unnecessarily uncomfortable will only punish the children," he said. A spokesman for the Prisoners Advice Service, which offers free legal advice to prisoners, said: "The lack of legal aid since 2010 means that prisoners struggle to challenge unfair or unlawful decisions, which can have a huge impact on their access to family visits above the statutory minimum."

A Ministry of Justice spokesman said family visits had not been cut and that convicted prisoners could have two hourly visits a month. He added that fewer one in 20 prisoners were on basic regime, which limits visits to the minimum. "We absolutely agree that maintaining family ties, including through visits, plays a vital role in helping prisoners turn away from crime," the spokesman said. "We are carefully considering how family ties can be strengthened as part of our wider prison reforms."

Criminal Cases Review Commission (Information) Bill

If enacted, it would extend the powers of the CCRC to obtain information and evidence, testimony, documents and other material which would assist in its proceedings of appeal and review cases where a miscarriage of justice is believed to have taken place. In essence, it would allow the CCRC to obtain such information from a person other than one serving in a public body, as it is currently restricted to doing. This new measure would apply to private-sector organisations, persons employed by, or serving in, private companies, and private individuals. If passed, it would strengthen the CCRC's ability to overturn wrongful convictions and miscarriages of justice.The subject of the Bill hinges on what is commonly referred to as section 17 powers. Currently, section 17 of the 1995 Act gives the CCRC the power to require public bodies and those serving in them to give the commission documents or other material that may assist it in discharging its functions. That includes police, local councils, the NHS, the Prison Service and so on. It should be clear how all such bodies could and do serve as vital sources of evidence in such appeal cases. The CCRC currently does not have equivalent powers to get those materials from private organisations and individuals. The Bill contains provisions that would allow the CCRC to do so. As with the current power to require material held by public bodies, the new disclosure requirements will apply notwithstanding any obligations of secrecy or other limitation disclosure. That will mean that companies will not be able to use excuses such as the Data Protection Act to deny the CCRC information, as the CCRC has previously experienced. It will also mean that when information carries security classification, including restricted and secret information, that will also not be able to cited as a reason for non-disclosure. That could be particularly important in cases of court martial, with which the CCRC has been involved since the Armed Forces Act 2006. Even after the Bill is enacted, the CCRC should always attempt first to obtain information voluntarily before reverting to court order.

Hostages: Mark Alexander, Anis Sardar, 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 Coleman, Neil Hurley, Jaslyn Ricardo Smith, James Dowsett, Kevan & Miran Thakrar, Jordan Towers, Patrick Docherty, Brendan Dixon, Paul Bush, 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 Allan, Carl Kenute Gowe, Eddie Hampton, Tony Hyland, Ray Gilbert, Ishtiaq Ahmed.

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MOJUK: Newsletter 'Inside Out' No 559 (10/12/2015) - Cost £1

Serious and Continuing Breach of 'Public Law Duty' to IPP's

1.This case arises because of the very serious delays which have occurred in providing access to courses which prisoners serving indeterminate sentences for public protection ("IPP's") are required to undertake. In practical terms the prisoners serving IPP's are required to complete successfully the courses so that they can satisfy the Parole Board that they are fit to be released into society. While they are waiting for the courses the prisoners remain in prison, even if the tariff part of the sentence has expired. The tariff part of the sentence represents the period of time that the prisoners would have served if they had been sentenced to a determinate sentence of imprisonment.

2. IPP's have now been abolished by Parliament, but those who were sentenced to IPP's under the law as it then stood and who have not yet been released are still subject to the IPP's. The problems caused by IPP's have been highlighted in a very considerable number of cases, the details of which it is not necessary for me to repeat. The evidence before me shows that there were, as at 30th September 2015, 4,431 prisoners still serving IPP's of which 3,443 prisoners had served the tariff part of their sentences. This gives an indication of the enormity of the continuing problem.

3. This hearing is directed to the issue of "whether any further hearing or relief is required with respect to the breach of the public law duty". The public law duty is to provide systems and resources that prisoners serving IPP's need to demonstrate to the Parole Board, by the time of expiry of their tariff periods or reasonably soon thereafter, that it is no longer necessary for the protection of the public that they remain in detention. The public law duty was confirmed by the House of Lords in R(James) v Secretary of State for Justice [2009] UKHL 22; [2010] 1 AC 553. I identified that the Secretary of State for Justice ("the Secretary of State"), who is the main Defendant in this action, was in breach of the public law duty in my judgment dated 3rd November 2014, [2014] EWHC 3586 (Admin); [2015] 3 All ER 558.

4. In that judgment I granted a declaration that the Secretary of State had acted in breach of the public law duty. I granted the declaration, notwithstanding submissions to the effect that the fact of a judgment finding breach should be sufficient. This was because the evidence showed that statements made by other Judges in other judgments about breaches of the public law duty by the Secretary of State had not led to a situation where the Secretary of State was no longer in breach of his public law duty.

5. I did not make a mandatory order at that stage, but I adjourned the issue of relief to another hearing date so that information could be provided to show what steps were being taken to comply with the public law duty, breach of which had been in issue up to the first hearing. I had not made a mandatory order because it was not appropriate for a Court to attempt to micro-manage the attendance of the Claimants on the courses which they had been required to attend by the Parole Board (which were Healthy Sex Programme courses ("HSP courses")), nor was it appropriate to prefer the Claimants to other prisoner serving IPP's who were waiting for HSP courses but who were not before the Court. Adjourning the issue of relief seemed to me to be the most effective way of securing effective relief for the Claimants, while avoiding impermissible management by the Court, which management remains a matter for the Secretary of State.

6. A further hearing was heard on 12th December, and in a judgment dated 19th December

2014 [2014] EWHC 4338 (Admin) I set out the steps which were then being taken by the Secretary of State to address the breach of the public law duty, and which it was hoped would lead to a situation where the Claimants were put on the HSP course. I adjourned again the issue of relief. This was because it would have been wrong to make a mandatory order at that stage. This was because it is not for the Court to determine how to discharge the public law duty, and because it was apparent that the Secretary of State had committed further resources to address the problems. I concluded that it would also be wrong to conclude the proceedings at that stage. This was because the evidence showed that the backlog of persons serving IPP's waiting for the HSP course was continuing and that the Claimants were still waiting to access the HSP course. It remained possible that a mandatory order might, in certain circumstances, be appropriate.

7. This hearing was due to be relisted in July, but it appears that there were difficulties in agreeing a date suitable for counsel who had all been involved in the case throughout and who could not be replaced without unnecessary extra cost. In the event the hearing took place before me on 27th October 2015. Towards the end of the hearing the Secretary of State sought permission, which I granted, to lodge further written submissions and evidence. This was after I had expressed the provisional view on the evidence that was then before me that a mandatory order might now be necessary. I granted permission for the further submissions and evidence even though there was understandable objection to further delays by the Claimants. I granted permission because the continuing delays are affecting so many other prisoners serving IPP's waiting for the HSP, that the effect of granting a mandatory order was very likely to adversely affect another prisoner. I made provision for the Claimants to respond to those further submissions and evidence. In the event the following submissions and evidence were lodged: further submissions of the Defendant following the hearing on 27th October 2015, and the second witness statement of Simon Marshall ("Mr Marshall"); submissions on behalf of the First and Second Claimants dated 9th November 2015; the Third Claimant's submissions dated 10th November 2015; the Defendant's submissions in response to the Claimants' submissions of 10-11 November 2015; the Reply submissions on behalf of the First and Second Claimants; and a letter from the Government Legal Department dated 19th November 2015. The submissions on behalf of the First and Second Claimants dated 9th November 2015 did not get forwarded to me (it appears that this was because I was still sitting in Bristol, where the hearing of 27th October 2015 had taken place), and it was only when my draft judgment was circulated to the parties in the normal way that this became apparent. As it is I have therefore had to make some changes to the judgment to reflect those submissions, but those submissions did not cause me to alter the relief which I had decided to grant as set out in this judgment. The updated position

8. (The updated position) In order to understand this short judgment it is necessary to know that the three Claimants are all prisoners serving IPP's. They have all served the tariff part of their sentences. The three Claimants were all identified by the Secretary of State as needing to complete, and in practical terms required by the Parole Board to undertake, the HSP course. The three Claimants brought these proceedings because of continuing delays in providing them with access to the HSP course.

9. At the hearing on 27th October 2015 there was evidence of the updated position from Mr Marshall. Mr Marshall is the acting Head of Commissioning Group at the National Offender Management Scheme ("NOMS"). The evidence showed that the number of HSP courses had increased considerably, and that very real efforts were being made to address the problems caused by prisoners serving IPP's waiting to access the HSP course. The number of HSP courses had increased to 71, which was up from 38, with a possibility of 3 more places. The evidence also showed that the First and Third Claimants had by then accessed and completed the HSP course.

been protected in the autumn statement despite a 15% cut in the MoJ budget. The prisons chief confirmed there are still 14 jails operating a restricted regime, with staff drafted in from other parts of the country under a detached duty scheme. He said there was evidence from the chief inspector of prisons that jails were turning a corner, and getting to grips with the bullying and intimidation that arose from the illegal market in spice and other new psychoactive substances was a major part of that.

Selous told MPs: “Spice has a particular appeal in prisons not least because up to to now we have not been able to test for it. It is unbelievably frustrating but thanks to the Home Office centre for applied technology we now have the ability to test. I believe that will be a gamechanger. With the measures in the psychoactive substances bill I believe we will be able to get on the front foot.” The new bill will make the possession of spice and other psychoactive substances illegal inside prison, and will make it a criminal offence to throw anything over the wall of a prison. The prison service is also training 320 sniffer dogs to detect legal highs.

Children Denied Visits to Fathers in Jail After Rule Changes *Eric Allison, Guardian*

Thousands of children are being denied visiting rights to see their fathers in prison because of changes to the prison discipline system, according to a report. The report, Locked Out, by the children’s charity Barnardo’s, says 17,000 children a month visit a parent in prison, and changes to the incentives and earned privileges (IEP) scheme mean that prison visits are being used as a way to enforce discipline. The new regime has resulted in male prisoners being denied visits from their children, either as a punishment or because they have not “earned” the right. The report estimates that there are 200,000 children with a parent in jail. The rules do not apply to women’s prisons, where official guidance explicitly states that children of prisoners should not be penalised in effect for their mother’s actions.

Family visits are increasingly limited to two hours a month as punishment for prisoners falling foul of changes to the IEP scheme. The report also cites cases of children undergoing intrusive searches during visits. The IEP scheme was introduced to prisons in England and Wales in 1995. It governs four levels of living standards for prisoners: basic, entry, standard and enhanced. New prisoners start at entry level. The different levels impose restrictions including access to phone calls, letters and visits. Under IEP rules, prisoners can have their level reduced on the word of one prison officer and without going through an adjudication process. There is an appeal system, but it is regarded as slow and unwieldy.

Prisoners on basic level can be visited for only two hours a month and in many jails are not allowed “family visits”, which tend to be orientated towards children. Prisoners on enhanced status can have weekly visits, including family visits. The report cites a case of a week-old baby being strip-searched before a visit and her mother’s sterilised bottle of expressed breast milk being opened and sniffed by staff. The mother was said to have felt humiliated. The prison service guidance for women’s prisons states: “Losing a parent to imprisonment is often an extremely damaging life event for a child and it is one of the international rights of a child to be able to keep contact with a parent. Children should not be penalised from visiting their mother because of the mother’s behaviour.”

The Barnado’s report makes several recommendations. They say all jails should see visits as family interventions aimed at reducing re-offending, rather than as a security risk, and that children’s visits to male prisons should be separate from the IEP scheme, as they are in female prisons. Barnado’s chief executive, Javed Khan, said children with a parent in prison were the innocent victims of someone else’s crime, and often struggled with having a parent taken away. “Intensifying that loss by taking away precious visiting hours or making visits

men who were wounded in west Belfast on 12 May 1972. Police are also looking at the killing of 18-year-old Daniel Rooney five months later, also in west Belfast.

Montgomery said: “Some of these incidents have been investigated before and people have been arrested or appeared in court in relation to some of them. There are also others which have not been investigated until now. But in order to progress this investigation, I need as much information from the public as possible. I am appealing to anyone who witnessed any of the shootings or anyone who has any further information in relation to them to come forward and talk to us. I also want to speak to former members of the MRF who served in Northern Ireland and would ask them to come forward and speak to my officers. I appreciate these incidents took place a long time ago but I believe there are people in the community and elsewhere today who were witnesses to them, remember them or talked about them. I need their help to progress this part of the overall investigation.” The Provisional IRA came to learn about the MRF’s existence in the early 70s and moved against its locally recruited agents within the republican community. Among those recruited to the MRS were Seamus Wright and Kevin McKee, two young men from west Belfast whom the IRA kidnapped, killed and buried in secret in 1972. The pair became among those labelled “The Disappeared” – more than two dozen people whom the IRA accused of being informers and whose bodies are still being uncovered at remote locations across Ireland four decades later.

Prisons to Introduce Tests for Legal Highs in Bid to Reduce Violence

Alan Travis, Guardian: Ministers claim the introduction of new drug tests able to detect legal highs such as spice and black mamba will prove a “gamechanger” in curbing the rising tide of violence in jails across England and Wales. Andrew Selous, the prisons minister, told MPs that the introduction early next year of tests developed by the Home Office’s centre for applied technology to detect psychoactive substances will help authorities “get on the front foot” as they tackle violence in jails. The drive will include trying to restrict the use of drones to smuggle drugs into prison, after eight attempts were uncovered so far this year.

The latest official “safety in custody” statistics for prisons in England and Wales show that the number of serious assaults have risen by 80% in the past two years to 2,480, self-harm incidents are up 21% to 28,881 in the past year, and self-inflicted deaths are at a 10-year high of 95 in the 12 months to the end of September. Homicides behind bars have risen to seven in the past 12 months – the highest since 1978. Selous acknowledged to the Commons justice select committee that ministers regard the rising levels of violence inside jails as unacceptable. They say the root causes lie in an unexpected increase in prison numbers, a more violent mix of offenders including young gang members, and the impact of psychoactive substances such as spice and black mamba.

The rising assault levels led the Prison Officers’ Association (POA) three weeks ago to accuse the Ministry of Justice (MoJ) of a “wholesale failure” to address the “dangerous and deteriorating situation” inside prisons. The POA put ministers on 28 days’ notice to improve the situation or face action by prison officers to reduce the health and safety risks. But the warning was dismissed by Michael Spurr, the chief executive of the National Offender Management Service, as exaggerated and unfair, and he suggested its timing was linked to the submission of evidence to the prison service’s pay review body. He acknowledged, however, that the increased violence was linked to a more toxic mix of prisoners serving longer sentences, staff shortages and the impact of psychoactive substances.

Spurr revealed that a drive to recruit a further 1,700 prison officers by next April is under way and should give a net boost of 540 prison officers. He said the prison service’s operational budget had

10. However the evidence also showed that the Second Claimant was only likely to access the HSP course between April 2016 and April 2017. The Second Claimant's tariff had expired on 11 May 2012, and this would mean that he would wait up to 5 years for access to a course which (if the public law duty were to be discharged) he should have accessed by 11 May 2012 or reasonably soon thereafter. This was not any significant improvement on the situation which existed at the date of my first judgment, see paragraph 28 of that judgment. The evidence also showed that, in real terms, the delays faced by prisoners serving IPP's waiting to access the HSP course had not improved in measurable terms, even though the number of courses had increased. I accept that the problems caused by the fact that there are prisoners serving IPP's who are waiting to access courses cannot be solved "at the drop of a hat or wig", see R(Kaiyam)v Secretary of State for Justice [2014] UKSC 66; [2015] AC 1344 at paragraph 34. However the hearing before me took place on 27th October 2015, after I had declared a breach of the public law duty on 3rd November 2014, and after I had had a hearing on 12th December 2014 directed to the issue of relief.

11. The fact that matters had not improved for prisoners serving IPP's waiting to access the HSP course, notwithstanding the real efforts that had been made to improve the situation and increase the number of HSP courses, was acknowledged by Mr Lowe to come as a surprise to those at NOMS and the Ministry of Justice who were attempting to sort out the problems caused by the IPP's. It was because the evidence showed that, notwithstanding all that hard work, matters had not improved for the Second Claimant that I indicated at the hearing that my provisional view was that I should make a mandatory order directing that the Second Claimant be provided with access to a HSP course. This is because the Courts have set their face against indefinite detention by order of the executive, see R(Lumba) v Secretary of State for the Home Department [2012] 2 AC 245 at paragraphs 181, 200 and 341. Although prisoners serving IPP's have been sentenced by the Courts, the continued detention of prisoners serving IPP's after expiry of their tariff because of continuing breaches on the part of the executive of the public law duty raises issues which the Courts must ensure are addressed.

12.The further evidence served after the hearing on behalf of the Secretary of State comprised a second witness statement from Mr Marshall. This showed that the number of HSP courses had increased from 27th October 2015 to 105. It is fair to note, as the Claimants did in written submissions, that there was no real explanation of how it had become possible to increase the number of predicted courses from 71 (or 74 at the most) to 105. Mr Marshall simply stated that there had been "significant activity" to increase the numbers of those able to deliver the HSP course.

13.The effect of this further evidence is that NOMS is highly confident that the Second Claimant will be offered a HSP course in April-June 2016, see paragraph 8 of the second witness statement of Mr Marshall. This is an important improvement from the position which had been outlined before me on 27th October 2015.

14. (Relief) I accept that it is for the Secretary of State, who is subject to the public law duty, to determine how that public law duty is to be discharged. It is not the role of the Courts to manage how the duty is to be discharged. This is because the way in which the public law duty is to be discharged raises issues of policy for the Secretary of State, and because the Courts do not have the expertise to manage the discharge of the public law duty. I also accept that it is important that prisoners serving IPP's who are also waiting to access HSP courses and who are also the beneficiaries of the public law duty, should not be ignored because they are not Claimants before the Courts.

15.However it needs to be recorded that there has been, and remains, a serious and continuing

breach of the public law duty. The fact that it was intended that the Second Claimant should wait for up to 5 years after the expiry of his tariff period before he was provided with access to the HSP course proves that something has gone seriously wrong with the management of prisoners serving IPP's.

16. In circumstances where it is now apparent that the Second Claimant should be provided with a HSP course in April-June 2016 it is no longer necessary to make a mandatory order. However, in order to ensure that the Second Claimant is not again neglected and forced to wait for access to a course that should have been provided years ago, I will conclude the case by giving the Second Claimant permission to apply to the Court for further or other relief if he is not provided with access to a HSP course commencing in the period April-June 2016.

17.(Conclusion) For the detailed reasons given above I will give the Second Claimant permission to apply to the Court for further or other relief if he is not provided with access to a HSP course in the period April-June 2016. I am very grateful to Mr Rule, Mr dos Santos and Mr Lowe and their respective legal teams for their submissions and assistance.

Fletcher & Ors v Governor of HMP Whatton & Anor [2015] EWHC 3451 (Admin) (02/122015)

ECtHR Hearing Concerning Delay of Access to a Lawyer During Police Questioning

The European Court of Human Rights held a Grand Chamber- hearing on Wednesday 25 November 2015 in the case of Ibrahim and Others v. the United Kingdom (applications nos. 50541/08, 50571/08, 50573/08 and 40351/09). The case concerned the temporary delay in providing access to a lawyer during the police questioning of suspects involved in the 21 July 2005 London bombings and the alleged prejudice to their ensuing trials. The applicants in the first three applications, Muktar Said Ibrahim, Ramzi Mohammed and Yassin Omar, are Somali nationals who were born in 1978, 1981, and 1981 respectively. The applicant in the fourth application, Ismail Abdurahman, is a British national who was born in Somalia in 1982. On 7 July 2005 suicide bombers detonated their bombs on the London transport system, killing 52 people and injuring countless more. Two weeks later, on 21 July 2005 four bombs were detonated on the London transport system but failed to explode. The perpetrators fled the scene but were later arrested.

Following the arrest of the first three applicants - Mr Ibrahim, Mr Mohammed and Mr Omar - they were temporarily refused legal assistance in order for police "safety interviews" (interviews conducted urgently for the purpose of protecting life and preventing serious damage to property) to be conducted. Under the Terrorism Act 2000, such interviews can take place in the absence of a solicitor and before the detainee has had the opportunity to seek legal advice. During the interviews the applicants denied any knowledge of the events of 21 July. At trial, they acknowledged their involvement in the events but claimed that the bombs had been a hoax and were never intended to explode. The statements made at their safety interviews were admitted at trial. They were convicted in July 2007 of conspiracy to murder and sentenced to a minimum term of 40 years' imprisonment. The Court of Appeal subsequently refused them leave to appeal against their conviction.

Mr Abdurahman, the fourth applicant, was not suspected of having detonated a bomb and was initially interviewed by the police as a witness. He started to incriminate himself by explaining his encounter with one of the suspected bombers shortly after the attacks and the assistance he had provided to that suspect. The police did not, at that stage, arrest him and advise him of his right to silence and to legal assistance. Instead, they continued to question him as a witness and took a written statement from him. He was subsequently arrested and offered legal advice. In his ensuing interviews, he adopted and referred to his written statement. This statement was admitted as evidence at his trial. He was convicted in February 2008 of assisting one of the bombers and of failing to

Woodhill prisoner Joanne Latham (dob 31/01/1977) was found unresponsive on the morning of Friday 27 November. Staff and paramedics attempted resuscitation but she was pronounced dead at 6.20am. As with all deaths in custody there will be an investigation by the independent prisons and probation ombudsman." In 2001, Latham was given a life sentence at Nottingham crown court after being convicted under the name Edward Latham of attempting to murder her flatmate by lacing a glass of Coca-Cola with mercury. Six years later, in 2007, she was given another life sentence after trying to kill another prisoner at HMP Frankland in County Durham. Then in July 2011, when being held at Rampton secure psychiatric hospital in north Nottinghamshire and still living as a man, she tried to kill another patient by stabbing him in the neck. She was found guilty by jury of attempted murder and given another life sentence.

The CSC system holds about 60 of the most dangerous prisoners . Many of these are men who have been imprisoned for very serious offences which have done great harm, have usually committed subsequent very serious further offences in prison and whose dangerous and disruptive behaviour is too difficult to manage in an ordinary prison location. CSCs are not designed to deal with prisoners with mental health issues, but in 2011 the manager of the unit in Woodhill said many prisoners did have psychiatric problems and that incidence of self harm was high. In July in 2011, Woodhill's CSC was criticised after a prisoner, Lee Foye, sliced off an ear with a razor blade, three months after cutting off his other ear at the unit in April. The July incident occurred while the prison governor was holding an inquiry into the April incident, when Foye, who had previously self-harmed, was allowed into a shower room with a razor blade. After Thompson's death last month, the government committed to providing figures on the numbers of transgender prisoners for the first time. A review of the custody policy in relation to transgender prisoners was started earlier this year and guidance would be implemented in due course, the prisons minister, Andrew Selous, told MPs on 20 November.

Northern Ireland Police Appeal for Information on Covert British Army Unit

*Henry McDonald, Guardian: T*he Police Service of Northern Ireland has appealed for information about a secret undercover British Army unit that operated at the start of the Troubles and was responsible for killing two men in Belfast. Detectives from the PSNI's legacy branch – the specialist police unit tasked with investigating unsolved murders and other crimes from the Northern Ireland conflict – confirmed on Wednesday that it was investigating incidents involving the Military Reconnaissance Force, also known as the Military Reaction Force. The MRF was a covert army unit in the early years of the Troubles made up of two components. One comprised regular soldiers dressed as civilians and carried out special operations, including covert surveillance and drive-by shootings. A second MRF section recruited agents within the IRA and other paramilitary groups who carried out dirty tricks attacks on the orders of the British military.

Appealing for fresh information about the MRF's activities, DCI Peter Montgomery said: "We have been carrying out enquiries in relation to a number of shooting incidents between April and September 1972, during which two people were killed and a number of others were injured. We are looking at these incidents as part of an overall investigation into the activities of the Military Reaction Force at the time. "We know these events took place a long time ago and we know they took place during one of the worst years of the Troubles when many shootings occurred but we believe there are people out there who can help us progress this investigation and we are appealing to them to contact us." The PSNI said the incidents under investigation included the fatal shooting by the MRF of Patrick McVeigh, alongside four other

2014/15 and developed a picture of practices across a range of establishments. Solitary confinement and isolation went under many names: separation, single unlock, loss of association, basic, group separation, time out, low stimulus, intensive care suite, single-person wards, confined to room, duty of care - all of these isolated detainees and in some instances amounted to solitary confinement. The report found that some of this euphemistic terminology created a risk of obscuring the seriousness of the practices and the need for rigorous monitoring and governance. All these processes involve individuals locked up on their own for long periods with limited contact with other detainees or staff.

The review shows that it would be possible for two men with identical mental health needs, disruptive behaviour and self-harm risks to be held in very different conditions, depending where they ended up: 1) A man in a prison segregation unit might be locked in a dirty cell for 23 hours a day with no activity apart from a radio to listen to and very limited human contact; A man with identical characteristics might also be isolated in a secure hospital, where he would be kept in his own room, allowed as many of his own things as possible and visited regularly by staff and health professionals who would help him reintegrate; 2)A boy of 16 in a young offender institution might be disciplined by being confined in an adult segregation unit for some days; and the same boy in a secure training centre might be confined in his own room for a few hours for the same behaviour.

The NPM is made up of 20 independent bodies with powers to inspect regularly all places of detention. Being part of the NPM brings into their remit the clear purpose of preventing ill-treatment of anyone deprived of their liberty. The NPM was established in 2009 by the UK government to meet its UN treaty obligations and is coordinated by HM Inspectorate of Prisons. Through regular, independent monitoring of places of detention – conducted through thousands of visits every year – the NPM plays a key role in preventing ill-treatment in detention. The NPM used a widely accepted international definition of solitary confinement for this work. This definition has now been adopted in new UN prison rules, known as 'The Mandela Rules'. Over the next year NPM members will use these findings and the new Mandela Rules to develop consistent monitoring standards to reduce the use of solitary confinement and prevent them from being ill treated.

Transgender Prisoner Found Dead in HMP Woodhill CSC Unit

*Eric Allison & Helen Pidd, Guardian:*Joanne Latham a transgender woman has become the second trans prisoner in the space of a month to apparently take their own life while serving time in a male jail in England. Joanne, 38, from Nottingham, died in Woodhill prison in Milton Keynes on Friday. It is understood she had changed her name this summer, having previously been known as Edward Adam Brown or Edward Latham. She was serving a number of life sentences for attempted murder and was housed on the close supervision centre (CSC), reserved for the most dangerous and vulnerable prisoners. Her death comes just weeks after the death of 21-year-old Vicky Thompson, who was being held at Armley, a category B men's prison in Leeds. Thompson had identified as a woman since her mid-teens and told friends she would kill herself if she was sent to a male prison. Her solicitor Mohammed Hussain told the judge at Bradford crown court she was "essentially a woman" and asked for her to be sent to New Hall women's prison, near Wakefield, but she was instead sent to HMP Leeds. At the end of October another trans woman, Tara Hudson, was moved from an all-male jail to a women's facility after a campaign by her friends and family.

Latham had not requested a transfer to a women's prison, the Guardian understands. In any case, she would not have been eligible for a transfer, as there are no CSC units for women in the English justice system. A Prison Service spokesman said on Tuesday 01/12/2015: "HMP

disclose information about the bombings. He was sentenced to ten years' imprisonment, reduced to eight years on appeal on account of the early assistance that he had given to the police.

Relying on Article 6 §§ 1 and 3 (c) (right to a fair trial and right to legal assistance) of the European Convention on Human Rights, the applicants complain about their lack of access to lawyers during their initial police questioning, alleging that their subsequent convictions were unfair because of the admission at trial of the statements they had made during those police interviews.

Procedure: In its Chamber judgment of 16 December 2014, the European Court of Human Rights, held, by six votes to one, that there had been no violation of Article 6 § 1 and 3 (c) (right to a fair trial and right to legal assistance) of the European Convention. The Court was satisfied that, at the time of the four applicants' initial police interviews, there had been an exceptionally serious and imminent threat to public safety, namely the risk of further attacks, and that this threat provided compelling reasons justifying the temporary delay in allowing the applicants access to lawyers. The Chamber also found that no undue prejudice had been caused to the applicants' right to a fair trial by the admission at their trials of the statements they had made during police interviews and before they had been given access to legal assistance. It took into account the counterbalancing safeguards contained in the national legislative framework, as applied in each of the applicants' cases; the circumstances in which the statements had been obtained and their reliability; the procedural safeguards at trial, and in particular the possibility to challenge the statements; and the strength of the other prosecution evidence. In addition, as concerned the fourth applicant, who had made self-incriminating statements during his police interview, the Chamber emphasised the fact that he had not retracted his statement even once he had consulted a lawyer but had continued to rely on his statement in his defence up until his request that it be excluded at trial. On 1 June 2015 the case was referred to the Grand Chamber at the request of two of the applicants (Mr Omar (application no. 50573/08) and Mr Abdurahman (application no. 40351/09)).

All Charges Against Kevan Thakrar Dropped

After more than two years since the false allegations of assault were made against me by a Manchester prison officer, a verdict has been entered by the judge of Not Guilty, without the need for a trial. Expecting to be attending Manchester Crown Court on 18 November for the purpose of setting security arrangements for the scheduled trial on 30 November following complaint by the Prison Service, I was greeted instead by the Crown Prosecution Service (CPS) confirming my innocence and withdrawing the case. KEVAN THAKRAR writes from HMP Wakefield.

Hundreds of thousands of pounds have been wasted through this vindictive prosecution which the Prison Officers Association (POA) pressured the CPS into taking, full in the knowledge that I had done nothing wrong, in an attempt to spite me and, as part of their ongoing vendetta for exposing the racist and brutal regime they operate at HMP Frankland. Constantly complaining of funding cutbacks whilst squandering such large sums in an act of outright corruption is total stupidity causing the smaller pot to be spread even more thinly. Decent pay and conditions will never be possible with such unprofessional conduct frittering away substantial amounts of public money. I did not get the chance to hear the verdict live due to the refusal of HMP Wakefield to comply with the judge's production order again, meaning I watched the circus on TV through a video-link instead. Although the ridiculousness of this entire case is best suited to a TV drama, the audacity of the prison to repeatedly refuse to bring me to court throughout is a matter the judge should never have tolerated. Obviously too used to making up their own law in the kangaroo adjudication process, those from within the prison system believe

they can force the criminal courts to bow to their degenerate ways.

A trial putting on display the outright lies which brought about this case, as well as my mistreatment within the Close Supervision Centre (CSC) system since 2010 and secretive world of solitary confinement within a country whose propaganda claims it to be a bastion of human rights and the strongest opponent against the torture of prisoners would have been nice, but other means of publicising this hypocrisy will now need to be utilised. A protest outside the court was arranged for the trial and I thank all those who intended to come, as well as those who made it to hear the verdict; however a shift away from Manchester aimed instead at my location on and treatment within the CSC is what is now necessary. I therefore ask that my supporters arrange a demonstration outside the Prison Service headquarters demanding my removal from the CSC where I have been held as a political prisoner for almost six years, and educate the public as far as possible on my situation and the existence of the CSC. Time has come for an end to my torture but only through your support will this be possible.

Kevan Thakrar A4907AE, HMP Wakefield, 5 Love Lane, Wakefield WF2 9AG

[Kevan was originally charged in August 2013 with common assault against a prison officer at Manchester prison. In March 2014 the CPS then accepted a defence submission that it was not in the public interest to proceed (presumably as Kevan was already serving a life sentence). Backed by the POA, the officer judicially reviewed this decision and succeeded in getting the charge reinstated, only to have it – and a further spurious charge of 'interfering with a witness' - once again withdrawn, this time by the prosecution itself, presumably when it finally became apparent there was no actual evidence to support the charge.]

Relatives Lose Fight for Inquiry Into 1948 Batang Kali 'Massacre' – But Did They?

A majority decision by the UK's highest court, handed down Wednesday, 25th November 2015, ruled that the duty to investigate effectively only dates back to 1966 – when the right of individual petition to the European court of human rights was introduced – will, however, have profound consequences for inquiries into Northern Ireland's Troubles. They ruled 4 to 1, lady Hale dissenting that government is not obliged to hold a public inquiry into the 1940s killing of 23 Malayan villagers by a British army patrol because the atrocity occurred too long ago, the Supreme Court has ruled. MOJUK having read through the judgment and paying particular attention to the dissenting opinion of Lady Hale, reprinted in full below, are of the opinion that Lady Hale makes a compelling argument, her concluding paragraph, says it all! "If the Divisional Court had not set the bar to establishing the truth so high, it might well have concluded that the value of establishing the truth, which would serve all the beneficial purposes which it identified, was overwhelming. In my view, the Wednesbury test does have some meaning in a case such as this. The Secretaries of State did not take into account all the possible purposes and benefits of such an inquiry and reached a decision which was not one which a reasonable authority could reach."

Lady Hale: (Dissenting) - 286. The claimants want the United Kingdom Government at long last to hold a proper inquiry into how it was that 24 unarmed rubber plantation workers were shot dead by British soldiers on 11 and 12 December 1948 during the emergency in Malaya. They want the decisions taken by the Secretaries of State on 29 November 2010 and 4 November 2011 not to hold such an inquiry or to make any other form of reparation quashed. They make their challenge under both the Human Rights Act 1998 and the common law.

Rights Act Challenge - 287. The Human Rights Act challenge has always been ambitious. The events in question took place before the European Convention on Human Rights was

state that the time is not right for a continuation of revolution by any and all means, it is our opinion that while the denial of national self-determination and British occupation continue, so too will armed revolution. Those who remain true to the ideals and principles of the 1916 Proclamation, need to publicly re-dedicate ourselves to the achievement of that vision.

Therefore, collectively and by politically organised and other means, the fight against occupation must continue. The fight against capitalism must continue. The fight within our communities against collaborators, conformists, criminals and corruption must continue.

Those of us who remain willing to fight for the Socialist Republic by all means should not permit those who have abandoned it to use the memory of fallen volunteers for their own political ends; especially when their current political objectives run contrary to the very values they purport to commemorate. 'State-Run 1916 commemorations' in either statelet are, by their very definition, contradictions in terms – given that both statelets are complicit in the suppression of the Irish Socialist Republic. Likewise, former comrades who now welcome the commander in chief of the British occupying forces to Ireland and endorse British law and state agencies in occupied Ireland, are also unworthy of any claim to the legacy of 1916.

The National Republican Commemoration Committee hereby invites all Revolutionary Socialist Republicans committed to the continuing fight for Irish Freedom to join with us to commemorate our martyred dead in Coalisland on Easter Sunday 2016. The historical significance and symbolism of gathering in Coalisland, where northern volunteers assembled in 1916, will not be lost on the Republican base. Our parade will provide an opportunity for all principled Republicans to collectively commemorate our fallen volunteers and demonstrate our continued dedication to the establishment of the Socialist Republic.

Beirigí bua agus ar aghaidh linn le chéile [Success to you Comrades We go Forward Together]

Monitoring Places of Detention – Sixth Annual Report

Inspectors and monitors of prisons and other detention facilities across the UK today published the first national account of the use of solitary confinement and isolation in every type of custody across the UK. They warned that the use of solitary confinement and isolation was often unacknowledged as it was called by so many different names, and so was inconsistent and too often involved poor regimes and inadequate safeguards. Twenty independent inspectorates that monitor all prisons, police custody, immigration detention, secure mental hospitals and other forms of detention in England, Northern Ireland, Scotland and Wales (known as the National Preventive Mechanism or NPM) work together to deliver the UK's UN treaty obligations to prevent detainees being mistreated in custody. The findings were a major part of the UK NPM's sixth annual report, which also gave an overview of its work monitoring detention in prisons, police custody, court cells, customs custody facilities, children's secure accommodation, immigration, military and mental health facilities.

On behalf of the 20 members of the UK NPM, Chief Inspector of Prisons Nick Hardwick said: "In many cases, detainees are isolated legitimately to prevent harm or provide a calm environment that is in their best interest. However, prolonged solitary confinement or isolation can also have a detrimental effect on a detainee's mental health, exacerbate behaviour problems and increase the risks of their ill-treatment. It is already clear that poor governance, inconsistent practice and a soothing terminology allow some individuals to be held in solitary confinement for long periods without adequate safeguards - and that includes some of the most vulnerable people in detention, such as children and mentally ill people."

NPM members monitored and inspected solitary confinement and isolation throughout

transparency and of justice in the wide sense for a government to arrange for a further review in connection with a national tragedy in response to concerns of victims or their families who are not satisfied with the results of the terminated investigations carried out in accordance with national law, notwithstanding that the tragedy has occurred many years earlier."

313. If the Divisional Court had not set the bar to establishing the truth so high, it might well have concluded that the value of establishing the truth, which would serve all the beneficial purposes which it identified, was overwhelming. In my view, the Wednesbury test does have some meaning in a case such as this. The Secretaries of State did not take into account all the possible purposes and benefits of such an inquiry and reached a decision which was not one which a reasonable authority could reach. I would have allowed this appeal.

Support Republican Prisoners of War – Restore Political Status Now!

National Republican Commemoration Committee 1916 – Statement of Intent – 2016

As the Irish Nation approaches the centenary of the Easter Rising of 1916, it is of the utmost importance that commemorations marking this historic landmark event highlight the principles and ideals contained within the proclamation of the Irish Republic. The centenary should also serve as an opportunity for those who legitimately continue to struggle for Irish Freedom, by whatever means necessary, to re-dedicate ourselves to the ongoing fight to end the British occupation of our country and the establishment of a 32 County Democratic Socialist Republic. With this in mind, revolutionary Republicans committed to resisting foreign imperialism and native capitalism have established the National Republican Commemoration Committee, made up of activists from across the country. Our intention is to commemorate with dignity and pride the fallen of 1916 and those from previous and subsequent generations who made the ultimate sacrifice for Irish Freedom.

The Ireland of today bears absolutely no resemblance to the vision that the men and women of 1916 cherished. While they obligated themselves to cherishing all the children of the nation equally; one hundred years on, our cities have the highest levels of child poverty in Europe. The gap between rich and poor has never been greater and two anti-Republic administrations oversee the implementation of austerity agendas that are directed by foreign capitalists. Successive regimes have consistently attacked the working class and unwaged. At the same time, toothless trade unions have abandoned Connolly and embraced capitulation to capitalism. The Ireland of today is an Ireland divided; torn in two by those who abandoned the Republic proclaimed in 1916 and perpetuated by subsequent betrayals of the Socialist Republic by former comrades. Two illegitimate assemblies that uphold the undemocratic injustice of partition continue to suppress the sovereignty of the nation. It is shameful that parties claiming the legacy of Connolly, Pearse, Mellows, Carney and Sands have consented to a unionist veto over the reunification of our country. The Ireland of today contains men and women imprisoned for their continued dedication to the ideals of the 1916 Proclamation and the establishment of a Socialist Republic. Those administering British rule on behalf of the same party that oversaw the deaths of the H-Block Martyrs claim that these Republican Prisoners are ‘traitors to Ireland’. The truth is that current Republican POWs have been incarcerated for asserting the Irish right to national freedom and sovereignty by arms – a fundamental right enshrined in the 1916 Proclamation. Continual attempts to criminalise our comrades have failed due to their collective resistance and continue to fail.

What all of the above and more serves to confirm; is that the Easter Rising of 1916 is an unfinished revolution, armed and otherwise. While we have listened to the opinions of those who

adopted in 1950; before it was ratified by the United Kingdom in 1951; before it gained sufficient ratifications to come into force in 1953; before the United Kingdom accepted the right of individuals to petition the European Court of Human Rights about alleged violations in 1966; and before the Human Rights Act 1998 turned the Convention rights into rights which are binding, not only in international law, but also in United Kingdom law.

288. The claimants seek to build two bridges. The first is to carry them from the killings which took place in 1948 into the temporal scope of the Convention which came into force in 1953. They say that 1953 is the critical date for this purpose and that the killings took place sufficiently close to that date for there still to have been an obligation to investigate them after it. The second bridge must carry them from that internationally enforceable obligation into a domestically enforceable obligation under the Human Rights Act. They say that such an obligation arises because of new information which has come to light since the Act came into force.

289. It is a tribute to the skill of the claimants' legal team that these arguments have to be taken seriously. They rely crucially on the Grand Chamber decision in Janowiec v Russia (2013) 58 EHRR 792, which clarified the court's earlier decision in Silih v Slovenia (2009) 49 EHRR 996. Janowiec concerned what is generally known as the "Katyn massacre" in 1940, when more than 21,000 Polish prisoners of war were summarily executed by officers of the Soviet NKVD, the predecessor of the KGB. The court might have disposed of the case on the ground that these deaths all took place long before the ECHR had been dreamt of, let alone adopted. But it did not. It acknowledged that it only had jurisdiction to examine acts or omissions taking place after the entry into force of the Convention. But it posited two circumstances in which that jurisdiction might arise even though the deaths themselves had pre-dated the critical date. The first was where there was a "genuine connection" between the death and the entry into force of the Convention. This had two components, both of which must be satisfied. First, "the period of time between the death as the triggering event and the entry into force of the Convention [was] reasonably short, and [second] a major part of the investigation [had] been carried out, or ought to have been carried out, after the entry into force" (para 148). The court had previously said that the period should be no more than ten years (para 146), although it appears that this was a maximum which might not apply in all cases. The second circumstance was "if the triggering event was of a larger dimension than an ordinary criminal offence and amounted to the negation of the very foundation of the Convention" (para 150). The examples given were war crimes, genocide or crimes against humanity. But this "Convention values" obligation could not arise where the deaths had taken place before the adoption of the Convention, "for it was only then that the Convention began its existence as an international human rights treaty" (para 151). It would have been much simpler for us all if the Grand Chamber had applied the same logic to the "genuine connection" test. But it did not.

290. As to the first part of the "genuine connection" test, the lapse of a "reasonably short" period of time since the deaths, it seems unrealistic and artificial that so much should depend upon whether the critical date is the entry into force of the Convention in 1953, or the acceptance ofthe right of individual petition in 1966. As Lord Kerr has demonstrated, the jurisprudence of the Strasbourg court does not point convincingly one way or the other. But logic points strongly in favour ofthe former. The United Kingdom was bound by treaty to observe the Convention from 3 September 1953 and in relation to Malaya from 23 October 1953. It could thereafter have been taken to the Strasbourg court by any other member state for an alleged violation. There was no requirement that the member state or its citizens be a victim. It is difficult to see why the additional possibility of being taken to the court by an individual victim should make any differ-

ence to the obligations of the United Kingdom in international law .

29l. Left to myself, therefore, I would not have been prepared to reject this claim on the ground that the critical date was 1966 rather than 1953. We do not have slavishly to follow the Strasbourg jurisprudence. Lord Bingham's famous dictum in R (Ullah) v Special Adjudicator [2004] UKHL 26; [2004] 2 AC 323, para 20, does not require us to do so. Thus far, it is possible to discern four broad propositions from our own case law. First, ifit is clear that the claimant would win in Strasbourg, then he will normally win in the courts of this country. This is because it would negate the purpose ofthe Human Rights Act for the claimant to have to bring a claim in Strasbourg. But this is subject to the well-known qualifications set out in Manchester City Council v Pinnock (Secretary of State for Communities and Local Government intervening) [2010] UKSC 45, [2011] 2 AC 104, para 48 (and recently reaffirmed in R (Chester) v Secretary of State for Justice [2013] UKSC 63, [2014] AC 271, para 26): that the "clear and constant" line of Strasbourg authority is "not inconsistent with some fundamental substantive or procedural aspect of our law, and whose reasoning does not appear to overlook or misunderstand some argument or point of principle". Second, if it is clear that the claimant would lose in Strasbourg, then he will normally lose here too: R (Al-Skeini) v Secretary of State for Defence (The Redress Trust intervening) [2007] UKHL 26, [2008] AC 153 is an example where the House of Lords thought that the answer was clear. Strasbourg had drawn a line in the sand - jurisdiction was territorial, with only a very few narrowly defined exceptions, which did not apply to civilians killed in the course of military operations in Iraq. As it happened, the House was wrong about that (see Al-Skeini v United Kingdom (2011) 53 EHRR 589), but that does not affect the principle. Third, there are cases where it is clear that Strasbourg would regard the decision as one within the margin of appreciation accorded to member states. Then it is a question for the national courts by which organ of government the decision should be taken:

R (Nicklinson) v Ministry of Justice (CNK Alliance Ltd intervening) [2014] UKSC 38, [2015] AC 657 is an example of this, in which this court was divided on where responsibility lay for deciding whether the outright ban on assisting suicide was justified. Fourth, there are cases on which there is as yet no clear and constant line of Strasbourg jurisprudence. We do not have to wait until a case reaches Strasbourg before deciding what the answer should be. We have to do our best to work it out for ourselves as a matter of principle: Rabone v Pennine Care NHS Foundation Trust (INQUEST intervening) [2012] UKSC 2, [2012] 2 AC 72 is an example of this (an example which, as it happened, was swiftly followed by a Strasbourg decision which is wholly consistent with it: see Reynolds v United Kingdom (2012) 55 EHRR 1040). There may be other situations in which the courts of this country have to try to work out for themselves where the answer lies, taking into account, not only the principles developed in Strasbourg, but also the legal, social and cultural traditions of the United Kingdom.

292. As to the second part of the "genuine connection" test, that a significant part of the investigation did take place, or should have taken place, after the critical date, this depends upon whether there was an omission to act after that date. That depends upon whether "a plausible, credible allegation, piece of evidence or item of information comes to light which is relevant to the identification and eventual prosecution or punishment of those responsible". Such new material must be "sufficiently weighty and compelling to warrant a new round of proceedings" (Janowiec, para 144, citing Dorado v Spain (Application No 30141109), (unreported) given 27 March 2012, Cakir v Cyprus (Application No 7864/06), (unreported) given 29 April 2010, and Brecknell v United Kingdom (2007) 46 EHRR 967, paras 66-72). Quite obviously, new material did come to light in 1970 when five of the soldiers admitted under caution that the villagers

If the guardsmen did indeed kill innocent and unarmed villagers in cold blood, then even by the different standards of the time, this was a grave atrocity which deserves to be acknowledged and condemned. (2) The inadequacy of the initial investigation. There were many people present at the scene who could have been asked for their accounts. It was totally unacceptable to assume that the guardsmen and their police escorts were telling the truth but that survivors and civilian eye¬witnesses would not do so. (3) The weight which should be accorded to the confessions made in 1970. Although originally given to a newspaper, four were repeated under caution to the police. They were enough to cast serious doubt on the official account and to prompt a serious police inquiry. (4) The premature termination of that inquiry, which was obviously being conscientiously conducted by DCS Williams, and his view that this was a political decision, unsurprising given that it happened very shortly after the change of government in 1970. (5) The evidence obtained from the Royal Malaysian Police inquiry in the 1990s. Although some of the relatives and survivors had previously given their accounts to others, this evidence had only recently come to light. (6) The petering out of that inquiry, in the face, it would appear, of an unhelpful attitude of the British authorities when the Malaysian Police wished to pursue their inquiries here. (7) The thorough analysis of all the available evidence in Slaughter and Deception at Batang Kali. The authors did have a particular point of view, being determined to undermine the official account, but they collected together a great deal of information and analysed it in great detail. (8) The evidence from the archaeologist, Professor Black, as to what exhuming and examining the bodies of the deceased could show and how it would help in determining the facts. (9) The persistence and strength of the injustice felt by the survivors and families of the men who were killed, which has led them twice to petition the Queen and to launch these proceedings.

310. Bearing all that in mind, a rational decision-maker would then consider the advantages of some sort of inquiry, in summary: (1) The very real possibility that, despite the difficulties, conclusions could be drawn about what is most likely to have happened. (2) The importance ofthe British authorities, at long last, seeking to make good the deficiencies of the past inquiries and the very real benefits this could bring in terms of catharsis, accountability and public confidence, whether or not firm conclusions could be reached. (3) If firm conclusions could be drawn, the huge importance of acknowledging what had gone wrong and setting the record straight.

311. Against those advantages, a rational decision-maker would set the following disadvantages: (1) The passage of time, the death of so many of the participants and witnesses, and the conflict of evidence, which would make finding the facts more difficult. (2) The changes which have taken place in the organisation and training of the army, the climate of law and public opinion, such that it is unlikely that practical lessons could be learned about how better to handle such situations today. (3) The cost of even a "stream-lined" inquiry, which would be not inconsiderable, involving as it would have to do inquiries to be made in Malaysia, which would depend upon the co-operation of the Malaysian authorities.

312. The reasons given by the Secretaries of State focussed on what might now be learned of contemporary relevance, either to the organisation and training of the army or to promoting race relations, from conducting an inquiry. They did not seriously consider the most cost-effective form which such an inquiry might take. They did not seriously consider the "bigger picture": the public interest in properly inquiring into an event of this magnitude; the private interests of the relatives and survivors in knowing the truth and seeing the reputations of their deceased relatives vindicated; the importance of setting the record straight - as counsel put it, balancing the prospect of the truth against the value of the truth. The Strasbourg court expressed this well in Harrison, at para 58: "Even where no article 2 procedural obligation exists, it is in the interests of governmental

in the principal decision letter of 29 November 2010 and confirmed, after these proceedings had begun, on 4 November 2011. The reasons given for deciding not to hold an inquiry are summarised by Lord Neuberger at paras 124 and 125 and it is unnecessary for me to repeat them. I would only add that those reasons were focussed upon a statutory inquiry under the Inquiries Act 2005; but the Secretaries of State also concluded that the reasons against such an inquiry "also militate against the establishment of any other form of inquiry or investigation".

306. The Divisional Court dealt with this issue in some detail: [2012] EWHC 2445 (Admin), paras 124 to 176. The court considered five possible purposes of an inquiry, derived from Lord Howe's evidence to the Select Committee on Government by Inquiry in 2004-2005: (a) establishing the facts, (b) learning from events and preventing a recurrence, (c) catharsis and improving understanding of what happened, (d) providing reassurance and rebuilding public confidence, and (e) accountability. To this they added (vi) promoting good race relations, as required by section 71 of the Race Relations Act 1976. But the court's assessment of how an inquiry might achieve all of these purposes was heavily influenced by its conclusion that "it would appear to be very difficult at this point in time to establish definitively whether the men were shot trying to escape or whether these were deliberate executions" (para 159). Thus the facts could not definitely be found (paras 160, 161); catharsis could not be achieved (para 165); reassurance could not be given or public confidence rebuilt (para 168); accountability could not be determined (para 169); and it could not be said whether there would be negative or positive consequences in race equality terms (para 172). In addition, times had changed so much that it was very questionable how much could be learnt (para 164); and the costs, even of a "stream-lined" inquiry, which is all the court thought necessary, were a material factor (paras 174-175). Hence the Secretaries of State had taken into account the relevant factors and reached a decision which was plainly open to them to reach (para 176).

307. The Court of Appeal was critical of the approach of the Divisional Court: [2014] EWCA Civ 312, [2015] QB 57. The difficulties of reaching "definitive" conclusions "lay at the heart of its reasoning" but this was to impose too high a threshold (para 109). Recent public inquiries, including the Shipman, Bloody Sunday and Baha Mousa inquiries, had adopted a lower and more flexible standard. Moreover, the Secretaries of State had expressly not assumed that it was unlikely that an inquiry could reach firm conclusions. Nevertheless, they took into account the evidential difficulties; considered that establishing the truth is especially important when it can cast light on systemic or institutional failings, which can then be corrected, and this is more likely where the events are relatively recent; and doubted the contemporary relevance of any findings, given how much had changed since 1948. The costs would be considerable. Overall, the conclusion was that the benefits to be gained would not justify the costs. The Court of Appeal was "satisfied that the Secretaries of State had considered everything which they were required to consider; did not have regard to any irrelevant considerations; and reached rational decisions which were open to them" (para 118).

308. One ofthe reasons given by the claimants for adopting proportionality instead of Wednesbury unreasonableness or irrationality is Professor Craig's view that "cast in its correct terms it could almost never avail claimants" (Administrative Law, 7th ed (2012), para 21-027) and that "it is difficult to think of a single real case in which the facts meet this standard" ("The Nature of Reasonableness" (2013) 66 CLP 131, 161). This case is an excellent opportunity to test whether that proposition is correct.

309. Any rational decision-maker would take into account, at the very least, the following salient points about the background history: (1) The enormity of what is alleged to have taken place.

had not been running away but had been shot in cold blood and a sixth did not retract the sworn statement he had earlier given to the same effect. The critical question, however, is whether further new material came to light after the Human Rights Act came into force.

293. That question is critical because the second bridge, from the Convention to the Human Rights Act, depends upon it. The claimants might well have been able to complain to the Strasbourg court after the 1970 investigation was abandoned. But it is now far too late for them to do that. The time limit for complaining to Strasbourg is long gone. An individual can only make a claim under the Human Rights Act if he or she could complain to Strasbourg after exhausting the remedies available domestically. It was established in In re McCaughey [2011] UKSC 20, [2012] 1 AC 725 that where the death took place before the Human Rights Act came into force but a significant part of the investigation was to take place after that date, then the investigation had to comply with the requirements of the Convention. The claimants argue that the obligation also arises if, after the Act came into force, significant new information comes to light which undermines or casts doubt upon the effectiveness of the original investigation or investigations (a possibility recognised in McCaughey, for example at para 93). The claimants also argue that this point was decided in their favour in the Court of Appeal.

294. The original investigation by the UK authorities in 1948-1949 was seriously defective, not least because none of the surviving villagers were interviewed, and was rightly criticised by the Divisional Court and Court of Appeal. The criminal investigation begun in 1970 as a result ofthe guardsmen's confessions in 1969-1970 was halted prematurely, before the Metropolitan Police could complete their inquiries by interviewing the Malaysian witnesses. The Malaysian Police conducted their own investigations from 1993 to 1996 but were unable to complete their inquiries by interviewing the British witnesses. Much of the material was first brought together and put into the public domain in the book, Slaughter and Deception at Batang Kali, by Ian Ward and Norma Miraflor, published in June 2009. It is unclear just how much the British authorities knew about the Malaysian Police inquiries until then, but it is clear from the precis of the book prepared for the Secretaries of State by Dr Brendan McGurk in 2009, that the authors had seen statements made to the Malaysian Police which had not been seen in either Ministry. As Lord Kerr has shown, in January 2009, the Secretaries of State were still maintaining the stance that there was nothing to gainsay the original official version of the killings, but something caused them to reconsider their decision in the course of 2009. As the Court of Appeal held, "significant material from the Metropolitan Police in the 1970s and a considerable amount of potentially relevant material accumulated during the Royal Malaysian Police investigation in the 1990s has only come to the notice of the claimants in the course of, and as a result of, these proceedings" (para 82). Amongst that material was Detective Chief Superintendent Williams' report, which revealed his view that the decision to halt the inquiry was secured by "a political change of view".

295. Against that, the Secretaries of State argue that the Court of Appeal was not there deciding that there was new information sufficient to revive the investigative obligation. They also argue that the essentials of the villagers' accounts had been reported to the Metropolitan Police in 1970 and included in DCS Williams' report. Thus, although that inquiry had not been completed, the British authorities did know all the essential points of dispute. Further, although the claimants only got access to the files in the course of the proceedings, they too knew about the soldiers' confessions from press reports and from a television documentary In Cold Blood, broadcast in 1992. Thus, save for minor details, there was nothing "new" about what each side was saying had taken place.

296. In common with Lord Kerr, I find this a much more difficult issue to resolve than does Lord Neuberger. Clearly, the soldiers' confessions in 1969-1970 were indeed significant new material

which cast doubt on the effectiveness of the original inquiry and were sufficient to revive the obligation to investigate. It is also possible that the results of the Malaysian Police inquiries in the 1990s produced sufficient new material to revive the obligation. It is one thing for survivors to give their accounts to journalists and quite another thing to give them to the police in the course of an official inquiry.

297. But what is meant by "new" material and "coming to light"? It appears from the reference in Janowiec to an "allegation, piece of evidence or item of information" that new material must be construed broadly. It is true that the bare bones of the allegations and counter-allegations were known in 1970, but there had then been no proper investigation in Malaya. Effectively there have been two separate investigations, each of one half of the picture only. They were not properly brought together until the publication of Slaughter and Deception at Batang Kali in June 2009. In Harrison v United Kingdom (2014) 59 EHRR SEl, "coming to light" was equated with coming "into the public domain" (para 51). The findings of the Hillsborough Independent Panel constituted "new evidence and information which cast doubt on the effectiveness of the original inquest and criminal investigations" (para 53). Those findings were based on all the available documentation which now included newly disclosed documents held by government departments. Thus, whatever else "coming to light" may mean, it must encompass the revelation of material which was previously known only to the relevant authorities. Hence I agree with Lord Kerr that the material collectively provided by the publication ofthe book and the access gained to the Metropolitan and Royal Malaysian Police files "cast an entirely new light on the decision not to hold an inquiry" (para 265).

298. But I cannot agree with him that this is not a live issue in these proceedings. In their written submissions, the claimants clearly state that they cross the second bridge, the bridge into the Human Rights Act, "because the current position is that relevant and weighty material has recently come to light, requiring investigation to discharge the article 2 procedural obligation" (para 2.2). But that question only arises ifthe first part ofthe "genuine connection" test is established and that depends upon the critical date.

299. In my view, therefore, principle dictates that the critical date is the date upon which the United Kingdom became bound in international law to observe the guarantees of human rights and fundamental freedoms laid down in the Convention; the triggering events were less than five years earlier; and significant new material has recently come to light which, to say the least, casts doubt on the effectiveness of the original inquiry and later criminal investigations. My reservations about the human rights claim are different.

300. The first is whether what the claimants want falls within the procedural obligation in article 2 at all. In Janowiec, the court observed that the "procedural acts" which took place or ought to have taken place after the entry into force of the Convention referred to "acts undertaken in the framework of criminal, civil, administrative or disciplinary proceedings which are capable of leading to the identification and punishment of those responsible or to an award of compensation to the injured party" (citing Labita v Italy (2000) 46 EHRR 50, at para 131 and McCann v United Kingdom (1995) 21 EHRR 97, at para 161). The claimants do indeed seek reparation, but this is not by way of an ordinary civil action (which would have been time-barred a very long time ago) and not from the actual perpetrators, and it is now quite unrealistic to expect that anyone could be prosecuted for their part in what took place. What the claimants really and rightly want is a proper, full and fair inquiry, which will establish the truth, so far as it is possible to do so, vindicate their deceased relatives and lead to a retraction of the official account of what took place. Yet in Janowiec, the court went on to say that "This definition operates to the exclusion of other types of inquiries that may be carried out for other purposes, such as establishing a historical truth" (para 143).

30l. My second reservation is that the logic of refusing to apply the "Convention values" test to deaths which took place before the Convention was adopted could equally well be applied to the "genuine connection" test. How can it be said that there is a genuine connection between the obligations in the Convention and the triggering event, if that event took place before those obligations were given expression in the Convention and adopted by enough states to make it potentially binding in international law? Just like the Convention values, those obligations "take their life from the Convention. They are not eroded by events which took place before the Convention itself, and the values and guarantees which it embodies, came into existence" (to quote Lord Kerr, at para 258). That to my mind is a more logical, sensible and practical solution to the question of whether there is an obligation to investigate such historic events than arid debates about the critical date. It is for that reason that I would dismiss the Human Rights Act claim.

Common Law Claims - 302. There are three bases for the common law claims: customary international law, proportionality, and irrationality or Wednesbury unreasonableness. I agree that it has not been shown that, when these killings took place, customary international law had recognised a duty to investigate deaths of this sort. That is sufficient to dispose of this part of the claim and it is unnecessary to express a view on whether, in any event, such an obligation should not be recognised as part ofthe common law because of the long history of legislative activity governing the investigation of suspicious deaths.

303. Much of the argument before us (but not in the courts below) was devoted to whether the time had now come to recognise proportionality as a further basis for challenging administrative actions, a basis which, if adopted, would be likely to consign the Wednesbury principle to the dustbin of history. The claimants' principal argument (relying in particular on the work of Professor Paul Craig) was that proportionality should be adopted as the basis of challenge for all administrative decisions. An alternative argument was that it should now be openly adopted by this court in a human rights context (relying again on those commentators, including Professor Craig, who suggest that it already applies in the context of fundamental rights).

304. This is indeed a complex issue, but I agree with Lord Kerr (para 283) that it is one thing to apply a proportionality analysis to an interference with, or limitation of, a fundamental right and another thing to apply it to an ordinary administrative decision such as whether or not to hold some sort of inquiry. The recent observations of this court on the relevance of a proportionality analysis, in Pham v Secretary of State for the Home Department (Open Society Justice Initiative intervening) [2015] UKSC 19, [2015] 1 WLR 1591, were in the context of stripping the claimant of his British nationality and all that goes with it, which is clearly a grave invasion of a fundamental right. The context here is, of course, the killing of unarmed civilians by British soldiers. The right to life of those civilians was undoubtedly engaged by whatever took place. Two of the four claimants were present at the scene, but the women and children were separated from the men overnight, and loaded onto a lorry to be driven away from the scene the following day. The claim of all four is as relatives ofthe deceased. The right which they claim is to a proper investigation and a retraction of the official explanation of what took place. But, for the reasons given earlier, that is not a right recognised by the common law or under the Human Rights Act.

305. But that still leaves the Wednesbury challenge. I do not think that, by concentrating on the proportionality argument, it was intended to abandon the more conventional challenge. Issue 2 identified in the Statement of Facts and Issues was whether the refusal to hold an inquiry or otherwise investigate can be justified "by the applicable standard". If not proportionality that must be Wednesbury unreasonableness or irrationality. The decisions in question were contained