adjudication on the allegations against Odigie before the transfer took place.

Judge Mott said Odigie's application for judicial review "fails on all grounds". The judge said a gist of the accusations against him "does set out a consistent pattern of information pointing to pressure being put on other prisoners to convert to Islam, and the use of threats to those who do not comply". The cell search was "prompted by intelligence, and proved to be absolutely justified". The judge added: "The discovery of a home-made weapon in his cell appeared to substantiate this intelligence." He ruled: "In my judgement the undisputed facts and background were sufficient to justify action being taken without waiting for the result of the adjudication. The finding of the weapon was a serious matter. The background of perceived threats and bullying clearly had to be borne in mind also, but was not needed to justify taking action. In those circumstances, any difficulties in judging the reliability of the security information do not undermine the decision to act."

Children/Young People In Custody - Few Improvements, Many Concerns

Analysis of the experiences of 15-18-year-olds in prison - Establishments still struggling to manage some of the most challenging or vulnerable - the population of young men who said they were from a black and minority ethnic background remained stable at 45%; - the population of young men who described themselves as Muslim has remained stable at 22% after considerable increase from 13% in 2009-10 to 21% in 2011-12; - A third of young men had been in local authority care and almost nine out of ten had been excluded from school; - 74% of young men said most staff treated them with respect compared with 64% in 2011-12; - 90% of young men said they wanted to stop offending but a higher proportion than last year thought they would have problems getting a job on release; - 51% felt they had done something in the establishment that would make them less likely to offend in the future, compared with 45% in 2011-12; - the number of young women held is very small and reduced further in 2012-13; 12-18-year-olds' perceptions of experience in secure training centres Generally most young people were positive about their treatment and conditions in which they were held. However, in some important areas a sizeable minority of young people reported negatively and the range of some results across establishments is concerning. - most young people felt safe, felt that staff treated them with respect and that the education they had received would help them; - 16% of children and young people said they would have no-one to turn to if they had a problem; - 30% said they had been physically restrained by staff; - 44% of young people said they were from a black or minority ethnic background and 19% said they had a disability. In some important areas, young people from all minority groups reported different experiences from the population as a whole. More work needs to be done for these minority groups.

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, John Twomey, Thomas G. Bourke, David E. Ferguson, Lee Mockble, George Romero Coleman, Neil Hurley, Jaslyn Ricardo Smith, James Dowsett, Kevan 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,

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MOJUK: Newsletter 'Inside Out' No 456 (19/12/2013)

Victor Nealon A Miscarriage of Justice Conviction Quashed After 17 Years In Jail

A man who spent 17 years behind bars after being wrongly convicted of a sexual assault has been freed by the court of appeal after DNA evidence pointed to another man as the perpetrator. Victor Nealon, a former postman, has always maintained his innocence. He was convicted in January 1997 of the attempted rape of a woman leaving a nightclub. Three appeal court judges quashed the conviction after a hearing lasting around an hour at the Royal Courts of Justice, on Friday 13th December. Lord Justice Fulford said the court would set out its full judgment at a later date. The crown said it would not seek to appeal against the ruling.

The Criminal Cases Review Commission (CCRC) referred his case - which since 2010 has been highlighted by the Guardian in its Justice on Trial series - to the court of appeal earlier this year. It accepted Nealon's legal team's argument that DNA traces on the 22-year-old victim's blouse and underwear belonging to another unknown male made the conviction unsafe

Nealon had twice before appealed to the CCRC, but the CCRC had resisted calls to conduct DNA tests on evidence. The solicitor Mark Newby, of Jordan's Solicitors in Doncaster, who took up the case in 2008, commissioned independent experts and proved that the samples, from an unidentified male, could not have been Nealon's. The crown argued that the DNA evidence was neutral, as samples could have been from other sources, such as the shops where the victim bought the clothes. But lawyers for Nealon said the position of the DNA samples was consistent with the description of the assault, and on more than one item of clothing.

Peter Willcock QC, for Nealon, argued that had the DNA evidence been provided at the original trial it would have been "explosive". Willcock told the court that the fact Nealon had always requested testing of the clothes for DNA evidence, which could have identified him had he been the attacker, underlined his innocence. The CCRC carried out extensive checks to match the DNA profile found on the victim's clothing to people who had handled the evidence or knew the victim, but found no match.

Leo O'Toole, a friend of Nealon's who has campaigned for his release, said it was a great day, but it had taken too many years to secure justice. "The overturning of this conviction shows how difficult it can be to right a wrong. The damage to Victor – and to the victim – is irreversible. She will also now know that the real perpetrator got away free." He added: "Victor has been emotionally and physically traumatised and is effectively homeless." He said that Nealon had been assaulted in the notoriously tough Wakefield prison even within the last few weeks.

Newby said: "It's a serious miscarriage of justice, and it's been hard fought. But it also demonstrates the importance of appeal lawyers being able to access evidence from old cases, as there clearly could be other wrongful convictions out there in cases when exhibits are withheld." He said they would be deciding whether to seek compensation for Nealon's years in prison in the new year. While the thrust of the appeal was the fresh DNA evidence, the court also heard there were concerns about witness identification of Nealon, as statements said he had distinctive facial features including a lump on his forehead that did not match Nealon's. - Nealon, 53, appeared via videolink from Wakefield prison, and spoke only to say: "Thank you. Thank you very much." He had been serving a discretionary life sentence but was not considered for parole because he consistently denied the offence.

Justice for Jack Dempsey Another Joint Enterprise Case

His crime was to behave bravely by pursuing a criminal assailant to detain him and for that he received a sentence of life imprisonment.

The Party: In January 2003, Jack was out with a friend and acquaintances, Nicki Miller, sisters Stacey and Ashley Faunch, and Stacey's boyfriend, Tyrone Woolley. They were celebrating Nicki's eighteenth birthday. Jack was twenty-one, Woolley was twenty-three and the sisters were both under twenty years old. Nicki was the only one of the party who Jack knew as a friend. The others were just acquaintances. They went to a disco, The Boulevarde, in London's Ealing Broadway, and had a good time. As the party left the club they saw an abusive row going on between some East European guys and three young men, two black guys and twenty-seven years old Paul Carr, who was of mixed race. They deliberately avoided this fracas by turning into a pedestrianized shopping precinct. But the row tailed off just then and Paul Carr and his companions followed them into the precinct.

The First Incident: What happened next is attested to by witnesses. Paul Carr and his mates caught up with Nicki Miller's party near a well known horse statue just off Uxbridge Road. They started chatting-up the girls, who told them they had boyfriends. At first, the encounter was good-natured but Paul Carr persisted with his unwelcome advances and the exchanges became heated. Tyrone Woolley then produced a flick-knife from his hip pocket and threatened Carr. This was the first time anybody else in the party knew Woolley had a knife on him. Jack was alarmed by this development and interposed himself between Woolley and the other guys. Carr's two companions were also worried and pulled Paul Carr away, saying they didn't want any trouble. Woolley then put the knife away. As the two groups parted, Carr pulled free of his mates and returned to pester Ashley Faunch. He started to paw her and she warded him off. A witness overlooking this incident from his bedroom window testified to exactly what happened then. As Ashley fended him off, Carr punched her so forcefully in the face that her tooth penetrated her cheek. She fell unconscious to the ground. Carr turned and fled immediately after delivering this vicious punch. The others, including Carr's companions, ran to help Ashley but Jack chased after Carr straight away. As he ran around the corner on to Uxbridge Road, Carr stopped and tried to punch Jack, but missed. Jack tried to punch back but Carr caught his arm and threw him down, then he fled again. Jack got up and pursued Carr again. He did not know that Tyrone Woolley and Stacey Faunch had joined the chase behind him at that point.

The Fatal Second Incident: Paul Carr ran about two hundred metres into another disco where he was already known as a troublemaker. The bouncer, Mr Ngei, grabbed him and started to push him back out just as Jack arrived. Jack was panting for breath, but he called for the receptionist to call the police and he shouted at Carr, "Why are you punching girls?" He said this hoping the bouncer would help him to hold Carr until the police arrived. Woolley and Stacey arrived behind Jack as Carr was forced out of the doorway. Carr threw a punch at Jack as soon as the bouncer released him, but missed. Jack tried to pin his arms but Carr pulled away and then threw a punch at Woolley, who scuffled with him. Woolley then turned and ran from the scene. Paul Carr pulled his shirt off, revealing a blood wound to his side. He then collapsed. At that point, Jack and Stacey realised Woolley had used his knife. They too then ran from the scene. This all took place in less than a minute.

The Aftermath: Jack and Stacey returned to the horse statue to rejoin Nicki Miller and Ashley Faunch, who had recovered consciousness by then. There was no sign of Tyrone Woolley so Jack called him on his mobile. Woolley agreed to return to meet them. When he came

Still No Justice as Babar Ahmad and Talha Ahsan Change Pleas

Babar Ahmad and Talha Ahsan, two British men extradited to the US in October last year after long court cases, appeared in court in New Haven yesterday, Tuesday, and changed their pleas to guilty. In the US 97 percent of federal cases in 2012 ended in guilty pleas. This allows the accused to "plea bargain"—a guilty plea is exchanged for a dramatically reduced sentence. If found guilty without a plea bargain, Talha would have faced a sentence of 70 years. This is now reduced to 15, which will include the years he has already been detained. Babar could still face a 25 year sentence. They will now also have the possibility of serving time in a British prison.

Talha's brother Hamja Ahsan told Socialist Worker, "We are just hoping that the UK and US governments work together so that I can get my brother home as soon as possible." Moazzam Begg of Cage Prisoners said, "We must be careful against seeing this as an admission of guilt. Rather, Babar had little choice but to make this decision after finding himself amid torturous conditions within the impossible labyrinth of US injustice. "This episode is a damning indictment of a system that does not rest until it saps its victims' hope and tramples their dignity underfoot."

Babar Ahmad spent eight years fighting extradition to the US. Talha also fought from the time of his arrest in 2006. The men have been held in solitary confinement in "supermax" prisons since they were extradited. The two are charged under terrorism laws, accused of running websites which supported Islamist fighters in Chechnya and Afghanistan.

Muslim Accused of Intimidating Prisoners to Convert to Islam

rish Indpendent, 04/12/13

A Muslim jailed for his involvement in the killing of a woman at a christening party has been accused of bullying and intimidating jail inmates to convert to Islam, it was revealed today 04/12/13.The accusations, which also include gang activity in prison and possessing a home-made weapon, came to light as the High Court in London rejected Jude Odigie's challenge to his transfer from a private prison to a high security jail. Odigie, 24, was a teenager when he was convicted of manslaughter and sentenced at the Old Bailey in February 2007 to detention "for public protection" and ordered to serve a minimum period of seven years, three months, eight days. He was part of a gang which invaded a christening party at a community centre in Peckham, south London, and stole mobile phones and handbags. A shot was fired by another member of the gang and hit a woman, who was holding a baby, in the head. The baby was unharmed but the woman, Zainab Kalokoh, 33, died later in hospital. Odigie was sentenced on the basis that he was involved in the "joint enterprise" attack on the christening party, although he did not personally fire the gun.

Odigie was held at various prisons until he was moved in June 2012 to Lowdham Grange, a Category B training prison for men operated by Serco Ltd in the East Midlands. His cell was searched on October 12 2012 and a tin opener was found which came apart, with one handle sharpened to a point. A plastic handle was also found wrapped in bootlaces into which the sharpened point could fit to make a weapon, the High Court heard. The following day, at a specially convened hearing at the prison, he said he had borrowed the tin opener quite innocently, and the plastic handle was something he used in the course of his weight training. Odigie was told he was being segregated due to intelligence suggesting he was involved in bullying and intimidating other inmates and being in possession of a home-made weapon. He was then moved to Full Sutton high security prison.

He launched a High Court challenge and asked deputy judge Philip Mott QC to quash the transfer decision and return him to Lowdham Grange on the basis the move was procedurally unfair and an abuse of power. Julian Coningham, his solicitor advocate, argued at a one-day hearing in November that the prison authorities failed to follow proper procedures and did not wait for the result of an

Psychology in response to Freud's Psychoanalysis. Jung, who famously said, "Show me a sane man and I'll cure him for you", went on to develop new psychotherapeutic techniques. These were designed "to re-acquaint an individual with his unique place in the collective unconscious as expressed in dream and imagination".

Jung's new psychotherapeutic techniques were heavily criticised as "merely disguised religion' and dismissed for its lack of proof or verification. In spite of these justified criticisms, both Freud and Jung are esteemed as founding fathers of modern psychology.

Most of the above facts were referenced from the Encyclopaedia Britannica, in case you thought I was making it all up, but the parallels between Scientology and Psychology grow even more remarkable.

An initial interview process with Scientology begins with an "audit" of the potential recruits qualities and mental well-being. An initial interview process with prison psychologists begins with a "risk-assessment" of a prisoners qualities and mental well-being. The psychological testing of an audit or risk-assessment measures the skills, knowledge, intelligence, capacities, aptitudes of the subject, but most importantly, receptiveness to "treatment". This psychometric testing of subjects is not to establish if treatment is necessary. In Scientology treatment is a prerequisite of being accepted into the Church. In prisons, psychologists already know a prisoner requires intervention, "for otherwise they wouldn't be in prison", would they?

Psychotherapeutic methods in both Scientology and psychology are very similar. In both cases, low level treatment takes place in the wider community by means of courses. A more intensive level of indoctrination or psychotherapy in Scientology takes place in "the Barn", in prison psychology, therapeutic communities serve as Barns.

Scientology backsliders or defectors have an extreme form of re-education in units known collectively as "the Hole". In prison psychology the units created for these "fallen angels" are known as Dangerous Severe Personality Disorder or Psychologically Informed Planned Environments (PIPEs) units.

In Scientology quasi-clerical terms are used to emphasise the religious aspect of the Church, terms such as Elder, Minister, Deacon, etc present an image of spiritual structure.

In psychology, quasi-scientific terms are used, Clinical Psychologist, Forensic Psychologist and so forth to present a scientific image for psychology.

Sadly, psychology is not fact based, so cannot be a true science. It is entirely opinion based and like Jung's psychotherapeutic techniques could be dismissed as faith or perhaps again, a belief based proto-religion.

The Church of Scientology is always looking for new converts and once made an attempt to introduce a course of treatment for drug addicts into English prisons. Termed "Criminon", it was a distance learning course, however, when it was discovered that Scientology was the sponsor of the course, the project was shelved, due in part to Inside Time's refusal to advertise it.

Prison psychologists are always looking for new intervention candidates. New courses continually appear to replace old, tired ones, with meaningless names like "mindfulness". What is a mindfulness. course? No idea, but someone's making a fortune dreaming them up!

In writing this article, a thought occurred, given the similarities between psychology and Scientology how many psycho-babes could be Scientologists? Considering the evidence above, all of them. Perhaps there's even a Church of Psychology in the offing. Now there is a scary thought! Having exposed the many links between Scientologists and psychology, I now live in daily fear of Tom Cruise coming round to head-butt me in the nadgers.

Keith Rose, A7780AG, HMP Whitemoor, Longhill Road, March, PE15 0PR

back, Jack and the three girls got into his car but Woolley wanted to go to his mother's house to discuss the incident. Jack knew this was a very serious issue and he told Woolley to drop him off instead. After Jack left the car. Stacey asked her boyfriend, "What did you do?" Woolley replied, "I stabbed him." At his house, his mother also asked what happened and Woolley told her he had, "... stabbed the guy with his car keys!" All three girls testified to these confessions later. Paul Carr died in hospital about an hour after the stabbing.

The following afternoon as Jack returned from work on a bus, he saw police incident tapes around the entrance of The Boulevarde. He phoned Woolley and told him the matter was obviously quite serious. Later that day, the media reported the death of Paul Carr and the police hunt for the 'gang' responsible. Woolley and his mother took a plane to America that evening.

The three girls were traced the next day and then armed police raided Jack's mother's house looking for him. Jack had moved in with his partner and their baby son a few weeks earlier and so he was safe for a while. He decided to give himself up a few days later because he knew the police would have heard all the details from the girls. He also knew he had not done anything criminal.

Murder Charges and Trial: Jack and Stacey were both charged with murder! Tyrone Woolley was arrested weeks later in Canada and was extradited to face trial along with them. Jack and Stacey were charged with murder under the doctrine of Joint Enterprise

Woolley's defence was that it was Jack who had stabbed Paul Carr. He said he had no weapon that night and denied producing a flick-knife at the horse statue incident in spite of the evidence of the girls and Paul Carr's two companions. He denied confessing to the girls in the car and at his mother's house and claimed that Jack and the three girls, including his own girlfriend, beside him in the dock, had conspired to blame him in his absence! Needless to say, he was convicted of murder.

Khalid: The police had acquired a very pliable and untrustworthy witness. He was an Afghan by name of Khalid, whose English was very poor and whose immigration status was questionable. He was operating that night as an illegal mini-cab driver. He had given false identification details to the police at the scene of the killing but they traced him after a week of enquiries at other mini-cab firms in the area. His evidence was contradicted by numerous verifiable facts; his claim to have seen into the club's foyer as Paul Carr was manhandled out - but CCTV coverage of the entrance to the disco shows the pair of drapes that makes that impossible! - the evidence of Mr Ngei and other people at the scene as well as the differing accounts of the incident he gave in several different statements.

Critically, he had confused Jack with the victim. He described Jack as a "half-caste" and Paul Carr as "the boy". The reverse was true. Jack was twenty-one and white English whereas Paul Carr was twenty-seven with an African father and an English mother. Khalid also passed Jack by and misidentified an innocent volunteer in a police line-up. Regardless, both the prosecution and the trial judge used his highly dubious evidence to suggest that both Jack and Stacey had participated in an attack on Paul Carr in the doorway of the disco. He claimed to have heard the 'half-caste' (Jack) shouting, "Give it to him." to Woolley in the club's entrance. He also said Stacey had kicked Paul Carr as he lay on the ground dying.

This was deadly Joint Enterprise evidence against Jack and Stacey, despite the fact that even the prosecution conceded Khalid's evidence could be as much as 75% wrong! Stacey's counsel was able to prove materially that Khalid was definitely wrong about the alleged kick.

Pathology Evidence: Dr Freddy Patel was declared unfit to practice and struck off by the General Medical Council in August 2012. Unfortunately, he was still on the Home Office list

of pathologists in 2003 and his evidence was very damaging against both Jack and Stacey because he recorded a number of bruises and brawl injuries as well as two stab wounds on Paul Carr's body. This made it look as if these injuries were inflicted on him at the entrance of The Boulevarde but that was not the case.

Apart from the stab wounds, all the cuts and bruises on his body were older because he had been involved in a very violent fight with two off-duty policemen in a pub in Harrow three days earlier. The pub window was broken in this fight and he also resisted arrest violently when uniformed police arrived, adding to his injuries. A police doctor recorded his injuries at the police station in Harrow but Freddy Patel made no age distinction between the various injuries and the stab wounds in his written report.

This written report was accepted because the defence, inexplicably, did not call evidence about the Harrow fight. It was classified as 'unused evidence' and Dr Patel was not called to be cross-examined. This meant that the jury could conclude that there was a violent fight involving Woolley, Jack, Stacey and Paul Carr during the course of which he suffered the various other injuries recorded in the post mortem report.

Jack's Defence: Jack related truthfully the sequence of events and his role and intentions in pursuing Paul Carr that night to the police when he gave himself up and in the witness box at the trial. Only Khalid's evidence conflicted with Jack's and Stacey's accounts. But his evidence also conflicted with the bouncer's evidence. Mr Ngei remembered hearing Jack shout, "Why are you punching girls." but denied hearing anything else and contradicted claims by Khalid about the alleged fight. The disco receptionist confirmed the bouncer's account. Nevertheless, the trial judge was hostile and bad-tempered with these two witnesses but highly accommodating with Khalid. He gave Khalid an hour's break during his cross-examination to allow him to refresh himself with his earlier statements to the police because he was so incoherent, inconsistent and uncertain. After the verdicts, the judge also gave Khalid a reward of five-hundred pounds for the value of his testimony. Another witness, Mr Samra, an Indian guy who also failed to hear anything Khalid claimed to have heard and who called the ambulance and administered first-aid to the stricken Paul Carr until it arrived, did not even get a mention from the judge.

Verdicts and Sentences: The jury returned to court during their deliberations to ask to read statements again and to ask the judge if they could find one defendant guilty of manslaughter. The judge was very irritable with them. He admonished them because he had spent two days summing up. He then repeated the concept of culpability that informs the perverse law of Joint Enterprise which, in effect, means that murder convictions should be returned against anybody in the company of a killer. A concept that makes us all responsible for the deadly actions of others. My brother's keeper.

Wooley was found guilty of murder, not surprisingly in view of his absurd defence, and he received a life sentence with an 18-year tariff. Jack was also found guilty of murder and received a life sentence with a tariff of 16-years. Stacey was acquitted.

Futile Appeals: Just after the trial, Jack received a bundle of documents by post. Labelled 'unused evidence', they were sent to him anonymously. They recorded the details about the Harrow fight confirming that Paul Carr's injuries, apart from the stab wounds, had not been inflicted that night. Jack started an immediate appeal with a new legal team. Dr Freddy Patel was approached and made the following statement: "I concur with the serious concerns expressed by the defence counsel that crucial medical evidence of Dr W who had examined the deceased [in Harrow] a couple of days prior to his death was not disclosed at the original trial. An insight into the age of the injuries listed by Dr W could

sent to the Court must in future be completed in full and accompanied by copies of the relevant documents. All incomplete applications will be rejected by the Court.

The second change concerns the interruption of the period within which an application must be made to the Court, that is, within six months from the final decision of the highest domestic court with jurisdiction; for the period to be interrupted, the application will now have to fulfil the conditions set out in Rule 47. The form must be sent to the Court, duly completed and accompanied by the relevant documents, within the period laid down by the Convention. Incomplete files will no longer be taken into consideration for the purpose of interrupting the running of the six-month period.

To help applicants comply with the new rules the Court will be expanding its range of information materials, in both written and multimedia form, not only in the official languages of the Council of Europe (English and French) but also in the official languages of the States Parties to the Convention. A new and simplified application form will be available on the Court's website (www.echr.coe.int) from 1 January 2014, together with information documents designed to assist applicants in filling out the application form and complying with the new rules.

Psychology, Scientology, Can You Spot the Difference?

Over recent months Channel 4 and the Sun have been running a series of features exposing secrets of the Church of Scientology. A Channel 4 documentary featured the behaviour of Scientology adherents towards those who rejected the "faith" and the revenge tactics employed against them. In a similar format, the Sun ran a series of articles exposing "treatment" methods of the church. Having watched the Channel 4 programme I began to have a feeling of deja vu, in that I've seen this type of revenge mentality before, and the Sun's exposure of treatment methods s all too familiar.

Recently, the BBC's Panorama reporter, John Sweeney, has written a book on Scientology, "The Church of Fear: Inside the Weird World of Scientology", which reveals many of the methods of indoctrination employed by Scientology practitioners together with some of their extraordinary beliefs. Sweeney, in 2007, famously had a screaming match with Scientology's spokesman, Tommy Davis, during Panorama's first investigation into Scientology's oddities.

Scientology was established in the United States by a science fiction writer, Lafayette Ronald Hubbard. In 1950, as L. Ron. Hubbard, he published his theories of the human mind in the book, "Dianetics". This described a system of psychotherapy he had developed to "cleanse the mind of harmful disorders". By 1954, Hubbard had developed his form of psychotherapy into a religion, which he termed, Scientology. After the foundation of the Church of Scientology, Hubbard struggled for many years to gain recognition of it as a legitimate religion. Churches in the United States enjoy a tax free status, and U.S. tax authorities describe Scientology as a cult. Former members of the Scientology movement accuse it of fraud, harassment and brainwashing.

In contrast, psychology and psychoanalysis originated from the theories of Sigmund Freud who following a study of hysteria, extreme excitability, concluded that "mental disorders were caused by the disguised expression of unconscious wishes, particularly related to the complicated states of psycho-sexuality". In 1905, Freud published a book, "Three Essays on the Theory of Sexuality", which led critics to conclude that Freud, a cocaine addict, had an obsession about having sex with his mother.

Freud's close collaborator, Carl Gustav Jung broke with Freud over Freud's drug use and cocaine fuelled insistence on the sexual basis of all neuroses, and founded Analytical

highlights: - the need for prison staff to have access to and make use of all available information when assessing the risk involved in a prisoner sharing a cell; - the need for the Prison Service to manage carefully the risks that vulnerable prisoners pose to one another, including when they are separated from mainstream prisoners in vulnerable prisoner units; and - the need for safe and consistent procedures for cell door locks when prisoners are unlocked.

Nigel Newcomen said: "This Learning Lessons Bulletin examines the lessons to be learned from the mercifully infrequent but nonetheless tragic killing of one prisoner by another in custody. These are some of the hardest deaths to learn lessons from. They occurred in 15 different establishments; prisons contain many people who pose a serious risk of harm to others, but very few kill in custody; and learning can be slow to emerge because of the need to build, and then not prejudice, a criminal case against those responsible. However, learning lessons about managing risk better could make homicides in prison rarer still."

California Given Two-Month Extension to Reduce Prison Crowding

California will have an extra two months to reduce crowding in its prison system, a panel of three federal judges ruled on Wednesday, in the latest twist in a decades-long dispute over conditions and medical care for inmates. The panel gave the most populous U.S. state until mid-January to reach a negotiated plan with lawyers representing inmates over poor medical care and crowded conditions. It also extended a deadline by about two months to April 18 to otherwise reduce crowding if no deal is reached. California prisons have been in the national spotlight for the past year as officials wrestled with crowding and concerns about the state's use of long-term solitary confinement for prisoners with suspected gang ties, which led to a hunger strike this year. The state has been under court orders to reduce inmate numbers since 2009, when the same panel ordered it to relieve overcrowding that several courts, including the U.S. Supreme Court, have said was to blame for inadequate medical and mental-health care.

CCRC Refers Conviction of Q to Court of Appeal

Mr Q pleaded not guilty but was convicted in 2004 of indecent assault. He was sentenced to a Community Punishment Order of 100 hours and was placed on the Sex Offenders Register for a period of five years. Mr Q applied to the Commission for a review of his case in September 2012. Having reviewed the case, and having used its powers under Section 17 of the Criminal Appeal Act 1995 to obtain material relating to the case, the Commission has decided to refer the conviction to the Court of Appeal. The referral is based on new evidence relating to the credibility of the complainant which, in the Commission's view, raises a real possibility that the Court will now quash the conviction. Mr Q was not legally represented during his application to the Commission.

Stricter Conditions for Applying to the European Court of Human Rights

Stricter conditions for lodging an application will apply from 1 January 2014, with the entry into force of the new Rule 47 of the Rules of Court. This amendment to the Rules, designed to enhance the Court's efficiency and speed up the examination of applications, introduces two major changes which will determine whether an application is allocated to a judicial formation or is rejected without being considered by the Court.

The first change concerns the information and documents supplied to the Court to enable it to examine applications and hence perform its mission as effectively as possible. Any form

have significantly altered my opinions on the causation of these injuries.

Therefore, at this late stage it is paramount in my view that the colour album of the postmortem photographs are reproduced for Dr W in the first instance to identify the older injuries and thereafter Dr R to prepare an expert report for the defence following which I can review my original opinions and give due consideration to any appropriate amendment in the light of new disclosures."

Regardless of his medical incompetence, Freddy Patel was honest enough to appreciate the crucial nature of the unused evidence. Nevertheless, the appeal court rejected Jack's appeal because they said his defence knew about this evidence and chose not to use it! This is staggering. Jack did not know about this evidence but he knew full well that the jury thought he and Woolley had fought with Paul Carr. But that was not the case. Apart from his failed attempt to punch Jack and then Woolley's scuffle and stabbing, Paul Carr was not otherwise assaulted at that time.

It appears our appeal courts abide by the idea that if a barrister is negligent or incompetent, his client suffers the consequences, even a life sentence! Whether or not the defence teams actually knew about these Harrow injuries is uncertain. It was available in the case papers and that is all that is certain.

We have not been able to ascertain the truth because the original legal team refuse to comment about the case. But many other cases of miscarriages have revealed how the police are very skilful at concealing evidence favouring the defence by mislabelling it.

A second appeal was launched by Edward Fitzgerald QC, who campaigns vigorously against Joint Enterprise convictions. But the result was the same. Once a jury finds somebody guilty, that verdict is set in concrete as far as the criminal justice system in the UK is concerned.

Why?: The accounts given above are true and Jack's mother and sister, myself and his partner are devastated that Jack is suffering unjust imprisonment for a murder in which he took no part and could not possibly have predicted while his son grows up without a father. How could a jury convict Jack of murder in those circumstances?

The answer is that there is a political policy of the day that requires the state to appear to be tough on knife crime and on 'gangs', whatever that means. Any couple of friends or small group can now be described as a 'gang' and Joint Enterprise is being used on an everyday basis to convict innocent people, mostly young black guys, of murder whenever a fatality occurs in a common brawl. It has no relationship to justice or morality and it is being extended to many other sorts of crime as well. The police love Joint Enterprise and regularly advertise their intention to use it. Convictions are easily obtained because they do not have to prove any actual criminal behaviour. Judges are stretching the concept of culpability to such a degree that they can persuade juries to convict innocent parties in Joint Enterprise cases. Just being there is enough.

There is also a massive reluctance on the part of governments and the judiciary to accept the fact that the police often groom witnesses, fabricate evidence and commit wholesale perjury in the course of their everyday duties. The huge number of cases of known miscarriages, along with the many others never exposed, proves this point. The Cardiff Five case, the Stefan Kiszko case and the case of Gary Mills and Tony Poole best describe the culture of corruption and abuse endemic in our police CID forces.

The fact that Jack's jury convicted him but acquitted Stacey is also inconsistent with the evidence. If they believed Khalid then they should have convicted Stacey. If they didn't believe Khalid then they should have acquitted Jack. Stacey was lucky but as I discovered in other examples of Joint Enterprise cases, juries seem to acquit some defendants because they feel bad about convicting all the companions of the actual perpetrator.

The evidence of Dr Freddy Patel was very damaging but Khalid's was also critical regardless of its conflict with the testimony of other witnesses. The police saw Freddy Patel's report and wrongly concluded, as did the jury and everybody else, that Paul Carr had been in a fight outside The Boulevarde. They needed a witness to say there was such a fight because Mr Ngei's evidence did not record such a fight.

I believe Khalid was primed by the police to make claims about what he saw and heard that night to create a fight that never happened but which made a Joint Enterprise case against Stacey and Jack. Khalid was scared of deportation or charges in relation to his illegal mini-cabbing and he was, therefore, putty in their hands. The cases of Sion Jenkins and Dudley and Maynard as well as the Cardiff Five shows clearly the way the police groom or blackmail witnesses. If you don't believe they do this, I can only say you are very naive.

I can tell you that almost all miscarriages are a result of police corruption of evidence and I invite you to examine the few cases I mention above on their websites or the many other cases mentioned on websites run by INNOCENT - JENGbA and JUSTICE.

What Next?: I have joined with an organisation called JENGbA (Joint Enterprise: Not Guilty by Association) in a public campaign to fight for justice for my son and the sons and brothers of the more than three hundred mostly young kids who have been inhumanly imprisoned because politicians want to look good in public on the law and order issue. I recommend that you check out the cases of Jordan Cunliffe, Nicola Faulds, Tirrell Davis, Jade Braithwaite and any of the many other cases where the state has used collective punishment to imprison innocent people.

Joint Enterprise is an evil law that is a menace to everybody and their children. If you go out with a friend and there is a fight, it doesn't matter that you do nothing criminal, you will be charged and convicted of murder if someone in your company kills. We must force the hypocrites who rule us to repeal this dreadful anti-social law.

"For evil to triumph it is necessary only for good men to do nothing." (Edmund Burke)

Please support JENGbA and help to get justice for my son and many others like him.

Andy Dempsey / andy@jackdempseyinjustice.co.uk

Transgender Inmates

HMP Frankland is in County Durham. It houses maximum security prisoners within Categories A and B. The wing that houses the most vulnerable prisoners is B Wing. As of 1st October 2013 there were 106 prisoners of whom 26 are Category A and the balance Category B. There are currently 6 prisoners within B Wing who are treated as transgender (one of whom is the claimant). I gather HMP Frankland is regarded as having a level of expertise in dealing with prisoners who wish to change gender. That number of prisoners wishing to change gender is very small. The issue poses a considerable challenge in the context of the secure regime of a prison where other prisoners might be expected to lack an enlightened attitude.

The claimant was originally detained at HMP Long Lartin. She made a complaint to the Prison Ombudsman about treatment at that prison. She transferred to HMP Frankland on 4th July 2011 and, subject to a brief period at HMP Grendon, has remained there ever since. She is a Category B prisoner for whom the very highest regime of security is not needed, but for whom escape must be made very difficult. It is unclear whether the claimant has a diagnosis of dysphoria. The evidence on behalf of the Governor provided by Mr Peter Jobling (the segregation unit manager) reveals an unclear (certainly uncorroborated) view as to the precise medical position of the claimant. As of April 2011 a consultant psychiatrist at Charring Cross Hospital in London (Gender Identity Clinic) regarded the claimant as

national attention. The Prison and Probation Ombudsman, Nigel Newcomen, has recently commented in the Guardian newspaper that the issue of inappropriate handcuffing of elderly, infirm and dying prisoners needs to be addressed: "While the prison service's first duty is to protect the public, too often, the balance between humanity and security is not achieved".

Mr H was represented in his claim by Jude Bunting of Doughty Street Chambers, a recognised expert in prison and human rights law.

Sodexo Force Prisoner to Clean up Dead Fetus *Metro News: 12/12/13*

A remand prisoner who had a miscarriage in her cell was made to clear up after herself while the fetus lay dead on the floor, a court heard. Nadine Wright claimed a nurse stood by watching and that she only received medical attention three days later, after the prison governor intervened. The allegations emerged as Wright, 37, attended a sentencing hearing for breaching earlier court orders and admitting shoplifting. Her barrister, Philip Gibbs, told Leicester crown court: 'There was blood everywhere and she was made to clean it up. 'The baby was not removed from the cell. It was quite appalling. It was very traumatic.' The incident is alleged to have happened at HMP Peterborough last month.

The court heard Wright, formerly of Newbold Verdon, Leicestershire, has been battling heroin addiction since her teens and lived a 'chaotic lifestyle'. Her mother died in September and, with all her mental health issues, was ill-equipped to deal with the loss, said Mr Gibbs. He said Wright had been unable to claim benefits and stole £13.94 of food from a Co-op store because she was hungry. Within 24 hours of being locked up in HMP Peterborough, she miscarried. It was not stated in court how many months pregnant she was. Wright pleaded guilty to breaching two community orders and was jailed for ten months.

HMP Peterborough is a category B privately run prison managed by Sodexo Justice Services. A spokesperson said it could not comment on individual cases. The spokesperson did confirm a prisoner received medical treatment on the day of her arrival in prison and was seen by a GP the following day.

Lessons Should be Learned From Prison Homicides

Since 2003, there have been 16 cases of homicide (all male, ten were white, six Black and Minority Ethnic) in prison in England and Wales. Homicides in prison are rare but there are still lessons to be learned from them, said Nigel Newcomen, Prisons and Probation Ombudsman (PPO). The PPO investigates all deaths in custody and his remit is to examine the circumstances surrounding the death and establish whether anything can be done to help prevent similar tragedies in the future. Since 2003, the PPO has investigated 16 homicides in prisons in England and Wales. During the same period, the PPO investigated over 1,500 other deaths, either self-inflicted or from natural causes.

Learning lessons bulletin / Fatal incident investigations issue 5

While uncommon, the killing of those in the care of the state is a particularly shocking and serious matter. For families, the loss can be impossible to understand and come to terms with. At the same time, these are some of the hardest deaths to learn lessons from. They occurred in 15 different establishments; prisons contain many people who pose a serious risk of harm to others, but very few kill in custody; and learning can be slow to emerge because of the need to build, and then not prejudice, a criminal case against those responsible. It is striking, but perhaps not wholly surprising, that half the prisoners died while they were locked in their cell with their cellmate. The bulletin

sion: "It does not appear to me that there has been real attempt to balance risk against benefit." The offender manager for example expressly in the report we do have of March 2012, set out clear benefits to which transfer to open conditions would give rise. I have already set them out. I do not know what was said in the addendum but it must be reasonable to assume that her position had not changed. As I have also indicated, the offender supervisor in the recommendation in the addendum report of September 2012, expressly sets out the benefits to be gained in open conditions. The failure to balance those benefits against the Board's assessment of the extent to which the claimant had made sufficient progress during sentence in addressing and reducing risk to a level consistent with protecting the public from harm is, in my judgment, fatal to the legitimacy of this decision. For all these reasons I grant this review and quash the decision, solely however on that ground. "

Handcuffed for Hospital Appointment Unlawful - Damages Awarded

Mr H has since been released from prison, but, at the time of his hospital appointments between September 2011 and March 2012, he was a Category D prisoner and was suffering from serious medical and mobility problems. Category D is the lowest security categorisation and Category D prisoners have been assessed by the Parole Board as trusted not to attempt to escape from prison. Furthermore, Mr H was suffering from chronic back and knee problems, and was waiting to undergo an operation for a double knee replacement. Despite this, HMP Highpoint, which is a closed prison in Suffolk, decided that Mr H should be handcuffed and accompanied by escort officers whilst undergoing his medical tests and discussing his medical treatment: the result of which caused Mr H unnecessary humiliation and distress.

The claim was brought under the Human Rights Act 1998, and alleged that, contrary to Prison Service policy and the relevant caselaw, HMP Highpoint failed, either adequately or at all, to assess the risk Mr H posed at that time in light of his Category D status and medical and mobility problems. The claim alleged that, when assessing the risk posed by Mr H, HMP Highpoint failed to consider these relevant factors and that, if they had have, it would have been clear that he neither had the motivation nor the ability to escape when attending his hospital appointments. As a result, the claim alleged that Mr H should have been able to have his tests and discuss his treatment without being handcuffed and without escort officers being present. A two-day trial of Mr H's claim was due to start at the Central London County Court Tuesday 3 December 2013. However, on Friday, 29 November 2013, and after a year of failing to engage with the issues being raised, HMP Highpoint offered to pay Mr H compensation and his reasonable costs.

In commenting on the settlement, Benjamin stated: "Clearly, our client is happy that HMP Highpoint has finally seen sense and settled his case. However, it is regrettable, both from our client's and the taxpayer's point of view that the settlement has come so late in the day, and that this settlement is simply the latest in a long line of such settlements by HMP Highpoint. Seemingly, it is HMP Highpoint's position that they are content to pay-off individual cases rather than to fix the underlying failures resulting in these cases.

For their part, the Ministry of Justice, who are legally responsible for the running of HMP Highpoint, have for the last three years been saying that they are reviewing their guidance on the handcuffing and escorting of prisoners. We would urge them to get on with. Both the domestic and the European courts have been consistent on the issue for some time. Therefore, it is time for the Ministry of Justice to catch up. The continuing absence of any further guidance, will simply lead to further breaches of human rights and claims against them."

The handcuffing of seriously ill prisoners whilst in hospital has recently attracted

"a conundrum" who appeared to be saying different things to different people. He indicated her description of transsexualism to be of recent origin. Regardless of that diagnostic conundrum there is no doubt the Governor has treated the claimant as a transgender prisoner. She stated she was transgender upon arrival and has been a vocal member of the prison's group of transgender prisoners. The claimant enjoys an enhanced IEP status within the prison. She applied for a certificate under the 2004 Act on 22nd February 2011 which was withdrawn by reason of the fact she was unable to show she lived in the role of a woman for 2 years. She withdrew her application on 29th June 2011.

Thereafter, the claimant has assiduously endeavoured to complain to the Governor (and/or prison officials) about the provision of items for living in the role of a woman. It is unnecessary to set out every item of complaint or the response of the governor. The essence of the repeated complaints was that there was (and remains) discrimination towards transgender prisoners. This included: (1) No access to hormone treatment (2) No access to wigs. (3) No access to certain prosthetic devices (designed to aid the intimate appearance of a woman – it is unnecessary to be more graphic than that). (4) No hair removal products. (5) No separate changing facilities for the gym and no privacy screens. (6) An expectation that male urinals would be used for drug testing purposes. (7) Items required for living in the female role ordered from certain specialist suppliers were routinely returned at reception.

The Governor has responded to these various complaints and it is really only necessary to refer to one or two of these to reveal the situation. The details are contained in the witness statement of Mr Peter Jobling (the segregation unit manager at HMP Frankland) who has the role of Residential Governor. He has called my attention to a range of different prison policy documents relevant to all prisoners as well as those in a transgender role.

At HMP Frankland there was a local Trans-sexual Prisoners Policy which permitted prisoners to be allowed to progress towards surgery or a Gender Recognition Certificate and to live permanently in their new gender role. Appropriate clothing and make-up would be allowed to be purchased in the same way as a comparable woman prisoner. It was, however, emphasised that where there are security concerns, individual items would be subject to negotiation and agreement. Prisoners would be allowed to use gender appropriate names and be addressed accordingly by staff.

A Transgender Prisoner Compact was signed by the claimant on 6th July 2011. This was intended to be an individually tailored agreement as to the management and treatment of the claimant designed to deal with individual needs and concerns. It would also be able to be adjusted to reflect the particular stage at which the prisoner had reached on the journey to gender change. Dialogue and individual agreement were the lodestars for the compact. Sadly, the claimant has not agreed a recent suggested refinement of the compact relating to her.

On 28th March 2012 and on other occasions too, it was asserted the governor has the right to refuse items that could be used to aid escape. Security was averred to be the priority of the prison. A series of requests were made for individual items and subject to individual responses. No useful purpose would be served by a detailed recitation of each of these. There were many complaints.

The view of the Governor can, I feel, be distilled in this way:

(1) There are regular meetings between staff and transgender prisoners (Gay, Bisexual and Trans-sexual Forum) where issues are discussed and plainly it is used as a means of resolving complaints. (The Forum) [I have read several of the minutes of these meetings which I forbear to recite but have well in mind when deciding this case]

(2) Specific events and activities are organised to aid support for transgender prisoners.

(3) The claimant (in common with other like prisoners) has a card on her cell door to

make it clear to staff the name by which she is to be known. The Governor acknowledges that there have been a small number of breaches of this.

(4) The claimant may access and wear female clothing and make-up subject to the demand it is appropriate and the make-up is kept "within reason" (as applied to female prisoners in the prison estate). (5) It is denied she is required to present as a man.

(6) Whilst away form her residential wing the claimant is allowed to wear female underwear, a bra, minimal make-up, female trousers and other unisex clothing that is found on the "Girl Gear" list. Overtly female clothing is not permitted when away from the residential wing. It is averred there would be an enhanced risk of assault or sexual violence from other prisoners elsewhere in the prison where less enlightened prisoners would react adversely.

(7) The claimant does not leave her residential wing as she has a position of a cleaner on the wing. Additionally, she does not wear make-up as a matter of choice (even though it would be allowed). Nor does she wear overtly female clothing. One of the significant complaints of the claimant is that there is an unlawful interference with transgender prisoners obtaining female clothing. The governor explains the position at HMP Frankland in this way:

(1) The system whereby prisoners may purchase items incentivises positive behaviour and responsibility. (2) There is a prison policy to cover this: Prisoner Retail PSI 23/2013.

(3) Items may be purchased via the prison canteen each week at HMP Frankland. This includes about 600 items such as tobacco, toiletries and groceries. It does not include make-up or clothing. It is inevitable that most of the items on the list are either gender-neutral or male items (after all it is a male prison). There is a system for consultation with prisoners about the content of the canteen list via "canteen reps" (nominated prisoners).

(4) The additional way to obtain items is via the Facilities List on a weekly basis. This includes items supplied by companies via their catalogues. This includes female items for the transgender prison population and it may be accessed regardless of the prisoner's enhanced privilege status (unlike male prisoners). On this list are 13 suppliers offering a range of women's clothing. Special arrangements are in place to secure the supply of larger sizes.

(5) One problem relates to the supplier called Transformation which specialises in those in the transitional stage of gender reassignment. Unfortunately it only offers an online catalogue and prisoners are not permitted to access the internet for obvious security reasons.

(6) Make-up may be obtained via the Special Cosmetics Order Form. The particular problem asserted by the claimant is her access to prosthetic items – wigs, breasts and vaginas. Mr Jobling addresses this delicate and difficult issue. He differentiates between the various items in this way:

Prosthetic Breast and Vaginas: To provide these would heighten the risk of sexual abuse and assault by other prisoners. Additionally, it would heighten the risk of a prisoner concealing items which might compromise the security of the prison. To provide the items and maintain security would demand more rigorous and invasive searches affecting the dignity of transgender prisoners.

Tights: Tights are prohibited at HMP Frankland as they may be used to provide a ligature, climbing aid and/or as a sieve for brewing. They can be easily concealed and it is impossible to adequately monitor their use. *Wigs:* The provision of wigs produces a security risk as they provide a very convenient and highly effective disguise if misused in the prison environment. Their effective use in the event of an escape is obvious.

The Governor has emphasised the security issues in relation to the various items and the fact that he has to consider the wider prison population as well within HMP Frankland. He describes his policy as being "even handed". He also has to pay close attention to the obvious fact that if the items, that might ordinarily be regarded as acceptable, fell into the hands of other prisoners (not uncommon in prisons) there are plain and obvious security risks.

In relation to showers and lavatory facilities the Governor points out it is impossible to provide separate facilities for the very limited number of prisoners in this category. However, a certain level of segregation is permitted whereby the ordinary facilities are made available during association periods when no other prisoners are allowed access.

CCRC Refers Conviction of Busani Zondo to Court of Appeal

Mr Zondo, a Zimbabwean national, pleaded guilty to possessing an improperly obtained false instrument with intent contrary to s25(1), (2) and (6) of the Identity Cards Act 2006 at Manchester Crown Court in March 2008. He was sentenced to ten months' imprisonment. He applied to the Criminal Cases Review Commission for a review of his conviction in August 2012. Having considered the case, the Commission has decided to refer Mr Zondo's conviction to Court of Appeal because it considers that there is a real possibility the Court will quash the conviction. The referral is made on the basis that Mr Zondo, who was granted refugee status in 2013, took legal advice to plead guilty when in fact he was entitled to a defence under section 31 of the Immigration and Asylum Act 1999 in circumstances where that defence would probably have succeeded.

Rowe V Parole Board *Rowe represented by Barrister Flo Krause*

In September 2005 Rowe pleaded guilty in the Crown Court to one offence of making threats to kill his partner and two offences of section 47 assault, again against his partner. On that occasion he was sentenced on the threat to kill to a indeterminate sentence for public protection ("IPP") pursuant to section 225 of the Criminal Justice Act 2003. The minimum term specified to be served for the purposes of retribution and deterrence, was a short one, some 8 months which expired in May 2006. As regards the other two offences he received concurrent extended sentences of 12 months. The tariff having expired, the claimant being an indeterminate prisoner, his continuing detention is based in law solely on the basis of continuing future risk. It is common ground that the claimant in this position is entitled to regular and speedy reviews of the lawfulness of his continued detention. Rowe had applied for move to open conditions the move was refused he challenged the decision on three grounds, two were refused!

However ground 3: Judge Kind said, "I have no doubt that the the Board failed in its duty is in their failure to address direction 5(d). I repeat what 5(d) says. It is: "The extent to which the lifer is likely to derive benefit from being able to address areas of concern and to be tested in a more realistic environment, such as to suggest that a transfer to open conditions is worthwhile at that stage." There is no express reference to that balancing exercise in the decision. It is true that the Board refers to the need to have regard to the directions of the Secretary of State in the opening introduction of their decision. It is true that the Board refer to the support the claimant had for transfer from the offender's supervisor, the offender manager and Dr Pratt, which if analysed contains references to the benefits which could be directly derived from transfer. It is true that there is a reference to weighing the risk assessment in the balance and to setting Dr Pratt's more favourable views against those more cautious of Miss Fleming.

However, nowhere do I find any passage not merely making plain that they have carried out what I have described as the fundamental balancing exercise, fundamental to the decision-making process, but in which they expressly state which factors which go towards benefit have been taken into account. I would adopt the words of Smith J in paragraph 38 of Gordon applicable to this deci-