says Top UK Police Chief

Henry McDonald, Observer, Saturday 28 September 2013

One of England's most senior police officers has called for class-A drugs to be decriminalised and for the policy of outright prohibition to be radically revised. In a dramatic move that will reignite the debate over the so-called war on drugs, Mike Barton, Durham's chief constable, has suggested that the NHS could supply drugs to addicts, breaking the monopoly and income stream of criminal gangs. Comparing drugs prohibition to the ban on alcohol in 1920s America that gave rise to Al Capone and the mafia, Barton argues that criminalising the trade in drugs has put billions of pounds into the pockets of criminal gangs.

Writing in the Observer, Barton said: "If an addict were able to access drugs via the NHS or something similar, then they would not have to go out and buy illegal drugs. Buying or being treated with, say, diamorphine is cheap. It's cheap to produce it therapeutically. Not all crime gangs raise income through selling drugs, but most of them do in my experience. So offering an alternative route of supply to users cuts their income stream off. What I am saying is that drugs should be controlled. They should not, of course, be freely available," Barton wrote. I think addiction to anything – drugs, alcohol, gambling, etc – is not a good thing, but outright prohibition hands revenue streams to villains. Since 1971 [the Misuse of Drugs Act] prohibition has put billions into the hands of villains who sell adulterated drugs on the streets. If you started to give a heroin addict the drug therapeutically, then we would not have the scourge of hepatitis C and Aids spreading among needle users, for instance. I am calling for a controlled environment, not a free-for-all."

Unlike the criminals who supply drugs, Barton said that addicts "must be treated and cared for and encouraged to break the cycle of addiction. They do not need to be criminalised." Barton contends that decriminalisation and offering an alternative, controlled legal supply would also deal a mortal blow to criminal gangs and dent their image among some young

The Court's decision: It was the defendant's case that the fact that the claimant's profile was not already held on the NDNAD was simply an accident of timing. After 5 April 2004 any person convicted of any one of the offences committed by the claimant would expect his sample to be taken and his DNA profile to be retained indefinitely.

In S and Marper v United Kingdom (2009) the Strasbourg Court found that the blanket and indiscriminate nature of the powers of retention of the fingerprints, cellular samples and DNA profiles of persons suspected but not convicted of offences was a disproportionate interference with Article 8. PACE has been subsequently adjusted to take account of this judgment. But that case did not deal with the taking of a sample without the individual's consent when that individual had in the past been convicted of serious offences. In S, it was the "indiscriminate reach of the statutory power" that rendered the retention objectionable, in particular, "its tendency to stigmatise unconvicted persons who had come under suspicion".

Pitchford LJ, giving the main judgment, accepted the defendant's contention that the statistical probability that any one of the samples gathered would produce a match with the crime scene database was not determinative of the issue of proportionality: In my judgment, acceptance of propensity to commit offences as a measure (albeit an imprecise measure) of probability in the detection and proof of further offences is now so widespread that the defendant was fully justified in placing weight upon it. [40]

In the light of this, and their finding that "significant weight" was to be attached to the legitimate interest in the detection of crime, the Court dismissed the claim that the claimant's Article 8 rights had been inadequately protected.

H**MP Low Moss Prison Records 165 Assaults in a Year** *BBC News Scotland*

An inspection report on Low Moss Prison near Bishopbriggs, Glasgow revealed 15 serious attacks by prisoners on fellow inmates in 2012-13. There were a further 140 assaults by inmates on inmates, and 10 assaults on prison staff. The Scottish Prison Service said it did not "tolerate any acts of violence" and said it had procedures to reduce risks. The report also recorded "five incidents of concerted indiscipline" - most of them said to be sit-down protests. HM Chief Inspector of Prisons David Strang said Low Moss had "appropriate staffing levels" to "ensure good order is maintained". It added "most prisoners reported that they feel safe within HMP Low Moss".

The report drew attention to the way in which the prison was dealing with a so-called "dirty protest". At the time of the inspection, a prisoner was being switched between two cells to allow each of them to be cleaned in turn. Repeated deep cleaning of the cells meant the cells required re-plastering and re-decorating "as a matter of urgency".

Inspectors said it was "concerning to note that there was no one, national, recognised protocol or standard operating procedure which deals with such situations". They recommended the Scottish Prison Service (SPS) "ensure that a national protocol for dealing with prisoners on dirty protests is designed and implemented across the estate".

The report also drew attention to the average time given to prisoners who were receiving methadone. This was said to be one minute per patient. It stated: "This does not constitute good prescribing practice and should be reviewed. This is a weakness."

Overall, however, the report found that for the jail to be "functioning well given it has only been up and running for just over a year is a considerable achievement". It also praised the number of inmates taking part in 35 hours of "purposeful activity" - such as work or education each week. Mr Strang said: "This report is positive and I am particularly impressed with the

We agree that we need to improve our engagement with families as a matter of priority, to ensure that it is proactive and sensitive and that families are as engaged as they can be, or want to be, in the investigative process. This is not only good practice, it is also a requirement of any investigation into a possible breach of Article 2 of the ECHR. We know, from the families we have heard from, that where we have been able to establish and sustain good and professional relationships with families, this has had a positive effect on trust in the investigation – provided that the investigation itself is thorough – even if the outcome is not what the families expected or hoped for.

All the IPCC's dealings with families need to be informed by the understanding that they have experienced a bereavement in what are usually highly traumatic circumstances and that they are probably going through the worst experience of their lives. We need to show respect and sensitivity in relation to their loss. Open and sensitive early contact is crucial, even though this is the most difficult time for families; it is also important to maintain and develop the relationship as the investigation progresses.

Effectiveness of IPCC investigations : The quality and thoroughness of IPCC decision-making and investigative work attracted considerable concern. Concerns were also raised about the limited impact of IPCC investigations, both in terms of how individual officers are held to account and the implementation of long-term changes to prevent future deaths.

Stakeholders on all sides identified the strain on the IPCC's resources as having an impact on effectiveness. Funding limitations were felt to affect decisions made by the IPCC about whether to conduct independent investigations as well as the timeliness of investigations. Capacity issues were said to lead to frequent changes in lead investigator, as well as an over-reliance on police resources in investigations. However, the issues identified go beyond problems of limited resources, with criticisms of the robustness and thoroughness of approach, and about gaps in skills, expertise and guidance.

Below, we identify the key issues raised in relation to the different processes in an investigation. Background information about the investigative process is included in Annex A of this report. Key issue 1: Decisions about whether the IPCC will investigate an incident – timeliness, consistency and transparency

- The IPCC's decision-making about whether to investigate an incident involving a death is described by a range of stakeholders as lacking in transparency, inconsistent and shaped by factors other than the seriousness of the case (such as resource constraints).
- Delays in the IPCC making a decision about whether to independently investigate a case are also noted by some stakeholders.
- Many stakeholders consider that the IPCC should independently investigate all deaths that have occurred during or after police contact.

Police Officers Guilty of Forcing Girls to Walk Barefoot Through Manure

Two police officers have admitted behaving in a threatening manner towards two teenage girls. The girls had been detained after a disturbance at a residential care home in Easter Ross. Tain Sheriff Court was told that they were handcuffed and driven to a farmyard by PC Robert Ovenstone and PC Stuart Kelman. Ovenstone also admitted forcing the girls to walk through manure without shoes on. He also pleaded guilty to behaving in a threatening manner towards a young boy at the same care home. A charge of abducting the girls was dropped by the Crown. Sentence was deferred until next month for background reports on both officers - who remain suspended from duty. *BBC News, 25 July 2013*

Martin O'Hagan Murderer - 18 Year Sentence Reduced to 3 Years *BBC News, 25/09/13*

A supergrass who got a heavily reduced jail sentence for agreeing to testify against men accused of a journalist's murder will not have his deal revoked. The Public Prosecution Service (PPS) is no longer going to seek a review of Neil Hyde's sentence, even though he was accused of lying during the case. Hyde's 18-year jail term for his part in the killing of Martin O'Hagan was reduced to three years, after he agreed to enter an 'assisting offender' deal. Mr O'Hagan, a Sunday World newspaper reporter was shot dead in 2001 in Lurgan, County Armagh, as he walked home with his wife.

Hyde, a self-confessed member of the Loyalist Volunteer Force (LVF) paramilitary group, was originally charged with the murder. He later admitted having a role in the killing and offered to give evidence against eight other men he said were involved. He pleaded guilty to 48 offences and, in return for agreeing to tell the truth, he was offered a reduced prison sentence.

However, in January this year, the PPS said the evidence he had provided was not enough to secure convictions for the murder. Six months later, the PPS said it wanted the court to review Hyde's reduced sentence on the basis he had breached his assisting offender agreement, amid allegations that he did not tell the "full truth". But in a statement on Wednesday, the PPS confirmed it was withdrawing its challenge to Hyde's three-year jail term, saying it was no longer in a position to ask a court to review the sentence.

"Following further examination of the evidence previously made available by police, extensive police enquiries and PPS consultation with the relevant witness, it is considered that the evidence which is now available is not sufficient to establish a breach of the agreement by Neil Hyde to the requisite standard. Accordingly there is no longer a basis to refer the matter to the court. The court has therefore been informed that the PPS no longer seeks the review of the sentence.

"The director of the PPS now intends to exercise his power under section 55 (4A) of the Police (Northern Ireland) Act 1998 to refer the matter to the Police Ombudsman for investigation." Hyde had originally been given an 18-year sentence in 2012 for conspiring to carry a firearm with intent to wound and other offences. However, his sentence was reduced by 75% because of his co-operation under the Serious Organised Crime and Police Act 2005. He was given a further reduction for his guilty pleas resulting in the sentence of three years.

Reduced Sentence For Drug Dealer Supergrass Shaun Mcmanus *BBC News, 25/09/13*

A major drug dealer, turned supergrass, has had a nine-year jail term reduced to nine months licensed parole and seven months imprisonment. Shaun Paul McManus, 29, has already served six months on remand and the judge said it would not be in the public interest to return him to jail for a couple of weeks and free him. He said normally McManus' drug dealing would have meant a nine-year sentence.

However, being an 'assisting offender' entitled him to a reduced sentence. McManus, arrested with others last October, following "an intelligence-led operation", has recently signed a contract under the Serious Organised Crime and Police Act (SOCPA) to become an 'assisting offender'. However, the actual details of that the agreement were not disclosed in court.

Earlier in the case, a prosecution lawyer told the court that for sometime police had McManus and others, and a number of properties under surveillance in and around the Coleraine and Portstewart areas, which also led to arrests in Londonderry. The lawyer said that following his arrest McManus admitted that between 14 September 2010 and October 2010 he had been heavily involved in drug dealing.

prisoners and immigrants claiming political asylum, the governmental lens has focused on alterations to the system to prevent abuse and to tighten the state purse strings, inadvertently but beneficially to any corrupt behaviour of public servants, the state has removed all safeguards from any innocent prisoners who face the 21st century British 'Death Sentence.' Furthermore on 1st April 2013 the L.S.C was abolished and replaced by the 'Legal Aid Agency', an executive agency that has considerably tighter ministerial control over Legal Aid funds.

Given these circumstances, Whole Life Tariff prisoners could legitimately have applied for a Judicial Review of the L.S.C's decision to exclude these individuals from ever receiving Legal Aid. Unfortunately to undertake such legal action requires assistance from a Legally Aided lawyer, or private funding, and applications for Legal Aid would be refused on the grounds that such action could have no impact upon the applicant's parole hearings, as Whole Life Tariff prisoners are never entitled to apply for parole. Moreover, media articles claiming that I have been legally aided for parole hearings are simply lies.

The unintended consequence of the changes in the Legal Aid rules has given all penal institutions carte blanche to ignore all regulatory safeguards if they should wish to do so, without fear of legal recourse from prisoners in their charge, who cannot fund a lawyer privately; and realistically not many long term prisoners have access to private funds as many are without family or earning potential. The government has 6 months to implement reviews into Whole Life Orders, this does not mean that people like me will be released under this system. I would be due for a review of my sentence as I have served over the tariff set by my trial judge and the Lord Chief Justice in 1986. For the purposes of this paper, the review might just entitle me to access to Legal Aid, giving me equality with other prisoners who can make claim for issues which affect the length of their sentence.

Jeremy Bamber: A5352AC, HMP Full Sutton, Stamford Bridge, YO41 1PS

No Breach Of Privacy To Request DNA Sample From Ex Con

DNA code analysis application of R v Chief Constable [2013] EWHC 2864 (Admin): The High Court has ruled that it is not a breach of the right to private life to request DNA samples from those who were convicted of serious offences before it became commonplace to take samples for the production of DNA profiles for the investigation of crime.

Background Facts: The claimant was asked, by reason of his previous convictions, to provide a DNA sample under the Police and Criminal Evidence Act to enable the police compare the his DNA profile with those held by the police in connection with unsolved crime. He refused to give the sample when it was sought initially, so he was sent a letter requiring him to attend at a police station to provide the sample on pain of arrest. He applied for judicial review of this requirement, arguing that it was an unlawful incursion on his right to privacy under Article 8.

In the light of the fact that the claimant's previous convictions had been for manslaughter and kidnapping, the police had identified him as falling within the criteria for a nationwide operation to ensure that those convicted of homicides and/or sexual offences have a confirmed DNA profile held on the National DNA Database. The sample requested from the claimant was destined for comparison with the 158,191 crime scene profiles held in the NDNAD. The issue therefore for the court in this case was whether the collection of the claimant's sample for the purpose of speculative checking against other samples and the retention of his DNA profile once produced was a proportionate exercise of the statutory power under PACE.

the statutory rights afforded to each prisoner whilst imprisoned by the state, and the withdrawal of Legal Aid made PSI's and PSO's no longer legally enforceable for prisoners who have no access to private funds. Prisoner's statutory rights are governed by human rights but are only enforceable if legal expertise is available. In the absence of Legal Aid being available to prisoners, the only alternative is private funding for things unrelated to parole hearings or the length of an individual's imprisonment.

Legal Aid and Whole Life Orders: There are a group of lifers who have been given whole life terms of imprisonment and these forty or so prisoners, of which I am one, will never be eligible for parole hearings. Therefore these prisoners are now excluded from ever obtaining Legal Aid funding, because they will never be eligible for parole and nothing could impact upon the length of their sentences, consequentially these prisoners are excluded from ever obtaining Legal Aid funding for any issue. This problem relating to those with Whole Life Sentences, appears to have been completely overlooked by the former L.S.C. Whereas all other prisoners can petition Home office ministers for a prerogative of pardon, and receive publicly funded legal help to do so, whole life term prisoners are expressly forbidden from undertaking such a petition.

Whole Life Sentence prisoners are already excluded from Legal Aid for appeals against their sentence, and are very much at the mercy of charitable organizations, hand-outs from friends or relatives; and the altruistic work of pro-bono lawyers and barristers which is becoming more difficult to obtain particularly in the current economic climate.

Political Opposition to Legal Aid and Access to Media for Prisoners

MP for Witham Priti Patel, promotes making access to justice more difficult for anyone. Comments made recently attack judgments made by the European Court which, "undermine the sovereignty of our parliament," and further, "this should also include preventing prisoners from using Legal Aid to fund their cases." Ms Patel is intent on speaking publicly about me having access to media and legal representation, but she has overlooked the fact that lawyers working on a pro-bono basis brought my case in the ECHR Grand Chamber. I was not and currently cannot be Legally Aided in any way. The Ministry of Justice has also further blocked my application for a filmed prison interview, as there is no Legal Aid available to me to fight this decision, and without private funding for this, I cannot not appeal further than the ministerial desk of Chris Grayling, Minister for Justice. Again, politics defines the rights of those maintaining their innocence, and not the judiciary.

Indulgent television programmes on people who have admitted murder, have been aired in the past 18 months where prisoners have been filmed in their cells discussing the appalling crimes they have committed. This must be stopped. In my view only prisoners who maintain innocence who require public exposure to raise awareness of their cause, should have access to media. In all the discussions about consideration for victims, why are they not considered when murderers are broadcast for the most gratuitous and unethical purposes?

In my previous article on Whole Life Tariff Orders, I discussed the abolition of the Death Penalty in the 1960's, and this was partly because innocent people were hanged. This progressive move was reversed with the Home Secretary, Douglass Hurd, upgrading sentences to Whole Life Orders retrospectively and in secret without advising the prisoner that they would die in prison. Whole life Orders are set to grow aggressively over the coming years with the knee jerk reactions of politicians eager for votes, after facing unpopularity on an unprecedented scale from the recent scandal of MP's expenses; the inadequacy of the Police, and their watchdog the IPCC.

With needless media fury over what is seen as abuse of the Legal Aid system by high profile

The court heard that during that period McManus had been involved in the movement of up to half a million pounds worth of drugs, much of which was recovered by the authorities. He had told detectives of delivering and collecting drugs all over Northern Ireland, picking up shipments from lorry drivers coming off various ferries. McManus told officer he had picked up "white bars" for cutting, which he took to be cocaine, while on other occasions he was given "green bars", which he he thought was cannabis.

The prosecution lawyer said because McManus was not certain of the type of drugs he was handling on those ocassions before his arrest, he was only charged with attempting to possess, control, or supply in those cases of drug dealing. The judge said that McManus' previous lifestyle, while financially rewarding, was highly illegal, but he had now taken a completely different course. He told the court that one could only imagine the serious toll that dramatic change has taken, not only on McManus' life, but on that of his family as well.

Prosecuting counsel said that while McManus was involved in both the dealing and distribution of drugs up until the time of his arrest, but had now shown "a willingness to give evidence, if required, against others". Defence counsel said that it was recognised that the step McManus had taken has been "at a significant personal cost".

McManus, now in the care of the witness protection unit, pleaded guilty to over 20 charges involving the possession, control, supply and attempted supply of Class A, B and C drugs.

Vitkovskiy v. Ukraine (Six Violations of Article 3)

The applicant, Vikentiy Vitkovskiy, is a Ukrainian national who was born in 1980 and is currently serving a prison sentence in Kryvyy Rig (Ukraine) following his conviction in criminal proceedings unrelated to his present case before the European Court of Human Rights.

The case concerned Mr Vitkovskiy's allegations of police brutality and degrading conditions of detention in connection with two sets of criminal proceedings brought against him in 2004 for burglary and theft.

He was ultimately found guilty in both sets of proceedings. He was released in January 2009. He alleged in particular that during his questioning on 28 June 2004 the police had punched, kicked and strangled him, had put a gas mask on his face so that he could not breathe and had given him electric shocks to his fingers and testicles.

He also alleged that the authorities' ensuing investigation into his allegations of ill-treatment had been inadequate. As concerns the conditions of his detention, he alleged in particular that his cell and bed linen were infested with insects in Dnipropetrovsk pre-trial detention centre and that there was insufficient water in Zhovti Vody prison, meaning that 140 prisoners only had access to 12 water taps for two and half hours per day. He further alleged inadequate medical care during his detention and that, as a result, he had lost 16 kilos and his already fragile health – due to duodenal and gastric ulcers – had deteriorated. He relied in particular on Article 3 (prohibition of inhuman or degrading treatment).

Violation of Article 3 – on account of the ill-treatment to which the applicant had been subjected in police custody - Violation of Article 3 (procedure) – on account of the lack of an effective investigation of the applicant's allegation of ill-treatment by the police - Three violations of Article 3 – on account of the material conditions of the applicant's detention in the Dnipropetrovsk SIZO, of the material conditions of the applicant's detention in Zhovti Vody prison no. 26, and of the lack of adequate medical care for the applicant throughout his detention Just satisfaction: EUR 9,000 (non-pecuniary damage)

Denial of Contact with Father too "Draconian" - Court of Appeal

Rosalind English, UK Human Rights Blog, 26/09/13

Father-and-child-holding--006M (Children) [2013] EWCA Civ 1147, 20 September 2013

The Court of Appeal has taken the unusual step of reversing a denial of contact order, by reviewing the question of the proportionality of the order in relation to the children's right to family life under Article 8.The appellant father appealed against the refusal of his application for contact with his three young sons. He had a history of violence and previous criminal convictions all but one of which, though distant in time, related to violent behaviour, including causing grievous bodily harm with intent.

Following repeated episodes of abuse, which was often witnessed by the boys, the mother had left the family home with the children and had taken up accommodation in a women's refuge. She voiced fears of their abduction out of the jurisdiction and her own personal safety to the extent of "honour based" violence and death at the hands or instigation of the father. When he applied for contact Cushing J found that the father had minimised his behaviour and blamed the mother as the victim of his violence. She concluded that he had failed to show any lasting benefit from therapy and his behaviour was likely to destabilise the children's home and security, which was provided by the mother.

Court of Appeal allowed the appeal. - Reasoning behind the decision

The judge's assessment of the parents' characters, past behaviour and present attitudes were entirely dependent upon finding primary fact, interpreting and drawing reasonable inference from the same. Her conclusions were justified and unassailable on appeal. It was "exceptionally rare" for an appellate court to contemplate reversing the evaluation of an issue which depends upon primary facts. Nevertheless, there had to be careful scrutiny of the outcome reached. Her order had been draconian, and therefore disproportionate under Article 8(2) of the European Convention of Human Rights. The child's rights take priority above those of his parents (see YC v United Kingdom (2012) 55 EHRR 967 at para 134: family ties may only be severed in very exceptional circumstances and that everything must be done to preserve personal relations and, where appropriate, to "rebuild" the family

An order denying contact could only be lawful within the meaning of Article 8(2) of the Convention if it was necessary in a democratic society for the protection of the right of the mother, and consequently the minor children in her care, to grow up free from harm. In order to reach that conclusion the court must consider and discard all reasonable and available avenues which may otherwise promote the boys rights to respect for family life, including, if in the interests of promoting their welfare during minority, contact with their discredited father. In this case there had been insufficient examination of whether the risks could be sufficiently guarded against by careful and professional arrangements for setting up the contact and for close supervision during it.

The prospect of the children having any relationship with a non-resident parent was highly desirable and contact should not be denied unless the child's welfare demanded it. Domestic violence was not in itself, a bar to direct contact, but had to be assessed in the circumstances as a whole (L (A Child) (Contact: Domestic violence), Re [2001] WLR 339). The judge had failed adequately to address why the children's safety and the management of the mother's anxieties could not be achieved under any circumstances of supervision.

The case was remitted to the judge for rehearing on the issue of availability of adequate resources, including accommodation and personnel, to supervise contact strictly and securely between the father and the three boys.

Changes in the Legal Aid Rules: Consequences for Prisoners

Prison Writings: Jeremy Bamber, 26th September 2013

What is Legal Aid? Legal aid is a payment from public funds, given to people who cannot afford to pay for legal advice themselves, and this has underpinned the UK's criminal justice system for more than half a century. Article 6 of the European Court of Human Rights entitles each person facing criminal charges the right to a fair trial. There must be equality of arms between state and the Defence, which includes full disclosure of all relevant information and proper legal representation for the defendant. If the accused cannot afford to pay for legal representation then the state should have a statutory obligation to provide the necessary funding for this assistance.

Why do Prisoners need Legal Aid? A convicted prisoner has a requirement for legal help which does not stop when they are living in prison. There could be any number of situations where the intervention of courts or judges may be required. For instance; the abuse of process within prison is kept to a minimum because prisoners have always been able to seek the protection of the law through legal representation funded by Legal Aid. This might be something fairly minor, such as a prison not providing those in their custody with food for 24 hours, but could range to something major, such as withholding someone's mail indefinitely when contact with the outside, in particular relatives, is key to the rehabilitation and wellbeing of prison communities. Other issues could be withholding medicines or obstructing access to general or specialized healthcare.

This could make prison environments more dangerous places than they currently are; particularly difficult or volatile prisoners on extremely long sentences with grievances in a pressurised environment, might act violently towards others and feel that there is no alternative but to hit out because they do not have other options with access to lawyers to make claims through the proper channels. The public at large may not care about the prison population generally, but the people working in prisons are at risk, this includes officers, teachers, psychologists and other members of administrative or contracted staff who are public servants and who are already facing the dangers of prison life whilst carrying out their duties. Society also relies on rehabilitation of prisoners for the long term benefits of society.

In 2000 the Legal Aid Board was replaced by the Legal Services Commission (L.S.C.), which was a non departmental public body, or government Quango. Under the L.S.C access to legal representation has gradually been stripped away from convicted prisoners, by the reduction of access to Legal Aid in order to obtain professional advice about situations which occur within the prison. Prisoners need access to Legal Aid in order to obtain the necessary protection against the state getting it wrong or becoming oppressive, as well as straight forward matters such as parole and security re-categorisation.

By 2010 this blanket protection of prisoners rights afforded by the L.S.C was removed further, so that Legal Assistance would only be available to determinant sentenced prisoners if the legal issue would impact upon the time they would spend in prison. For indeterminate sentenced prisoners ("lifers") Legal Aid would only be made available if the issue requiring Legal Aid would affect their parole outcome. For example someone on a whole life sentence such as myself is excluded from receiving Legal Aid for security categorisation as this does not relate to the length of my sentence.

An unintended consequence of this action by the former L.S.C's decision was that prisoners no longer have a legally funded way of ensuring that Prison's in England and Wales abide by either Prison Service Orders (P.S.O's), or Prison Service Instructions (P.S.I's).[8] These are