clear to me what relevance this had to women's approved premises.

Mr Sanders submitted that historically there had been little coordinated development of approved premises, which instead had grown by an organic process, and that approved premises were only one relatively small part of the criminal justice system. To my mind the first submission underlines the point that sufficient regard has not been paid to the public sector equality duty. The equality duty applies not only with discrete decision-making, but also with situations which develop organically. There is legislative support for this in section 212 of the 2010 Act. Moreover, the case-law makes clear that it is a continuing duty and requires ongoing review and assessment. Mr Sanders rightly says that the geographic spread of female approved premises is a discrete issue among many regarding their provision. However, he is unable to demonstrate where the Secretary of State has engaged with the equality duty holistically, as he contends ought to be the approach, with female approved premises. As regards the second submission, the number of women affected is relatively small although the rehabilitation of each of them could have large benefits. In any event the matter was placed on the agenda by the Joint Inspection Report, which devoted a section to it.

Thus there is no evidence that the Secretary of State has fulfilled his equality duty, at least not since 2008. What is required is that he address possible impacts, assessing whether there is a disadvantage, how significant it is, and what steps might be taken to mitigate it. In the context of advancing equality of opportunity – one aspect of the duty – that means taking the opportunity to see whether more might be done for women, having regard to their particular circumstances. Nothing even approaching this has been done. The equality duty is not outcome orientated, as Mr Sanders rightly submitted. Nor does it demand a minutely detailed examination of all possible equality impacts. However, as Laws LJ expressed it in R (MA) [2013] EWHC 2213, [72], it is an important standard for public decision-making. In this case the Secretary of State has not met the standard. Mr Justice Cranston

http://www.bailii.org/ew/cases/EWHC/Admin/2013/4077.html

Flower Box Drugs Man Johannes Elmendorp Must Pay £4.7m

A man jailed for 18 years for importing cannabis hidden in boxes of flowers has been ordered to pay back almost £5m, West Yorkshire Police have said. Austrian Johannes Elmendorp, 52, who was jailed in 2011, must pay £4.7m within six months, a confiscation order hearing at Leeds Crown Court ruled. Failure to pay the money would add five years to his sentence, the police said. The cannabis, with a street value of up to £150m, was brought into the UK during 2008 and 2009.

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, Richard Roy Allan, Carl Kenute Gowe, Eddie Hampton, Tony Hyland,

Miscarriages of JusticeUK (MOJUK)
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MOJUK: Newsletter 'Inside Out' No 457 (26/12/2013)

Non-disclosure of Police Sources did not make Trial of IRA Member Unfair or Did it?

I find it difficult to follow the reasoning adopted by the majority. In the first place, in my opinion the majority fail to address the applicant's core complaint. Secondly, they transpose principles related to statements by anonymous or absent witnesses to a situation of undisclosed material where such principles are in my opinion not applicable. Judge Lemmens

[Please read carefully JL's reasoning, follows court briefing, complainant should seek referral to full chamber of the ECtHR]

Chamber judgment in the case of Donohoe v. Ireland(application no. 19165/08)' which is not final the European Court of Human Rights held, unanimously, that there had been: no violation of Article 6 (right to a fair hearing) of the European Convention on Human Rights.

The case concerned the fairness of Mr Donohoe's trial and conviction before the Special Criminal Court (/SCC) in Ireland for being a member of the IRA. His conviction was based, among other things, on evidence given by a Chief Superintendent of the Irish police, who testified that it was his belief that Mr Donohoe was a member of the IRA. When asked to identify the sources of his belief, the Chief Superintendent claimed privilege stating that disclosure would endanger lives and State security. The SCC directed the Chief Superintendent to produce all relevant documentary sources which formed the basis of his belief and it reviewed those files in order to be satisfied as to the reliability of his belief. Neither the prosecution nor the defence had access to that confidential material. Mr Donohoe complained that the non-disclosure had made his trial unfair as it seriously restricted his defence rights.

The Court found against the applicant because: the trial court had upheld the non-disclosure of sources for the legitimate purpose of protecting human life and State security; the decision to convict had been reached with the support of additional evidence which corroborated PK's belief; and, there had been a number of safeguards in place during the trial to ensure that the non-disclosure of PK's sources would not undermine the fairness of the proceedings.

Principal facts: The applicant, Kenneth Donohoe, is an Irish national who was born in 1978 and has a permanent address in Dublin. The case concerned Mr Donohoe's trial and conviction for membership of an illegal organisation, the IRA. In the evening of 2 October 2002 police noticed suspicious activity among three parked vehicles (a Nissan Almera, a Nissan Micra and a Transit van) in Corke Abbey housing estate, near Dublin. After investigating, they found two men dressed up as "Garda" (police) in the back of the van and a number of incriminating items both in the van and Nissan Almera, including balaclavas, police costumes, a stun gun and a canister of CS gas. Five men were arrested at the scene in the van and charged with being members of an illegal organisation. Mr Donohoe was not among them. However, the Nissan Micra, which had left the estate, was traced back to his partner, leading to a police search of his home. Papers were found there containing the phone numbers of the owner of the Nissan Almera, and of the man who had been sitting in the driver's seat of the van.

Mr Donohoe was arrested and charged with membership of an illegal organisation. He was tried before Ireland's Special Criminal Court, which found him guilty and imposed a sentence of four years' imprisonment in November 2004. An aspect of the prosecution's evidence that

carried some weight was the sworn testimony of Chief Superintendent P.K. He stated that, independently of any evidence found at the incident in the housing estate or in Mr Donohoe's home, it was his belief that Mr Donohoe was a member of the IRA. P.K. told the Court that his belief was based on confidential information of an oral and written nature that was available to him from police and civilian sources. He refused to identify those sources claiming privilege because disclosure would endanger human life and State security. Mr Donohoe made an application for an inquiry into the sources, arguing that the trial would be unfair if he did not know these sources and the evidence against him. The court conducted an inquiry; it ordered the production of all relevant confidential files and the trial judges reviewed them in order to be satisfied as to the reliability of P.K.'s belief. Mr Donohoe sought leave to appeal against his conviction. Following a hearing and an extensive review of national and Convention case-law, the Court of Criminal Appeal refused leave to appeal. In October 2007, the Court of Criminal Appeal, following another hearing, also refused Mr Donohoe's application for his appeal to be taken to the Irish Supreme Court.

Relying on Article 6 (right to a fair trial), Mr Donohoe complained that the non-disclosure of the Chief Superintendent's sources had restricted his defence and that the trial court's review of that material was inadequate and that there should have been effective safeguards to ensure that the material could be evaluated in a way which did not prejudice his right to a fair trial. In particular, Mr Donohoe considered it unfair for a trial court to have access to material which he alleged was persuasive of his guilt but to which he, the defendant, had been denied scrutiny of any kind, the SCC review of the material having been held in private.

The application was lodged with the European Court of Human Rights on 8 April 2008. Third-party comments were received from the Irish Human Rights Commission, which was given leave to intervene in the Court's proceedings.

Decision of the Court Article 6: The Court noted that, in order to assess the fairness of the non-disclosure of P.K.'s sources, three questions had to be addressed. The first was whether it had been necessary to uphold P.K.'s claim of privilege. The Court found that the justifications given - of protecting human life, namely, persons in danger of reprisals from the IRA and State security as well as the effective prosecution of serious and complex crime - had been compelling and substantiated and that the non-disclosure had therefore been necessary.

The second question was whether the undisclosed evidence had been the sole or decisive basis for Mr Donohoe's conviction. The Court found that this was not the case, noting that the trial court had heard over 50 other prosecution witnesses and that there was other important evidence provided by the prosecution, namely: Mr Donohoe's link to the suspicious activities at Corke Abbey on 2 October 2002 via the Nissan Micra (whose movements during the Corke Abbey events had to have been carried out, if not with his acquiescence, then at the least with his knowledge) as well as to incriminating objects found in the vehicles; the papers found at Mr Donohoe's home; and, the inference which the trial court was entitled to draw from his complete refusal to answer questions that were of clear relevance to the charges against him.

The third question was whether there had been sufficient safeguards during the trial to counterbalance the disadvantage caused to Mr Donohoe's defence by the upholding of P.K.'s claim of privilege. The Court noted that the trial court had adopted a number of measures having regard to the rights of the defence.

Firstly, there had been judicial control over the question of non-disclosure in that the SCC had reviewed the documentary materials upon which P.K.'s belief was based in order to

breach of the public sector equality duty by failing to give due regard to the adverse effects on women of the current provision. The complaint is not that there are not enough places for women in approved premises; there are. Rather the claimants' case is that approved premises places should be more widely distributed, in smaller centres if necessary, so that women, like comparable men, can be accommodated at a reasonable distance from their homes and families. In advancing their case the claimants invoke a series of reports recommending this as the appropriate course for public policy.

They lost but the Judge Justice Cranston in concluding remarks said: For the reasons I have given the Secretary of Stare has not discriminated, directly or indirectly, in the performance of his functions of providing approved premises for women. However, he needs to undertake the analysis necessary to fulfil his equality duty under the Equality Act 2010.

Public sector equality duty: Ms Rose QC submitted that in the exercise of his functions the Secretary of State has not had due regard to the need to eliminate discrimination and to advance equality of opportunity as required by the public sector equality duty in section 149 of the Equality Act 2010. The claimants expressly conceded that the Secretary of State did not have to engage in regular equality impact assessments in this regard. However, Ms Rose QC contended that there was no indication in the Secretary of State's evidence that the repeated criticism of the provision for women has been considered, or that any strategy had been devised to address it. The Corston Report had identified the lack of provision of suitable approved premises as part of what was characterised as the marginalisation of women in the criminal justice system. The Joint Inspection Report addressed specifically how discrimination experienced by women in prison was perpetuated because of the reduction in the approved premises estate, with the result that they were forced to stay a long way from home. In 2013 the Justice Committee recommended a greater number of approved premises for women and commented that there was little evidence of the gender equality duty being used to resolve their needs.

The various reports to which I was taken clearly raise important issues of public policy but I am not sure they can bear the weight Ms Rose QC sought to place on them. The only report which seems to have raised discrimination in the provision of approved premises for women in a very direct way is the Joint Inspection Report. In the passage quoted earlier in the judgment the three chief inspectors of probations, prisons and constabulary described the decline in the number and location of approved premises for women and commented specifically on how this perpetuated the discrimination experienced by women in prison, in that a higher proportion of them than men were forced to stay a long way from home. The response to the report was Probation Circular 16/2008, which widened access to women's approved premises.

For the Secretary of State Mr Sanders was unable to identify any other government response which grappled with the problem or any document which considered whether the section 149 duty was satisfied with regard to women's approved premises. Yet since the time of the Judicial Inspection Report and Probation Circular 16/2008 the number and location of approved premises for women has shrunk further. Mr Sanders referred me to the Ministry of Justice National Offender Management Service document dated March 2012, A Distinct Approach: A guide to working with women offenders. But the passages on post release supervision simply encourage the use of approved premises and do not address the section 149 issue. Nor does the Secretary of State's annual Equalities Report or the ministerial document of March 2013, Strategic objectives for female offenders. Problems encountered by Welsh, including Welsh-speaking women, are certainly not addressed anywhere. Mr Sanders mentioned new funding streams but it was not

and facilitated training courses for a variety of stakeholders. As part of this we try to ensure that wherever possible, bereaved families are given the opportunity to speak out alongside us, and their experiences and that of their relative provides the basis for all our influencing and external work. We have maintained a high media profile in 2013, and likewise have endeavoured to ensure that families' voices are heard in the media as much as possible.

We have continued our campaigning against the proposals to limit legal aid, an issue which will take centre stage in the 2014 political calendar. We continue to call for an urgent, independent review of deaths of children and young people in the criminal justice system following our 2012 report, 'Fatally Flawed'. The deaths of 14 young people aged 24 and under this year, including four in November, make this particularly urgent. Look out for an hour long documentary on the deaths of children and young people we have been working on, due to be broadcast in April 2014. And we remain committed to our policy and parliamentary work on challenging the absence of an independent investigatory body to investigate deaths in mental health settings. We will launch a major report on this issue early in the new year.

A key milestone was reached in the summer when the Coroners and Justice Act 2009 was finally implemented, bringing about new changes to the way inquests are conducted. This was the culmination of years of INQUEST's work on coronial reform and we are working to ensure that all change is for the better, meeting regularly with the Chief Coroner to ensure our own experiences and those of the specialist INQUEST Lawyers Group are fed back to him, and to press for better learning and accountability. And we are delighted to have launched our new website, which we hope you are finding clearer, easier to read and more user-friendly. In December, we said goodbye to our long-standing caseworker Scarlet Granville, who moved on after seven and a half years with INQUEST. We wish her all the very best for the future.

We end this with a few words from our Chair, Daniel Machover: "INQUEST has had some extraordinary achievements in 2013. With a tiny staff team of 10, the majority part time, it punches far above its weight and consistently draws praise from families, lawyers, parliamentarians and other organisations for the excellent work that it does. I am proud to be INQUEST Chair and want to say on behalf of the whole Board of Trustees that we are always impressed at what the organisation is able to achieve with very meagre resources.

From all of us, very best wishes for a peaceful and positive new year.

Deborah Coles, Helen Shaw and the team at INQUEST

Justice Secretary Guilty of Discrimination Against Women Prisoners?

The claimants Linda Griffiths and Isobel Coll challenged what is said to be the continuing failure of the Secretary of State for Justice ("the Secretary of State") to make adequate provision for so called approved premises to accommodate women released from prison on licence. The claimants are women prisoners approaching the date on which they will be considered for release on licence. There are now only six women's approved premises in England, none in London, and none in Wales. Thus the claimants are said to face a significant likelihood of being in approved premises many miles from their homes and families, with detrimental effects on their rehabilitation and reintegration into the community. By contrast there are some 94 men's approved premises, spread throughout England and Wales.

The claimants' case is that the current state of affairs is unlawful, in that it treats women less favourably than men because of their sex; it subjects women to particular disadvantage by comparison with men; it particularly disadvantages Welsh women; and it constitutes a

test the adequacy and reliability of that belief. It found that P.K. had had adequate and reliable information on which he could legitimately form the opinion that Mr Donohoe was a member of the IRA. Furthermore, the SCC confirmed that there had been nothing in the undisclosed files that might have assisted Mr Donohoe's defence. If Mr Donohoe had doubted the trial judges' assessment he could have asked the appeal court to check their conclusions. The SCC also confirmed that it would not convict Mr Donohoe on the basis of P.K.'s evidence alone and that it required this to be corroborated by other evidence. It had kept Mr Donohoe informed of the procedure, allowing him to make detailed submissions about it.

The Court also noted that the laws allowing the admission of 'belief evidence ensured that it could only be provided by a high ranking police officer and that it would be assessed by the court as a belief rather than a fact. Finally, the defence could still cross-examine the Chief Superintendent in a range of ways - such as by asking about the nature of his sources, whether he knew or personally dealt with any of the informants and about his experience in gathering intelligence - in order to allow the trial court to assess his demeanour and credibility and the reliability of his evidence.

Therefore, considering the weight of the evidence other than P.K.'s belief as well as the numerous counterbalancing safeguards, the Court found that the non-disclosure of P. K.' s sources had not made Mr Donohoe's trial unfair.

Concurring but Separate Opinion Of Judge Lemmens

1. I voted with my colleagues that there has been no violation of Article 6 of the Convention. To my regret, however, I find it difficult to follow the reasoning adopted by the majority. In the first place, in my opinion the majority fail to address the applicant's core complaint. Secondly, they transpose principles related to statements by anonymous or absent witnesses to a situation of undisclosed material where such principles are in my opinion not applicable. Notwithstanding the fact that I would apply different principles to a different complaint, I come to the same conclusion. The complaint: not about the admissibility of belief evidence or the non-disclosure of underlying material, but about the role of the trial court with respect to the privileged material

2. The applicant explicitly stated that he did not object to the admissibility of the belief evidence (written observations of 17 July 2012, § 1). Nor did he object to the non-disclosure as such of the privileged material submitted by the Superintendent to the Special Criminal Court (SCC).

What he objected to was "the unfairness which is inherent in the fact that the court of trial, which in this case was the trier of fact, reviewed the material upon which the belief was based, formed a view as to its reliability and convicted the (applicant) on the basis of it while denying the (applicant) any meaningful way of challenging that evidence" (written observations, § 2; emphasis added). He concluded his submissions in the following words: "The applicant does argue that the procedure adopted in his case was unfair because a trial court which had to determine the question of guilt or innocence had knowledge of material which it concluded was reliable evidence persuasive of guilt but which the applicant was unable to challenge in any meaningful way" (written observations, § 24; emphasis added).

In sum, the applicant argued that the SCC, as a trial court sitting without a jury, acted in an unfair way by reviewing undisclosed material, not with the purpose of merely deciding whether or not this material had to be disclosed, but with the purpose of assessing its reliability and adequacy as a basis for the Superintendent's belief, which in turn was part of the evidence of the applicant's guilt. In other words, the applicant's complaint was based on the fact that the same trial court reviewed the material underlying the Superintendent's belief and decided on the applicant's guilt or innocence.

3. While the majority correctly quote the applicant's complaint, especially in paragraph 66 of the judgment, it seems to me that they do not focus their reasoning on the dual role of the trial court. They examine whether there were reasons for upholding the Superintendent's claim of privilege (paragraphs 80-81), even though the applicant did not challenge that claim. They go on to examine whether the Superintendent's belief evidence was the sole or decisive basis for the applicant's conviction (paragraphs 82-87). Finally, they examine whether there were adequate "counterbalancing" factors and safeguards in place (paragraphs 88-92), but without discussing the very fact that the trial court examined the material relied on by the Superintendent and subsequently decided on the applicant's guilt.

With all due respect, it seems to me that the majority thus fail to give an answer to the specific complaint made by the applicant. The relevant case law: not Al-Khawaja and Tahery, but Rowe and Davis and Edwards and Lewis

4. The majority further hold that they must be guided by the general principles articulated by the Court in Al-Khawaja and Tahery v. the United Kingdom [GC] (nos. 26766/05 and 22228/06, ECHR 2011) (paragraphs 78-79). That case concerns the impossibility to cross-examine an absent witness. It provides for a three-prong test (as is recalled in paragraph 76 of the present judgment): (i) was it necessary to admit the statement by the absent witness?; (ii) if so, was the evidence given by the witness the sole or decisive evidence for the accused's conviction?; (iii) if so, where there sufficient counterbalancing factors?

It is true that the Superintendent could not be cross-examined about the material underlying his belief that the applicant was a member of the IRA, but this does not turn the present case into a case about an absent (or anonymous) witness. I would like to add that neither is this case about a prosecution witness who refuses to answer questions of the defence (compare Pichugin v. Russia, no. 38623/03, 23 October 2012).

5. This case is about the role of the trial court with respect to undisclosed documents.

The relevant principles are, in my opinion, those that can be found in Rowe and Davis v. the United Kingdom [GC] (no. 28901/95, ECHR 2000-II) and Edwards and Lewis v. the United Kingdom [GC] (nos. 39647/98 and 40461/98, ECHR 2004-X). These cases concern the admissibility of undisclosed material in criminal proceedings and the procedure for dealing with such material. In recent cases concerning the non-disclosure of evidence the Court has continued to refer to those principles, not seeking to replace them with the Al-Khawaja and Tahery principles (see, for example, Leas v. Estonia, no. 59577/08, 6 March 2012; O'Farrell and Others v. the United Kingdom (dec.), no. 31777/05, 5 February 2013; and Twomey and Others v. the United Kingdom (dec.), nos. 67318/09 and 22226/12, 28 May 2013). The approach adopted by the majority in the present case is unprecedented.

6. Rowe and Davis sets the general principles for cases like the present one. These principles were also stated in two other judgments handed down on the same day: Jasper v. the United Kingdom [GC] (no. 27052/95, § 53, 16 February 2000), and Fitt v. the United Kingdom [GC] (no. 29777/96, § 46, ECHR 2000-II). They are quoted in paragraph 74 of the present judgment.

These same principles were reaffirmed in Edwards and Lewis (Chamber judgment of 22 July 2003, § 54, quoted in the Grand Chamber judgment, § 46). While Rowe and Davis, Jasper and Fitt all concerned cases in which undisclosed material submitted by the prosecution had been reviewed by the trial judge but not put to the jury which had to decide on the guilt or innocence of the accused, Edwards and Lewis concerned two cases in which undisclosed material had been reviewed by the trial court, while that same court also had to

Much of our casework remains largely out of the public eye, for example, tragic, preventable deaths in prison both self-inflicted and otherwise, deaths of psychiatric patients where mental health provision has been woefully lacking. Some very strong inquest conclusions have been returned this year, along with coroner's reports in relation to many of these deaths and we will continue to work to ensure this learning is acted upon.

Some cases will always attract greater public attention not least those following use of force by the state. We ended last year with the conclusion of evidence in the inquiry into the police shooting of Azelle Rodney in 2005. Six months later, at the beginning of July the inquiry report was published and it was ruled that the killing was unlawful. Four days later, a jury in the inquest into the death of Jimmy Mubenga – who died in 2010 on a British Airways plane after being restrained by three G4S security guards – also ruled that he had been unlawfully killed.

And then in September, the inquest into the police shooting of another black man, Mark Duggan, began, and the jury is currently still deliberating with a conclusion expected in January. INQUEST's casework has shown that a disproportionate number of following contact with the police that involve the use of force or serious neglect are of people from black and minority ethnic (BAME) communities. INQUEST is concerned that institutional racism has been a contributory factor and will continue to highlight this issue in 2014.

Another area where disproportionate numbers of people die following use of force are those with mental health problems. In November we were shocked to learn of two deaths within ten days following police restraint of people experiencing mental health difficulties, Leon Briggs and Terry Smith. We are giving advice and support to both families and working with their legal teams. This is a key area of work for us and we have been campaigning strongly for a national strategy on mental health and policing following the deaths of several others in similar circumstances: Thomas Orchard, James Herbert, Sean Rigg and Seni Lewis to name just a few.

We have also spent much of the year working intensively to influence the Independent Police Complaints Commission's review of its investigations into deaths following police contact. Our co-director Deborah Coles is on the reference group and have arranged for families to feed directly into the review. The final report has yet to be published, but it is telling that both recent restraint cases are being treated as criminal investigations, with police officers being interviewed under caution. It is also a tribute to the families of Seni Lewis, James Herbert, and Sean Rigg, as well as the work of their lawyers and INQUEST, that the IPCC has now begun to reinvestigate both these cases, in recognition of the poor quality of their original investigations.

Last year also saw inquests into the deaths of four women in prison: Melanie Beswick, Lucy Wood, Sarah Higgins and Helen Waight. As well as revealing the tragic circumstances of their individual deaths, evidence at each inquest called into serious question why they were ever imprisoned in the first place. These concerns were reflected in our June report 'Preventing the deaths of women in prison: the need for an alternative approach'. This argued that prison is no place for women and the entire system needs to be dismantled and replaced with community-based alternatives. There were six deaths of women in prison in 2013, a 50% increase on 2012.

Our casework continues to underpin our policy and influencing work, and we have worked hard throughout 2013 to ensure the issues raised by deaths are heard at the highest possible level. We have submitted responses to five separate parliamentary inquiries, produced several briefings for MPs, spoke at a number of conferences, parliamentary meetings and roundtables, met with ministers and officials, and we continue to be represented on the cross departmental Ministerial Board on Deaths in Custody and Independent Advisory Panel on Deaths in Custody. We have organised

and the risk of harm they pose to the public. Community-based offender managers and staff in prison Offender Management Units have joint responsibility for undertaking or co-ordinating work with prisoners to address the attitudes, behaviour and lifestyle that contributed to their offending.

The report reflects findings from 21 prison establishments inspected during 2012 and 2013. Inspectors found that, even taking account of the different nature of the establishments, some common themes emerged: - organisational changes to offender management units have failed to address the culture of poor communication or mistrust between prison departments that undermines the potential of offender management, illustrated by their failure to use one central electronic case record; - there have been some modest improvements in practice but these are inconsistent; - prison officer offender supervisors continue to lack guidance and supervision; - community-based offender managers still have insufficient involvement overall to be able to drive sentence planning and implementation; - there are too few structured programmes available within prisons designed to challenge offending behaviour and promote rehabilitation; - while some prisons offered a reasonable range of accredited and non-accredited programmes for their population, some offered no programmes at all whereas others were running down their provision; and - provision for offender management was particularly poor at two of the prisons accommodating foreign national prisoners.

Rosin v. Estonia - not Allowed to Question Witness Violation of Article 6

The applicant, Jüri Rosin (no. 26540/08), is an Estonian national who was born in 1953. He is currently detained in prison. The case concerned his conviction of a sexual offence. Mr Rosin was convicted of rape for having engaged in oral sex in December 2005 with two boys, aged 11 and 17 at the time, after having plied them with alcohol.

The trial court, in a judgment eventually upheld by the Supreme Court in May 2008, relied on the video recording of an interview with the younger boy, carried out by a police investigator on the day after the events. The court also heard the older boy, who had no recollection of the events as he had been drunk, and relatives of the younger boy. Relying in particular on Article 6 §§ 1 and 3 (d) (right to a fair trial and right to obtain attendance and examination of witnesses), Mr Rosin complained that his trial had been unfair because he had not been given the opportunity to question the younger rape victim on whose testimony his conviction had mainly been based.

Moved: Kevan Thakrar: A4907AE to HMP Whitemoor,Long Hill Road, March PE15 0PR

He is in the segregation unit and has been told that this is where he will be located permanently. How can this possibly be a permanent move or for that matter a Progressive move that he has been told he would get? No property allowed and only allowed out of his cell once every 3 days, not looking good.

Greetings From INQUEST - To all our Supporters

As the final edition for this year of the INQUEST newsletter we write with season's greetings and to thank you for all your support throughout 2013. It has been another challenging year. Demand for our advice and casework service has remained extremely high throughout 2013. Our casework team opened 385 new cases this year, of which 152 were deaths in custody requiring our detailed specialist casework service, including advice to lawyers, investigators, families, and input to policy work. We supported over 50 families through inquests. At the end of the year we published a short report of a survey conducted with families about our service which we are pleased to report contains overwhelmingly positive feedback.

decide on all issues of fact and on the guilt or innocence of the accused. The Court found that the material reviewed ex parte by the trial judge in order to determine whether there had been entrapment by the police concerned an issue that was "of determinative importance to the (accused's) trials" (Chamber judgment, § 57, quoted in the Grand Chamber judgment, § 46). Moreover, since the trial judge had seen prosecution evidence which could have been relevant to the defence submissions on entrapment, while the defence was not informed of the content of the undisclosed material, the Court did not consider "that the procedure employed to determine the issues of disclosure of evidence and entrapment complied with the requirements to provide adversarial proceedings and equality of arms or incorporated adequate safeguards to protect the interests of the accused" (Chamber judgment, §§ 58-59, quoted in the Grand Chamber judgment, § 46).

On the basis of the Rowe and Davis and Edwards and Lewis judgments, it seems to me that the Court would have to answer two questions in the present case: (i) did the trial court, in reviewing the material underlying the Superintendent's belief, see material which was, or could have been, "of determinative importance" for the applicant's trial (Edwards and Lewis)?; (ii) if so, did the decision-making procedure comply, as far as possible, with the requirement to provide adversarial proceedings[1] and did it incorporate adequate safeguards to protect the interests of the accused (Rowe and Davis and Edwards and Lewis)?

Application of the Rowe and Davis and Edwards and Lewis principles to the present case

7. In what follows, I will try to give an answer to the complaint, as I interpret it, on the basis of the principles set forth in Rowe and Davis, and further developed in Edwards and Lewis.

8. As to the question whether the undisclosed material was "of determinative importance" for the applicant's trial, I would like to emphasise that "determinative" does not mean "decisive". In my opinion, it is sufficient that the undisclosed material was or could have been "relevant" for the trial court's assessment of the guilt or innocence of the accused.

There cannot be any doubt that this was indeed the case. The material related to the Superintendent's belief that the applicant was a member of the IRA, and this belief formed the first strand of the evidence tendered by the prosecution. The majority attach importance to the fact that the Superintendent's belief was not the "sole or decisive" evidence relied on by the SCC (paragraphs 82-87). I believe that this assessment is correct, but in my opinion it is not a relevant issue. Even if the Superintendent's belief had been the sole or decisive basis for the applicant's conviction, this fact alone would in my opinion not necessarily have led to the conclusion that the applicant's trial was unfair. Indeed, it remains to be seen whether the decision-making procedure complied, as far as possible, with the requirement to provide adversarial proceedings and whether it incorporated adequate safeguards to protect the interests of the applicant.

9. It appears to me that the procedure in the applicant's case allowed, as far as possible, for adversarial proceedings. In the first place, the SCC decided that it would not base a conviction of the applicant solely on the Superintendent's belief, unless it was satisfied that there was evidence which supported or corroborated it. The applicant was able to comment on each of the other strands of evidence presented by the prosecution.

Moreover, "while the scope of cross-examination (of the Superintendent) was restricted by the trial court's ruling, the possibility to cross-examine the witness on his evidence was not entirely eliminated" (see paragraph 92 of the judgment, with further developments).

10. With respect to the protection of the applicant's interests during the proceedings, I note that the Irish Human Rights Commission (IHRC) in its submissions as a third party was

very critical of the decision-making procedure before the SCC. Commenting on the role of the SCC, the IHRC stated: "As noted, the SCC sits without a jury, and so the judges charged with determining the guilt or innocence of the accused hear all the evidence irrespective of whether part of it is later ruled inadmissible... This is in stark contrast to a jury trial where the jury, which ultimately decides matters of guilt or innocence, does not hear evidence deemed to be inadmissible, so their deliberations are not tainted by evidence that should never have been before the court in the first place. It is this safeguard in normal procedure that is such a significant lacuna in the safeguards before the SCC" (written comments of 9 May 2012, paragraph 21). Further in its submissions, the IHRC pointed to the fact that the absence of a jury in the proceedings before the SCC constituted a "structural deficit ..., which should be the overall responsibility of the State" (paragraph 41).

11. I have sympathy for the point of view of the IHRC, but in the end I believe that, notwithstanding the restrictions to the rights of the defence, the procedure in the applicant's case, taken as a whole, incorporated a number of safeguards which sufficiently protected his interests. I would attach particular weight to three aspects of the proceedings. They are also mentioned, albeit with other accents, in paragraph 88 of the judgment.

In the first place, the SCC was well aware of the difficulties the system created for the defence. For that reason, it made two things clear after having reviewed whether the information upon which the Superintendent based his opinion was "adequate and reliable". It stated "that there was nothing in any of the files which, in the view of the court, would assist the defence in proving the innocence of their clients", thus deciding that the "innocence at stake" exception was not applicable. It further stated that in weighing and considering the belief evidence of the Superintendent, it "specifically excluded consideration of any information to which the court had become privy as a result of perusing the files relating to the two accused which had been produced by the ... Superintendent". As the Court of Criminal Appeal (CCA) found in its first judgment, the latter statement indicated that the material examined by the SCC "was (not) influential on that court in making its judgment, let alone inspiring anything determinative of the guilt of (the applicant and his co-accused)".

It is true that it was the trial court itself that made the reassuring statements. The applicant could not meaningfully contest either of them. However, as for the first statement, it would in any event have been for the court deciding on the merits to assess whether or not there was something in the file that could have gone in the direction of an acquittal, and the accused would have had to accept that assessment, subject to appeal of course. As for the second statement, it is understandable that a convicted person may have doubts as to whether a court was able to disregard material it had seen before. However, as the CCA stated in its first judgment, banishing matters from their minds is something experienced judges do "meticulously and without difficulty every day". Our Court also accepts that experienced judges perfectly understand how to deal with undisclosed material that cannot serve as a basis for a conviction (Twomey, cited above, § 38).

Finally, it is important to note that the applicant could have invited the CCA, which was not the trial court, "to ascertain whether (in the process of reviewing the material submitted by the Superintendent) the trial judges had misdirected themselves in respect of the documents or the material contained therein" (second judgment of the CCA). The applicant did not seek such an "independent" review. This failure is an element that considerably weakens the strength of his argument.

12. For the reasons set out above, I would conclude that, despite the examination of some undisclosed, potentially damaging material by the SCC, the applicant has not

reduce deaths in custody or other unexplained deaths in which the police became embroiled.

Convicted Sex Offender Found Dead In His Prison Cell

Jason Lee Roseweir, was found hanged in his cell at HMP Wymott on Monday 9th December. Prison staff attempted CPR and paramedics attended but he was pronounced dead in his cell. Roseweir had made two previous attempts to kill himself the first attempt was in HMP Manchester, when he tried to hang himself but was saved by prisoner officers, the second attempt was an overdose. He had been sentenced to seven and a half years at Manchester's Minshull Street Crown Court in January 2012 after pleading guilty to three charges of indecent assault and sexual assault, and had a tentative release date for next year. As with all deaths in custody, the Independent Prisons and Probation Ombudsman will conduct an investigation.

Deaths and Self-Harm in Prison Custody

In the 12 months to the end of June 2013 there were 193 deaths in prison custody. This is unchanged from the same 12 month period in 2012. The number of self-inflicted deaths increased by one-fifth to 62 deaths from 51 in the same period in 2012. The number of natural cause deaths is lower in the 12 months to end of June 2013 than the previous 12 months but it is likely that some of the deaths in the other category will later be reclassified as natural cause deaths as more information about these deaths is received. Overall self-harm continues to decline year-on-year but there are differing trends for male and female self-harm. Incidence of male self-harm has been gradually increasing since June 2005, although the rate of male individuals self-harming has stabilised at between 68 and 71 males per 1,000 prisoners in recent years. In 2012 the number of males self-harming more than 20 times outnumbered females for the first time since the current recording system began.

Offender Management In Prisons: Worrying Lack Of Progress

"We have come to the reluctant conclusion that the offender management model, however laudable its aspirations, is not working in prisons.

The majority of prison staff do not understand it and the community-based offender managers, who largely do, have neither the involvement in the process or the internal knowledge of the institutions to make it work.

It is more complex than many prisoners need and more costly to run than most prisons can afford. Given the Prison Service's present capacity and the pressures now facing it with the implementation of Transforming Rehabilitation and an extension of 'through the gate' services, we doubt whether it can deliver future National Offender Management Service (NOMS) expectations. We therefore believe that the current position is no longer sustainable and should be subject to fundamental review." Nick Hardwick & Liz Calderbank

Little progress has been made in offender management in prisons and a fundamental review is needed, said Liz Calderbank, Chief Inspector of Probation, and Nick Hardwick, Chief Inspector of Prisons. Today they published the report of a third joint inspection into offender management in prisons. The lack of progress is concerning, they added, as it casts doubt on the Prison Service's capacity to implement the changes required under the Transforming Rehabilitation strategy designed to reduce reoffending rates, especially for short-term prisoners.

Offender management is the term used to denote assessment, planning and implementation of work with offenders in the community or in custody to address the likelihood of them reoffending

months, whereas, as we have already observed, the appellant's sentence of three years was discounted from 42 months. It was, in our judgment, a distinction which in all the circumstances the sentencing judge was entitled to draw, particularly as was the fact -- though not apparently uppermost in the sentencing judge's mind -- that the appellant alone was on bail at the time.

26. We return to the totality point from which we started. For all the criticisms of the judge's sentences in this case, as to credit, role and totality, if this appellant had been sentenced at one and the same time, as he ought to have been, for both offences with the burglary taken into consideration, an overall starting point of eight years following convictions for two offences of robbery, committed so close together at night with the aggravating features which we have identified, could not have been open to criticism. A reduction of 20 per cent to reflect the different degrees of credit to which he was entitled for the timing of his pleas could not have been open to criticism, and that would have produced a sentence almost identical to -- in fact, slightly more than -- the total of six years and four months against which this appellant appeals.

27. In our judgment, despite Mr Collis' attractive submissions and best endeavours on the part of this appellant, these sentences, considered separately and cumulatively, are neither manifestly excessive or wrong in principle. In those circumstances these appeals are dismissed.

Prisoner On The Run 'Taunts' Police With Facebook Party Pictures

Michael McInnes, jailed for attempted murder, failed to return to HMP Castle Huntly, near Dundee, last Wednesday 11/12/13 after being granted home release to an address in Glasgow. Instead of lying low McInnes posted links on Facebook to newspaper stories of his escape and was tagged in pictures from a night out three days after he absconded. In one image he is pictured at his favourite nightclub with his arms around revellers. Facebook friends, clearly amused by his exploits, praised his criminal 'brilliance' with comments like: 'Your the hide n seek champion lol x' (sic), and, 'Run like the wind'.

Prisons Have Ears!

R v Mahmood and Another - It was argued that the judge erred in admitting the recordings of the telephone conversations from prison, which it is suggested were inadmissible under the Regulation of Investigatory Powers Act 2000 ("RIPA"). The core argument in this regard is that since all telephone calls from inmates in HMP Manchester (apart from to the Samaritans and to defence lawyers) were recorded as a result of a general or a blanket policy, they were inadmissible under this statutory provision.

Judgement: The "blanket" interception and recording of the telephone calls of prisoners at the two prisons in question does not constitute a breach of RIPA, as it is not "outside the scope" of section 4(4) of the Act, and it is not ultra vires rule 35A.

Probed Officers Keeping Silent 'Should Leave Service'

Police officers who choose not to answer questions during serious criminal inquiries, or misconduct investigations should be made to leave the service, an original member of the Stephen Lawrence Inquiry panel has said. Dr Richard Stone insisted that officers should accept that exercising their civil right to silence is not compatible with being a police officer. They could therefore be made aware of the consequences if they choose to exercise that right, he said. Dr Stone, who was an adviser to Sir William Macpherson's inquiry alongside the current Archbishop of York, Dr John Sentamu, said the tough stance was "the only way" to

been deprived of a fair trial.

Regina v Hopkinson - Conviction Quashed - Retrial Ordered

This appeal also serves to highlight the problems of seeking special verdicts from juries. There will be occasions (very rare) where in the context of a trial for murder, where the alternative defences include, for example, diminished responsibility, loss of control, and lack of the necessary intent, the judge may think it advisable to seek a special verdict. But even in the context of a murder trial a special verdict should continue to be a rarity. Without suggesting that we are entitled in this court to abolish the special verdict procedure, we have offered a shorthand way of suggesting that we do not expect special verdicts to be sought in other cases; and, at least, that the taking of special verdicts has fallen into virtual desuetude. In particular it is inappropriate for a special verdict to be sought in the context of the legislation in section 5 of the 2004 Act which was deliberately created just because of the inevitable difficulties of proving which of two defendants was responsible for the infliction of fatal injuries on a child when there are no other candidates, and neither defendant appears to be willing to tell the truth about the incident.

On 11 February 2013, following a trial in the Crown Court at Leeds which was unsatisfactory in a number of respects, the appellant (now aged 19) was convicted of causing or allowing the death of a child, contrary to section 5 of the Domestic Violence, Crime and Victims Act 2004 ("the 2004 Act"). On the same date the jury also returned a special verdict: that she had unlawfully caused the injuries from which the child died. Her co-accused was Lee Michael Davison.

2. After the jury convicted the appellant a number of jury irregularities came to light. The judge therefore discharged the jury from returning a verdict in relation to the co-accused. He is due to be retried on 5 June 2013.

3. The prosecution arose from the death of a baby, Kristal Davison. She was born on 25 February 2012. She was the daughter of both defendants. At 2.50am on 13 April 2012, when she was not two months old, she was pronounced dead. The cause of death was brain injury, probably the result of traumatic, violent shaking. The post-mortem examination also revealed a number of older injuries. These included multiple rib fractures, fractures above the left knee and of the left ankle, and multiple retinal injuries. Only two people could have been responsible for the death of the child: either of the defendants, each acting alone, or possibly both defendants acting together.

4. Each defendant blamed the other. There was considerable evidence that, whichever one of them it may have been, the other was or ought to have been aware that the child was at a serious and significant risk of harm from the other.

5. The Crown's position from the outset, and throughout the trial (and indeed in their closing submissions to the jury), was that there was no sensible way of knowing from the evidence which of the two defendants was responsible, and there was no way of proving that one or other of them had treated the child with the violence which resulted in death. All that could be proved was that one or other of them inflicted the fatal injuries. That is why they were both charged with the offence under section 5 of the 2004 Act, and neither was charged with murder or manslaughter.

6. Given that there is to be a retrial of the co-accused, and the decision we have reached, we shall simply record for the purposes of this judgment that there seems to us to have been sufficient evidence against both defendants to justify leaving to the jury the charge of causing or allowing Kristal's death. Further, the facts appeared to fit precisely into the ambit of section 5 of the 2004 Act. The evidence was insufficient to justify the conclusion that one or other of the defendants was responsible for the physical injuries which resulted in Kristal's death. Beyond that we need not further summarise the evidence which will be examined in full

in open court in due course.

7. At the early stages of the trial the issue of a possible special verdict was raised by the trial judge. Plainly he had in mind some of the difficulties relating to sentencing if the jury returned verdicts of guilty against both defendants. At that stage we understand that he was asked to postpone any decision relating to a possible special verdict, but the issue came to be reconsidered at the close of the evidence. We are told that the proposal of the special verdict was supported on behalf of the appellant, but opposed on behalf of the co-accused and by the prosecution. The prosecution remained of the clear view that there was no reliable evidence about which of the two defendants had caused the fatal injuries.

8. As there was insufficient evidence on which it would be safe to convict either or both defendants of murder, there was in the Crown's view insufficient evidence to enable a safe special verdict to be returned by the jury that one or other was responsible for the fatal injuries.

9. The judge decided that he would seek a special verdict. By now reduced to eleven in number, the jury was directed accordingly.

10. Following the summing-up, the jury retired on Friday 8 February 2013 to consider their verdicts. They were sent home at the end of that day. They returned to court on Monday 11 February and retired to continue their deliberations. At the end of the day the jury was asked if they had reached a verdict on the co-defendant. They had not. They were asked if they had reached a verdict on the appellant on which they were all agreed. They said that they had. The appellant was found guilty of causing or allowing Kristal's death contrary to section 5 of the 2004 Act. They were then asked whether they were all agreed that she had unlawfully caused the injuries from which the child had died. Again they answered that they were so agreed. That was the end of the day and the jury left court.

11. They resumed their deliberations on Tuesday 12 February. After lunch the judge gave them the appropriate majority direction. The jury again retired. At the end of the day the court adjourned and the jury left in the usual way.

12. The following morning the jury bailiff made the judge aware of a number of troublesome matters which had been drawn to her attention by one or more members of the jury. The judge asked that the jury be brought into court. He told them that they could not continue with their deliberations. Instead he asked each of them individually to write on a piece of paper any "unhappy experiences" they had had. He emphasised that he did not want "shared experiences, just your own experience only", and if there was nothing to be said then the individual juror should say so.

13. In due course the responses were placed before the judge. He summarised them publicly. Some of the jury reported nothing. Some had anxieties they wished to report, but individually they were not significant. However, there were two responses which gave the judge "cause for concern". We shall not read out the lengthy responses in full. The evidence suggested some sort of improper interference with the jury. One juror described a "sense of discomfort and intimidation". The second felt "very threatened and very scared" and believed that he (or she) had been followed. Both said that they were fearful.

14. Counsel for the co-accused noted that the observations made by the jury referred to these anxieties going back for a period which spanned at least ten days or so, that is well before the conclusion of the summing-up. Counsel for the appellant said that he was "deeply troubled" that it was clear that at least two of the jurors had suffered intimidation for some considerable time and that they had done so without drawing their concerns to the attention of the court as they had been instructed to do at the outset of the trial.

credit because of the dilatory role of the prosecution, which is set out helpfully in a schedule which we have been provided with today by the Crown Prosecution Service Appeals Division. The other grounds in relation to credit and the principle of totality do not seem to us to be arguable.

19. As far as the second robbery was concerned, it is submitted on behalf of the appellant that the sentence was manifestly excessive given the credit and the mitigation open to the appellant. The mitigation was said to have been 20 per cent, whereas in fact it was 15 per cent. Also the sentence is appealed on the basis of a disparity between the appellant and Hillier, who, it is argued, played a major role and should not have received a shorter sentence as being a lesser player in that robbery.

20. The single judge, in considering the application for leave, considered that the point in relation to Hillier's role was arguable and that the point in relation to credit was not. With that approach, we agree.

21. Dealing with the first robbery and the question of the sufficiency or otherwise of the credit given to the appellant, we have, as we have observed, been assisted by the chronology, which sets out the history of the case as it proceeded through the court. There were, it must be acknowledged, a series of lamentable failures on the part of the Crown Prosecution Service and the police. But all the papers, with the exception of the CCTV footage and the appellant's interview, had been served by 8th October. The appellant appeared before the court to enter his plea on 18th October for a plea and case management hearing. He, of course, knew then that he had committed the robbery in question. No attempt was made on his behalf to either adjourn the plea and case management hearing generally for the papers to be served or specifically in order to preserve his credit. Had it been necessary for that to be done, it could -- and I have no doubt, would -- have been done.

22. There is, in our judgment, force in the submission that greater credit than that which was afforded should have been afforded, but in our judgment the credit to which the appellant was entitled for that robbery was 25 per cent and not full credit, for which argument was advanced before us.

23. We bear in mind that if the starting point of five years had originally been reduced to 51 months to reflect the credit of 15 per cent, this, if it stood alone, would result in a sentence on this robbery of 45 months, but of course it does not stand alone, and it was this sentence in any event which was specifically adjusted to allow for the principle of totality by a reduction to 40 per cent.

24. We turn to the second robbery and the point advanced on behalf of the appellant in relation to the roles played by the appellant on the one hand and Hillier on the other. Hillier, there is no doubt, snatched the bag. The appellant distracted the victim and later took hold of her companion in order to enable Hillier to get away. There was a suggestion at one stage that the appellant's role may have been greater in that he may have threatened the victim's companion with a knife, but in the light of what we have been told about that today, it would not seem to us to be safe to proceed upon that assumption: it was not something which was referred to in opening and may have been something about which the victim's companion was uncertain when he was asked about it at court on the day when he attended, anticipating, as he would, that he would be giving evidence.

25. In our view, this was, in every sense of the phrase, a joint enterprise in which there was no significant difference in the roles played by the two robbers, nor should one have been drawn. However, it is clear to us that the sentencing judge also took into account Mr Hillier's efforts to break out of a bad criminal cycle and gave him extra credit in order to reflect his earlier plea of guilty. In his case the sentence of 30 months was discounted from 37 to 38

his interference and he punched the appellant, knocking him to the ground.

9. The appellant was arrested by a passing police car and Hillier, the co-accused, was found nearby, in company with another man who in due course pleaded guilty to handling the complainant's smart phone.

10. The appellant, when he entered his plea of guilty, did so on a basis to the effect that he did not know Hillier before the incident, that he had no memory of the incident, probably due to the amount of alcohol and drugs which he had consumed, and being knocked unconscious. He accepted that he was the person depicted on the CCTV with Hillier.

11. When the appellant fell to be sentenced, he was 25 years of age. He has, and had then, a bad record for offences of dishonesty, some minor violence and a warning for robbery, albeit when he was 16 years of age. As was apparent from his basis of plea, he had a significant drug problem which was the catalyst for his offending.

12. At each sentencing hearing there was a discussion about the sentencing guidelines and the category into which each offence fell. There was, and can be, no doubt that the earlier robbery was a category 2 robbery, involving as it did the use of significant force resulting in injury to the victim. The starting point for someone committing such a robbery is four years, with a range of two to seven years. It should be emphasised that that starting point and range apply to persons with no previous convictions. That was not something which could be said of this appellant. His involvement in that robbery was aggravated by several factors: it was a group action which, if not planned, certainly involved two people; it was an offence committed at night; and it involved a victim who was vulnerable by virtue of the alcohol she had consumed.

13. The sentencing judge alighted upon a starting point of five years which he reduced to 51 months, a discount of 15 per cent, and then further reduced it to 40 months to reflect the principles of totality because, as we have already observed -- for reasons which elude us -- it was a sentence imposed consecutively and later to the sentence of three years which had been imposed in relation to the second offence of robbery.

14. The second robbery was, said the judge, essentially a category 1 offence, carrying with it a starting point of 12 months and a range of one to three years -- again, as we emphasise, for a person with no previous convictions. The learned judge then identified a number of aggravating features: the joint enterprise; the vulnerability of the complainant; the fact that it was committed at night, and on this occasion when the appellant was affected by drugs and alcohol.

15. There was of course a further significant aggravating feature which the sentencing judge could not identify because it was not drawn to his attention, namely that the appellant was, by the time of the second offence, on bail for the first offence.

16. The effect of the aggravating features, with or without the bail factor, was, in our judgment, to entitle the sentencing judge to elevate this to a category 2 offence, which he clearly did, and which was clearly in accordance with the flexibility which the guidelines retain. He gave the appellant 15 per cent credit for his plea, which means that he must have alighted upon a starting point of three and a half years. Given that the victim and her companion attended court on the day when the appellant pleaded guilty, that was, it may be thought, something of a generous discount.

17. By his grounds of appeal, it is submitted on behalf of the appellant that in relation to the first robbery, a starting point of five years was manifestly excessive; secondly, that insufficient credit was given for the appellant's plea of guilty; and, thirdly, that the principles of totality were not properly adhered to.

18. The single judge concluded that leave should be given to argue the point in relation to

15. The judge gave a short ruling in which he said: "Within the bounds of fairness to the first defendant [the co-accused] I had tried to emphasise to the jury .... the evidence against the second defendant [the appellant], certainly in relation to the second question as to whether they were satisfied that she personally was responsible for the unlawful killing and I was surprised to the level of near astonishment that a verdict of guilty on the special verdict was returned against her, and in an ordinary case, had she been the sole defendant, on a submission that she had no case to answer in respect of that second question I would have undoubtedly acceded to that application. It was not an application that was made, nor could it be made, bearing in mind that a special verdict was being sought also in respect of the first defendant."

The judge expressed himself to be "deeply concerned" about the safety of the special verdict. He then summarised the responses from the jury. He declined to adopt the suggestion made on behalf of the co-accused that the jurors should be invited to consider whether they could continue with their deliberations and, if they were prepared to do so, then return a proper verdict in accordance with their oath.

The judge took the view that the damage had already been done and that it was "too late for them to approach their task properly". He noted the concerns described by the jurors and "a feeling of intimidation" going back to the time before they delivered their verdict in the case of the appellant. As the jury now included two jurors who felt "intimidated, threatened, scared and one of them felt as though he (or she) was being deliberately followed", he decided that the jury should be discharged; the co-accused would be retried before a jury which was not subjected to threats and did not feel scared or intimidated.

16. The judge took the unusual step of certifying that the case was fit for appeal. The certificate reads: "(i) In this case I granted an application made on behalf of Jessica Davison (opposed by the First Defendant Lee Davison) for a special verdict. In the event that the jury convicted a Defendant of the offence, they were to be asked 'Are you all agreed that (the defendant with whom you are dealing) unlawfully caused the injuries from which Kristal died?' If, at the conclusion of the evidence I had been asked to rule if there was a case to go to the jury against Jessica Hopkinson on unlawful killing I would have ruled that there was not; the only evidence being that of the co-defendant Lee Davison, which was wholly unreliable.

The reason why the special verdict was left as an option for the jury was that (a) it had been requested by those who represented her and (b) it would have been impossible to leave the possibility of a special verdict for one defendant without the other; it would have appeared that the judge was favouring one defendant over the other. (ii) After the jury had returned their verdict upon Jessica Hopkinson but were continuing their deliberations in respect of Lee Davison, I received reports that they had felt threatened and intimidated by persons in the public gallery; one juror had been followed and two said they were scared and did not want to continue. I investigated these issues and discharged the jury. On investigation it was clear that these pressures had been building with the jury from a time before they delivered this verdict."

17. In the grounds of appeal it is submitted that there was no evidence on which the jury could have concluded that the appellant was responsible for the fatal injuries suffered by her daughter; on that basis the special verdict was unsafe. The Crown agrees that there was no such evidence. However, on the basis that the judge had concluded that it was not safe for the jury to continue to deliberate and return a verdict in the case of the co-accused, and in the light of the circumstances which led him to that conclusion and the fact that they had preceded the date when the jury convicted the appellant, it is submitted that the jury's verdict was as

unsafe in her case as it would have been if they had convicted the co-accused.

18. The Crown has not opposed this appeal against conviction. It is accepted that, following a careful enquiry of the jury by the trial judge about complaints of intimidation, there was sufficient evidence to support his conclusion and his decision to discharge them from returning a verdict in the case of the co-accused was justified.

19. The Crown's position appears to be, and we agree with it, that it would not be logical or fair (and perhaps more important, safe) to seek to uphold the conviction of the appellant or the special verdict. On the basis of the judge's findings of fact relating to jury intimidation and pressure, pre-dating the verdict against the appellant and indeed pre-dating the retirement of the jury, the conviction cannot be upheld.

If, on the basis of the material available to the judge, it was appropriate for the jury to be discharged before they returned any verdict relating to the co-accused, the verdict they returned in the case of the appellant should be regarded as similarly flawed and subject to the same problems. In other words, for the reasons which led the judge to discharge the jury from continuing their deliberations in the case of the co-accused, the verdict of the jury was flawed: the jury process had failed.

20. We shall order a new trial. We shall make no further comment about the evidence.

21. We must, however, add some words of caution. The mere fact that the judge himself disagreed, even if profoundly, with the verdict of the jury does not of itself provide a ground for quashing the convictions.

Any such approach would undermine the essential constitutional principle that the responsibility for the verdict rests with the jury and that the jury verdict must be respected by the court. Our conclusion that this conviction is unsafe is not based, because it cannot be based, on the personal views expressed by the judge about the jury verdict.

22. This appeal also serves to highlight the problems of seeking special verdicts from juries. There will be occasions (very rare) where in the context of a trial for murder, where the alternative defences include, for example, diminished responsibility, loss of control, and lack of the necessary intent, the judge may think it advisable to seek a special verdict. But even in the context of a murder trial a special verdict should continue to be a rarity.

23. Without suggesting that we are entitled in this court to abolish the special verdict procedure, we have offered a shorthand way of suggesting that we do not expect special verdicts to be sought in other cases; and, at least, that the taking of special verdicts has fallen into virtual desuetude. In particular it is inappropriate for a special verdict to be sought in the context of the legislation in section 5 of the 2004 Act which was deliberately created just because of the inevitable difficulties of proving which of two defendants was responsible for the infliction of fatal injuries on a child when there are no other candidates, and neither defendant appears to be willing to tell the truth about the incident.

24. In the new trial,the verdicts should be sought on the basis of the indictment without any reference whatever to any special verdicts. The jury will make up their own minds whether the case against either of the defendants has been proved on the basis of the evidence that they will hear at the forthcoming trial.

25. The appeal against conviction will be allowed and the conviction quashed. The defendant will be retried on the original count in the indictment. A fresh indictment will be served. She will be re-arraigned on the fresh indictment within one month, Mr McDonald, if that is convenient to you?

Hopkinson was cleared at the retrial, Davison convicted.

Regina v May - Summary

1. The Recorder: Andrew May is now aged 26 years. He appeals by leave of the single judge against two separate sentences totalling six years four months, imposed by two separate judges in November and December 2012, for two separate offences of robbery committed three days apart in June 2012. He also asked the court to take into account when sentencing him one old and unrelated non-dwelling house burglary.

2. During the course of this appeal we have sought to ascertain how it came to pass either that there was no application for the robberies to be tried together, or that there was no application for the sentence on the second robbery to be adjourned to the conclusion of what was then believed to be the trial of the first robbery. As to those queries, it appears that the question of joinder was not considered until after the appellant had pleaded guilty to the second robbery in point of time. As to the question of when he should be sentenced, we are told that he insisted that he should be sentenced following his plea to the second robbery.

3. We do not regard either of these explanations as satisfactory. They reveal a failure to deal with these two cases as they ought to have been dealt with, and a salutary lesson should be learnt about the importance of ensuring that serious cases which are related in time and nature should be dealt with, where possible, together.

4. Be that as it may, it is common ground that the principles of totality require us to put ourselves, as it did the judge sentencing in December, in the same position as if we were dealing with both offences at the same time and to ensure that the totality of the sentence imposed upon the appellant is just and proportionate in all the circumstances. We therefore approach this appeal as if one judge had dealt with the two robberies at the same time and in the knowledge that the second in time was aggravated, apart from anything else, by the fact that the appellant was on bail for the first; a fact that does not appear to have been conveyed to the sentencing judge in November.

5. The facts giving rise to these two offences are these. We propose to deal with them in chronological order, not in the way in which they were dealt with by the court.

6. On 19th June 2012 the complainant, a young man, went drinking with friends. He left them at about midnight but got on the wrong bus and ended up in Brixton, instead of going straight home. He purchased some food and then waited at a bus stop on Brixton Hill. The appellant was in the area in company with another man. The other man approached the complainant and asked for a cigarette and some spare change. Whilst the complainant was distracted, the appellant moved in. He punched the complainant, who was knocked unconscious. His wallet, mobile telephone and Oyster card were taken.

7. The appellant was identified from CCTV footage and arrested a short time later. In interview he said that he had nothing to do with it. In addition to losing consciousness, the complainant sustained a black eye and a suspected broken nose. The appellant was bailed.

8. Three days later, at about 3 o'clock in the morning on 22nd June 2012, the female complainant was walking down Coldharbour Lane in Brixton with a male companion. The appellant and another man by the name of Hillier approached the complainant and her companion in what was described as a "pincer movement". The appellant spoke to her companion. Hillier spoke to the complainant. He asked her for a light and may have offered her drugs. She indicated that she was not interested. Hillier snatched her handbag which was over her shoulder and ran off. The bag, containing an Oyster card, make up, keys and a smart phone, was seized from her. The appellant held onto the complainant's companion in order to prevent