already struggling to make ends meet as they have suffered financial abuse from their partner. Refuge found 1,780 women seeking help – more than a third of the total – had faced economic abuse from their partner. On average, the mistreatment, which includes being denied access to money or a bank account, as well as having debt placed in their name, lasted more than six years. While cuts to legal aid, which help people pay for legal advice and representation in court, has led to lawyers who provide this service being deluged with cases and has triggered the emergence of so-called "legal aid deserts" in the UK - with women in rural areas most likely to struggle to find help.

Lucy Hadley, of Women's Aid, a leading domestic abuse charity, told The Independent the organisation welcomed the "critical change" to legal aid which stems from "tireless campaigning" by survivors and campaigners. She added: "We continue to hear from survivors who are denied access to legal aid because of the 'capital' in their homes, but who simply do not have enough money to pay for a lawyer. This can result in women either forced to sell their homes or face debt or poverty to pay for legal advice or left to face abusers in court with no representation at all. It is essential that the legal aid system supports all survivors who need it to access safety and justice, and this reform is a critical step forward in making that happen."

Campaigners say the new legislation, which applies to all civil legal aid, means "imaginary capital" will now be seen as debt. Lisa King, of Refuge, the UK's largest provider of shelters for domestic abuse victims, told The Independent they support more than 7,000 women and children every single day and their frontline staff routinely report the obstacles and trauma victims grapple with in the family court system. She added: "This vital ruling will make a real difference to the women Refuge supports, allowing survivors to access legal aid when previously their home ownership blocked them from doing so."

Prison Leavers Can Claim Benefits by Phone

The new system, introduced last month across the UK, will see everyone leaving prison given a dedicated phone line number which they can call to start a claim for Universal Credit. At the same time they can apply for an advance, meaning that some will be able to access money on the day of their release. Under the previous system, ex-prisoners were only able to claim Universal Credit online. Whilst this could be done at a Jobcentre, it still sometimes led to delays, especially where people did not have the proper identification documents. The nationwide rollout of the new system this month comes after a pilot scheme last year was judged a success. During the coronavirus pandemic, all prison leavers are being given a free mobile phone if they do not already possess one. Universal Credit is a means-tested benefit which is normally paid monthly to a bank account. Recipients include the unemployed and those unfit to work. Delays in claiming benefits can lead to prison leavers being forced to rely on the Discharge Grant – handed in cash to convicted prisoners as they leave jail. It has been frozen at £46 since 1995.

Serving Prisoners Supported by MOJUK: Derek Patterson, Walib Habid, Giovanni Di Stefano, Naweed Ali, Khobaib Hussain, Mohibur Rahman, Tahir Aziz, Roger Khan, Wang Yam, Andrew Malkinson, Michael Ross, 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, Warren Slaney, Melvyn 'Adie' McLellan, Lyndon Coles, Robert Bradley, 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, Robert Knapp, Thomas Petch, Vincent and Sean Bradish, John Allen, Jeremy Bamber, Kevin Lane, Michael Brown, Robert William Kenealy, Glyn Razzell, Willie Gage, Kate Keaveney, Michael Stone, Michael Attwooll, John Roden, Nick Tucker, Karl Watson, Terry Allen, Richard Southern, Peter Hannigan.

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Proportion of BAME Children in UK Youth Custody at Record High

Alex Mistlin, Guardian: Self-harm and use of restraint are increasingly commonplace in the youth justice system, according to government figures that also show a record-high proportion of children in youth custody are from black, Asian and minority ethnic backgrounds. The government's annual youth justice statistics, published on Thursday, show that more than half of young people in custody are black, Asian or from a minority ethnic background (BAME), a situation that the shadow justice secretary, David Lammy, described as a "national scandal".

The figures show a significant rise in the overall use of pain-inducing restraint techniques since 2018-19. The number of restrictive physical interventions (RPIs) increased by 19% in the last year, to about 7,500 incidents. The number of self-harm incidents in child prisons increased by 35%, to about 2,500. For both measures, these were the highest number of incidents in the last five years. The number of severe injuries suffered by children as a consequence of self-harm incidents has also risen: there were 627 injuries requiring medical treatment after self-harm in 2019-20, with 69 of these injuries requiring hospital treatment (up from 39 in 2018-19). In total there were nearly 7,800 use-of-force incidents across the three secure training centres and five young offender institutions – an average of 82.5 incidents per 100 children and young people a month.

Carolyne Willow, the director of the children's rights charity Article 39, said the use of techniques that inflict pain on children was "a stain on our system of child protection. If adults deliberately hurting children is wrong in families, schools and children's homes, then it must be wrong for children in prison too. We cannot have a two-tier system of child protection." The number of BAME young people who received a caution or sentence rose. There were 10% more Asian children who received a caution or sentence compared with 2018-19, making Asian the only ethnicity group to record a rise in the latest year. The proportion of black children cautioned or sentenced has been increasing over the last 10 years and is now double what it was in the year ending March 2010 (12% compared with 6%). In the same period, the average custodial sentence length given to children has increased by more than seven months, from 11.3 to 18.6 months. "It is a national scandal that more than half of young people locked up are from a black, Asian or ethnic minority background," said Lammy. "Instead of denying the reality of structural racism, it is time for the government to finally act like black lives matter."

Last month Liz Truss, the equalities minister, suggested claims of structural racism in the UK were "evidence-free". A Ministry of Justice spokesperson said: "We are working across government to tackle the deep-rooted causes of BAME children's over-representation in the criminal justice system – including practical work on diversion and better support for frontline justice services."

Self-Harm Among Female Prisoners in England and Wales at Record High

Jamie Grierson, Guardian: Incidents of self-harm among women in prison have hit a record high, official figures reveal, after a big increase during the pandemic. The number of self-harm incidents in the women's prison estate in England and Wales increased 8% to 12,443 in the year to September, compared with the previous 12 months, while on a quarterly basis the number of incidents rose by 24%. This compares with a 7% decline year on year or a 5% rise quarter on quarter in men's prisons.

The rate of incidents, which takes population size into account, was markedly different between men and women. There were 3,557 incidents for every 1,000 women prisoners in the 12-month period, compared with 595 for every 1,000 men in prison. There were 10 incidents for every self-harming female inmate, compared with 4.2 for every self-harming male prisoner. The rise coincides with a highly restrictive regime applied to prisons to mitigate the spread of Covid-19 in the estate, which experts including the then chief inspector of prisons have warned would have a devastating impact on prisoners' mental health.

Frances Crook, the chief executive of the Howard League for Penal Reform, said: "While men's prisons have found some measure of respite through lockdown measures, the increase in self-injury in women's prisons is stark and extremely concerning. The mental distress caused by isolation can affect people in many different ways, some of which may not be evident for months or years." Wera Hobhouse, the Liberal Democrat justice spokesperson, said: "Our prisons are in crisis. The amount of self-harm, especially in women's prisons, is shockingly high and rising. Far too many women are sent to prison on short sentences for non-violent offences. Most of them have experienced abuse, and many are mothers of dependent children." The figures showed there were 318 deaths in prison custody in the 12 months to December, an increase of 8% on the previous 12 months. Seventy-one prisoners died within 28 days of having a positive Covid-19 test or where there was a clinical assessment that the coronavirus contributed to the death. There were 67 apparent self-inflicted deaths in the same period, a decrease of 21% in the previous 12 months.

Lyn Brown MP, shadow minister for prisons and probation, said: "These statistics show this incompetent government is losing control of our prisons, which have become much more dangerous places over the last ten years. "We need far stronger action to drive dangers down to ensure our prisons enable rehabilitation and are healthy places for staff and prisoners alike." On Saturday, the Ministry of Justice was criticised for plans to create 500 new prison places for women as part of proposals designed to reduce numbers in the criminal justice system.

Deborah Coles, the director of the charity Inquest, said: "The continuing rise in self-harm in women's prisons comes at a time when the Ministry of Justice has announced 500 new prison places for women. Sadly, this will mean yet more unnecessary suffering and harm."

Jabs start in English jails

Prisoners in English jails have begun to be vaccinated against coronavirus. The first doses were given on January 29, according to Prisons Minister Lucy Frazer QC. The Government has said prisoners will receive the vaccine at the same time as the general public, and in the same priority groups, starting with the over-80s. However, more than 7.5 million Britons, including 80% of over-80s, had already received their initial dose before the first prisoners in England were vaccinated. Welsh and Scottish prisons began vaccinating in mid-January Speaking on the morning of January 29, Frazer told Times Radio: "We are starting our rollout of vaccinations in England in prisons today. We have already started that in Wales. And our plan is to vaccinate just in line with the community – so, those top priority groups." With a limited number of vaccine doses available, the Government's policy to prioritise who gets them first was drawn up by an expert panel, the Joint Committee on Vaccination and Immunisation. It resisted calls from prison staff, charities and some medical leaders to give prisons a higher priority due to their high-risk environment. The death toll of prisoners with coronavirus in English and Welsh prison has risen to 85, according to weekly figures published by the Ministry of Justice on January 29.

been partially replaced by the Investigatory Powers Act 2016. The court took into account the Supreme Court's comment that any application to judicially review the Tribunal's decision should raise a point of general significance. The historical nature of the challenge meant this test was not met.

Comment: This case may appear somewhat technical, but it concerns a very real problem. A 2014 report by the Rt Hon Sir Mark Waller, the former Intelligence Services Commissioner and Court of Appeal judge, reached a similar conclusion to the Divisional Court. His findings led to one of the agencies withdrawing a thematic property warrant, and raised questions about how national security could be protected. Privacy campaigners will understandably welcome this judgment. In truth, however, the potential scope of any s.5 warrant remains significant. The court refused to rule out the possibility that a warrant could lawfully allow all computers in Birmingham to be hacked. It explicitly endorsed the idea that all devices in an Internet Café could be captured, regardless of how many innocent individuals may be present (though questions of necessity and proportionality would inevitably arise). The case also points towards wider issues within public law. It is worth remembering that the judicial review could never have been brought if the Supreme Court had upheld the purported ouster clause in s.67(8) RIPA. Given the lingering possibility that the UK will seek to derogate or withdraw from the ECHR, either by replacing it with a so-called 'British Bill of Rights' or using some other mechanism, the Divisional Court's reliance on fundamental common law rights is especially significant.

[Investigatory Powers Tribunal IPT: The Tribunal is a judicial body which operates independently of government to provide a right of redress for anyone who believes they have been a victim of unlawful action by a public authority using covert investigative techniques. The Tribunal is also the appropriate forum to consider complaints about any conduct by or on behalf of the UK Intelligence Community, MI5, SIS and GCHQ, as well as claims alleging the infringement of human rights by those agencies. The Tribunal has a UK wide jurisdiction and there are no costs associated with making a complaint to the Tribunal.]

Legal Aid: Domestic Abuse Victims do Not Have To Sell Their Homes To Access Justice

Maya Oppenheim, Independent: Domestic abuse victims blocked from getting legal aid will no longer be pushed into selling their homes in a bid to obtain justice and secure safety from their violent partners. The legal aid victory, which comes into force on Thursday, eradicates the cap on mortgage allowance previously used when determining the eligibility of an individual seeking legal aid. Campaigners, who celebrated the move, said unfair rules around legal aid force women who cannot afford legal representation to face their abusive former partners alone in court. The new legislation has been introduced in the wake of a High Court ruling in December 2020 which stopped a legal loophole that blocked a domestic abuse survivor who was a single mother from obtaining legal aid despite her only having £28 in her bank account.

Olive Craig, senior legal officer at Rights of Women, a leading women's legal rights charity, said: "We frequently speak to women experiencing domestic abuse. Some who have had to resort to food banks to feed their children, who have been denied access to legal aid by a system deliberately designed to make it harder for applicants to be granted legal aid. A system which ignores the lived realities of many women experiencing domestic abuse. You should not have to sell your home, and make yourself and your children homeless, to be eligible to access justice and safety. This vital legislation will help many more women access the legal support and protections they desperately need to live free from violence and abuse."

The legal aid changes will come as a relief to domestic abuse victims due to the fact most are

by the Secretary of State under this section. (2) The Secretary of State may, on an application made by GCHQ, issue a warrant under this section authorising the taking, subject to subsection (3) below, of such action as is specified in the warrant in respect of any property so specified or in respect of wireless telegraphy so specified if the Secretary of State [my emphasis]. (a) thinks it necessary for the action to be taken for the purpose of assisting (iii) GCHQ in carrying out any function which falls within section 3(J)(a) above; and (b) is satisfied that the taking of the action is proportionate to what the action seeks to achieve; (2A) The matters to be taken into account in considering whether the requirements of subsection (2)(a) and (b) are satisfied in the case of any warrant shall include whether what it is thought necessary to achieve by the conduct authorised by the warrant could reasonably be achieved by other means. It was recognised that CNE is a valuable tool in tackling national security threats such as terrorism and serious and organised crime.

Interpretation of Section 5: Unlike the Tribunal, the Divisional Court relied heavily on the eighteenth century warrant cases. It emphasised the common law's aversion to general warrants, which give significant discretion to the persons executing them (e.g. GCHQ). The case law indicated that there is a fundamental common law right not to have one's property searched without legal authority. The court also relied upon the common law principle of legality (as expressed in cases such as R v Secretary of State for the Home Department, ex parte Simms [2000] 2 A.C. 115). This states that, unless there are clear words to the contrary, courts should assume Parliament did not intend to override fundamental common law rights. In the view of the Divisional Court, section 5 lacked the unambiguous words required to overturn this presumption. The national security context did not change the court's assessment. Its role was to interpret the meaning of individual words read in the context of the enactment, rather than being moved by the Intelligence Agencies' opinion of the powers they regard as necessary.

Examples of Lawful s.5 Warrants: The court then considered how specific a warrant must be in order to comply with s.5. It drew a contrast with the wording of s.7, which authorises warrants on subjects outside the British Isles where the act/ person is "of a description so specified", and s.5, which permits 'such action as is specified in the warrant in respect of any property so specified'. [My emphasis.] It reasoned that the words 'description' and 'specified' do not mean the same thing, and the former is broader than the latter. Therefore, any s.5 warrant must be "sufficiently specific to indicate to individual officers at GCHQ […] whose property, or which property, can be interfered with, rather than leaving it to their discretion" [57]. Examples of lawful warrants include 'any device used by persons who are on the FCDO Syrian diplomatic list', or devices used at particular premises (including entire streets). A warrant could hypothetically permit the use of computer hacking across a geographical area, such as Birmingham, but whether such a warrant would be necessary and proportionate was a difficult matter which did not arise. Warrants needn't be limited to factual situations in existence when they are issued.

However, a warrant which referred to the property of anyone engaged in an activity (for example, "the mobile phone of any person conspiring to commit acts of terrorism") would be insufficiently specific. This is because it leaves significant discretion to the individual exercising the warrant. The court left open the question of whether a warrant which referred to anyone suspected of being a member of an organisation would be sufficiently specific, but a highly relevant factor would be whether a person's membership of the group was objectively ascertainable.

Application for Article 8 & 10 Claim Rejected: The Divisional Court refused permission to amend the claim to include a complaint that Articles 8 and 10 had been breached. The allegation had only been raised 4 years after the alleged unlawfulness. As a result, the relevant aspect of the scheme had

Amnesty International Calls on UK to Free Prisoners Held on Abolished IPP Sentences

"These continued detentions are arbitrary and those detained under them should be released unless it can be proved they remain a danger. The fact that this sentence regime has been repealed is clearly an acknowledgement that the IPP sentencing regime was unfair and unjust. International human rights law demands/requires that those detained under an IPP sentence benefit from this repeal."

Inside Time: Amnesty International has said the Imprisonment for Public Protection (IPP) sentence is "unfair and unjust", and claimed people being held on it are subject to "arbitrary detention". It said they should be released unless they were proved to be dangerous. The intervention by Amnesty, which has previously declined to express a view, will come as a boost to families campaigning against the IPP. The sentences were abolished in 2012 but remain in force for people already on them. Of more than 8,000 people handed them between 2005 and 2012 in England and Wales, around 3,400 are still in custody. The Ministry of Justice expects the number of IPP prisoners to stay at 3,400 for the next five years, because the number being recalled will match the number being released. 65 people serving the sentences have taken their own lives in custody. One man has served 15 years for making threats to kill, having been given an IPP sentence with a minimum term of four-and-a-half months.

Can the Police Hold Data About a Person Allegedly Vulnerable to Radicalisation?

If concerns are raised that a person might be vulnerable to radicalisation, how long can a police force hold data about that person? This was the question facing the High Court in the case of R (II) v Commissioner of Police for the Metropolis [2020] EWHC 2528 (Admin), which held that the police's continued retention of data a sixteen year old was contrary to the Data Protection Act 2018 and article 8. In finding this, the court held that a force's retention of data must be proportionate, what is proportionate in any given situation is fact-specific and that when the police cease to be able to identify a policing purpose for continued retention of personal data, it should be deleted. In December 2015, the Claimant was eleven years old and receiving online tuition. His tutor raised concerns that he might be vulnerable to radicalisation. In particular, it was alleged that the Claimant had: Talked about America being evil; Was obsessed with killing the Prime Minister; Stated that he enjoyed watching Game of Thrones because of the beheadings; Changed his email address to include the phrase "@ISbeards." The Claimant's tutor made a referral to the Government via the "Prevent" strategy. The police were informed and opened a case file on the Claimant. Officers attended his home address and spoke with his mother. No further concerns about the Claimant were identified and the case was closed in June 2016. However, the Commissioner decided to retain the Claimant's data on ten databases, which could be accessed by police officers, counter terrorism officers, local authorities and the Home Office - what would fall within "making available" for the purposes of the Data Protection Act 2018, which adopts the meaning of processing in the GDPR art 4(2).

The Claimant, aged sixteen, brought a claim challenging the legality of the Commissioner's decision to retain the data about him. His claim was threefold: First, that the decision to retain the data was contrary to art 8 of the European Convention of Human Rights; Second, that the decision to retain the data was in breach of three principles contained in the Data Protection Act 2018; Third, that the decision to retain the data breached the public sector equality duty at section 149 of the Equality Act 2010.

The Commissioner's decision to retain the data made reference to the College of Policing's Authorised Professional Practice (APP) on the "Management of Police Information: Retention, review and disposal" (since updated) This guidance provided that Group 4 data (i.e. here, intelligence) was to be retained for a minimum of six years, provided there had not been earlier deletion following a triggered review. The Commissioner contended that it was necessary and proportion-

ate for her to retain the data citing, in particular, the fact that radicalisation was a process that occurred over time and the authorities might need to be able to identify patterns of behaviour.

The Court rejected this. It found that the police's decision to retain the data constituted an interference with art 8(1). Whilst retention of the data had a legitimate aim, namely the prevention of radicalisation and terrorism, the continued retention of the Claimant's personal data was disproportionate and unjustified in that: Some (but not all) aspects of the intelligence were proved to be untrue and the case was closed on its merits, the Commissioner having determined that there was no cause for concern that the Claimant was being radicalised; In the four years and ten months since the tutor had made her referral, there had been no further concern that the Claimant was being radicalised; If retention of the data was no longer required for any policing purpose, then the information fell to be deleted on either a triggered or rolling review.

Turning to the APP, the Court observed that the length of proportionate retention was a fact-specific question. In the present case, no policing purpose for the continued retention had been demonstrated and, therefore, the data fell to be deleted [76]. Furthermore, the court indicated that the potential consequences of continued retention of the Claimant's personal data were severe. Whilst its disclosure was unlikely, it was not outside the realms of possibility and the police could not guarantee that the data would never be disclosed to third parties. As long as the data was retained, the Claimant would continue to fear that disclosure of data could wrongly suggest to the universities to which he was applying that he was, or might be, a supporter of terrorism. In those circumstances, the court found the period of retention to be disproportionate in all the circumstances of the case, even where it was less than the six years stated by the APP.

On the Data Protection Act 2018, the Court noted its being common ground that the outcome of the art 8 proportionality assessment should provide the answer as to whether continued retention of the data was "necessary" within the meaning of s35(2)(b) and s39(1) of the DPA 2018 [85]. Section 35(2)(b), addressing the first data protection principle that processing be lawful and fair, required that the processing of data be necessary for a law enforcement purpose (defined at section 31 as being the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, including the safeguarding against and the prevention of threats to public security). Section 39(1) stated the fifth data protection principle that data be kept for no longer than necessary. On the Court having already found that retention was disproportionate for the purposes of art 8, it went on to hold it was also not "necessary" for the stated law enforcement purposes and so was a breach of the first and fifth data protection principles. It made no finding on whether it was also a breach of of the third data protection principle, at DPA s37, that processing be adequate, relevant and not excessive.

Notably, the Court observed that that some of the data was sensitive or, to use the words of the DPA, special category data, in that it revealed the Claimant's religion and, purportedly, his political opinions. Noting the latter, the Court held that inaccurately recorded data would not preclude it from being special category data and that police forces should be mindful that any data recording a person's perceived political opinions, even if ultimately inaccurate, should be considered special category data handled accordingly. The last segment of the judgment briefly addressed whether the police had breached the public sector equality duty. The Court paid short shrift to this, finding there to be no merit in that ground [92]. The Court held that the Commissioner did have due regard to the Claimant's needs as a child and that the very reason the Commissioner decided to retain the data was with a view to safeguarding him from radicalisation.

77. When considering whether to set a time limit for a reconsideration each case must turn upon its facts which include the circumstances of the Claimant and the resources of the Board. In Grinham the Claimant, who had cancer, was due for release in five months in any event. In Khan the age of the matter was a concern. And in both Khan and Davies the length of time the Claimant had spent in prison after expiry of the minimum terms was a pressing consideration. The Claimant is in a different position in that his tariff expires on 5th October 2022. There is also the effect of the pandemic to be considered (which may impact upon the availability of staff at prison and Board members). Also, what is suggested is broadly in line with what the Board is managing without the need for an order. Given these factors, I am not persuaded that it is appropriate to set a timescale, although I will order that the hearing should be expedited to ensure that it does not fall to the back of the queue.

General Warrants to Hack Computers Unlawful: Privacy International v IPT

Conor Monighan, UK Human Rights Blog: In Privacy International v Investigatory Powers Tribunal, the Divisional Court held that s.5 Intelligence Services Act 1994 does not permit the government to issue general warrants to engage in computer network exploitation ("CNE") – more commonly known as computer hacking. The court also offered valuable guidance on warrants and what is required to make them lawful.

There were three issues: 1. Does s.5 Intelligence Services Act 1994 ("the 1994 Act") permit the Secretary of State to issue 'thematic' or 'general' warrants to hack computers? General warrants are those which purportedly authorise acts in respect of an entire class of people or an entire class of acts (e.g. 'all mobile phones in London'). 2. Should the court allow the claim to be amended to include a complaint that, prior to February 2015, the s.5 regime did not comply with Articles 8 and 10 of the European Convention on Human Rights? 3. If permission is given to amend the claim, should the new ground succeed?

History Investigatory Powers Tribunal: This case arose from a challenge brought by Privacy International in the Investigatory Powers Tribunal (a body which hears complaints about state surveillance). The Tribunal was asked, among other matters, to decide on the lawfulness of computer hacking under the 1994 Act. As readers may be aware, the Tribunal ruled that it is lawful to issue general warrants to hack computers. It stated: Eighteenth century abhorrence of general warrants issued without express statutory sanction is not in our judgment a useful or permissible aid to construction of an express statutory power given to a Service [37]. It is not in our judgment necessary for a Secretary of State to exercise judgment in relation to a warrant for it to be limited to a named or identified individual or list of individuals. The property should be so defined, whether by reference to persons or a group or category of persons, that the extent of the reasonably foreseeable interference caused by the authorisation of CNE in relation to the actions and property specified in the warrant can be addressed [38].

Ouster Clause? Privacy International sought to judicially review the Tribunal's decision. However, it faced an argument that the High Court had no jurisdiction over the matter. This was because s.67(8) Regulation of Investigatory Powers Act 2000 ("RIPA") provided: Except to such extent as the Secretary of State may by order otherwise provide, determinations, awards, orders and other decisions of the Tribunal (including decisions as to whether they have jurisdiction) shall not be subject to appeal or be liable to be questioned in any court. A 4-3 majority in the Supreme Court ruled in 2019 that s.67(8) did not 'oust' (exclude) the High Court's jurisdiction. This meant Privacy International's judicial review could proceed.

The Principles: The key parts of s.5 of the 1994 Act are as follows: (1) No entry on or interference with property or with wireless telegraphy shall be unlawful if it is authorised by a warrant issued

resentative that the Law Society and Bar Council consider the issue and provide professional guidance on the issue. In any event, and in the interim, it is very important that any representative (legally qualified or otherwise) communicates to the Board that they do not feel properly able to view the full statement, so the consideration can be given as to how the matter can fairly proceed. I do not know whether that happened in the present case or not. Certainly, the Panel should have been aware of the lack of the required undertaking. Given that the full statement was not considered by either the Claimant or his representative, there cannot have been a decision to continue on without oral evidence taken with the benefit of a full appreciation of extent to which it flatly contradicted the Claimant's assessment in his oral evidence. I accept Mr Wither's submission that the Claimant would have had to have had a great deal of foresight to know that the content of the statement could affect the panel's assessment of risk as it subsequently did.

70. Also the Court is entitled, subject to the facts in a particular case, to take a more benign view of the failure to object to the proposed procedure of the Parole Board, given the overriding duty of the Board to ensure that there is a fair procedure where the Claimant has not had sight of all relevant material. The decision to object requires consideration and balancing of a number of competing factors and, as I have already stated, the Claimant cannot easily weigh up the potential impact of a statement which he has not seen. In my judgment there is a more substantial entitlement than there may be in other circumstances, to rely upon the good judgment and experience of the Board, that the procedure it proposes can fairly deal with the issues in a particular case. This view is in line with the approach taken by Hickinbottom J (as he then was) in R (Rowe) v Parole Board [2012] EWHC 1272 (Admin), and also other cases such as R (Headley) v Parole Board [2009] EWHC 663 (Admin), R (Wezka) v Parole Board [2012] EWHC 827 (Admin), R (West) v Parole Board [2003] 1 WLR 705 and R (Grinham) v the Parole Board [2020] EWHC 2140 (Admin).

71. It is necessary to be cautious when considering the issue of what may have happened had a fair procedure been adopted. The Board was greatly influenced by the variance between B's statement and the oral evidence of the Claimant. The Claimant may have been able to explain or shed light on that variance and/or satisfy the Board that he could respect his children's need for independence and not contact them. I am satisfied that the Claimant has cleared the relatively low threshold that the outcome might have been different.

72. By reason of the matters set out above I accept that there was procedural unfairness and that the outcome might have been different, so ground two succeeds and the decision must be quashed.

73. Upon my indication after submissions upon ground two that it was successful, Mr Withers withdrew grounds one and three and it is not necessary for me to deal with them. It would not be appropriate for me to go on to try and give general guidance on issues that may have arisen from their detailed consideration.

Remedy: 74. The Claimant is entitled to a declaration that the decision of the Defendant was marred by procedural unfairness and an order quashing the Defendant's decision dated 25 March 2020, requiring the Defendant to remit the Claimant's case before a fresh panel for an oral hearing.

75. Mr Withers submitted that the order should require that the case be remitted for consideration with expedition and a timescale set of three months. He submitted that there is precedent to do so as demonstrated by the following authorities: R (Davies) v Parole Board [2015] 4276 (Admin); R (Khan) v Parole Board [2015] EWHC 2528 (Admin) and R (Grinham) v Parole Board [2020] EWHC 2140.

76. Mr Vanderman submitted that it would be wrong to order reconsideration within a set period. He stated that at present matters were currently being listed three months ahead.

Note: This case serves as a reminder that police forces cannot and should not assume that they are always permitted to retain data for six years, or that they can follow minimum retention provisions in data protection policies without applying individual judgment and considering proportionality. In this instance, where a case against a young person had been closed and retention of the data was unlikely to advance any ongoing policing purpose, the data had to be deleted. The facts here were fairly stark, concerning data on a boy when at a particularly young age, where no crime had been committed and no ongoing issues had arisen. His data had been retained for around 3 years and 4 months and this was held to be a disproportionate interference with his art 8 rights. Whilst this judgment states important general principles, how they apply to each individual situation and what will be proportionate will, of course, differ.

No Statutory Duty to Impose 30 Year Minimum Term Sentences on Secondary Parties

Since the enactment of the Criminal Justice Act 2003, there has been a misconception on the imposition of 30-year minimum Term sentences imposed by the Judiciary in murder cases specifically in secondary participant (joint enterprise) cases where a firearm has been used. There is a distinction between those who "pull the trigger" and those who play a peripheral part in any joint enterprise cases. Schedule 29 of the Criminal Justice Act 2003 does not - as many of the Judiciary believe - impose any statutory obligation on a Trial Judge to impose the Minimum Sentences within the said Schedule.

The Criminal Justice Act 2003 S 269(5) is pivotal in that it states that when considering the seriousness of a murder case, the Court: "must have regard" to the general principles set out in Schedule 21. It must be accentuated that these: " general principles" and "starting points" are not mandatory. The Court is duty-bound by legislation to have "regard to" them only and nothing more. Some guidance to the Bench on the application of S.26Q of the Criminal Justice Act 2003 is contained within the Practise Direction (Mandatory Life Sentences) published on 18 May 2004. This Practise Direction amended the relevant provisions of what were previous guidelines, namely the Practise Direction (Criminal Consolidated) [2002] 2.Cr App R 533 para.49.1 onwards. Prior to S.269 of the Criminal Justice Act 2003 and Schedule 21 being enacted the Minimum Term within the guidelines for a direct murder was 15/16 years after which aggravating and/or mitigating features were considered.

The Criminal Justice Act 2003 does not impose any Statutory duty to impose 30-year Minimum Term sentences as set out in Schedule 21, and for many years the Courts have - yet again - taken a wrong turn in its failure to apply the legislation. The Criminal Justice Act, 2003 per se, is a penal statute and settled practise requires all penal statutes to be strictly applied and with any doubt to the benefit of the defendant. Having "regard to" those terms is a far cry from being bound to the said terms. Many cases on secondary participation or "joint enterprise" (which is per se under scrutiny) have 30-year Minimum Terms imposed because the Judiciary believe that there is a Statutory Duty under Schedule 21.

Where specifically a person is convicted as a secondary participant and not the "one who pulled the trigger" and/or the secondary participant only plays a peripheral role then the Sentencing Judge is duty-bound only to "have regard" to Schedule 21 and the starting points but is not obligated. Where the Trial Judge has imposed a sentence of 30 years as a matter of course - as is often the case [see R -v- Osborne and R -v- Labastide and many more] then the said sentence is subject to being impugned. Any person that has been subject to the imposition of the Minimum Term of 30 years under the specific circumstances stated should contact their lawyers with a view to considering the appropriate course of action.

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£70 million to Keep Prison Leavers Off the Streets and Cut Crime

Ministry of Justice : Closer supervision of highest risk prison leavers for longer. Homeless offenders to be housed temporarily to prevent reoffending. Homeless prison leavers will be temporarily housed in basic hostels to reduce the risk of them reoffending, backed by £70 million of new investment. With offenders around 50 per cent more likely to break the law again if released without somewhere to stay, this is the latest part of the Government's work to tackle the root causes of crime. It follows last week's £148 million investment to combat illegal drug supply and treat addictions, taking the total funding to £220 million.

More than £20 million will be invested in supporting prison leavers at risk of homelessness into temporary basic accommodation for up to 12 weeks, giving them the foundation for a crime-free life. Launching in five of the 12 National Probation Service regions, it will support around 3,000 offenders in its first year. While there, offenders will get help to find a permanent home so there is less reason for them to turn back to crime. Getting prison leavers into stable accommodation provides the platform they need to find work and access treatment for addictions and mental health problems which are also proven to help reduce the risk of reoffending. Tackling all three together in this way could prevent thousands of people becoming victims each year and save some of the £18 billion annual cost of repeat crimes. At least £23 million of funding will go towards the Government's plans to build 200 new spaces in Approved Premises (APs), formerly known as bail hostels, which allow probation staff to closely monitor and support the highest-risk offenders in the community. It will also fund new training for staff, increased security, and vital repairs and maintenance. The expansion will see an extra 1,700 prison leavers receive closer supervision each year, boosting public safety.

Prisons and Probation Minister Lucy Frazer QC MP said: Releasing prisoners without addressing why they ended up there in the first place, only leads them to reoffend and cause more harm. By tackling homelessness, we are cutting crime, reducing drug and alcohol misuse and making our streets safer. This low-cost solution has the potential to save billions for the taxpayer and prevent thousands of people becoming victims. Last week, the Government announced the largest increase in drug treatment funding in fifteen years as part of a £148 million investment to cut crime and protect people from the scourge of illegal drugs. It includes:

An extra £80 million invested across England to increase the number of substance misuse treatment places for prison leavers and those diverted into tough and effective community sentences. £40 million of new money to tackle drugs supply - doubling the funding available for law enforcement to take down county lines gangs and drug kingpins. £28 million invested into piloting Project ADDER – a new intensive approach to tackling drug misuse, which combines targeted and tougher policing with enhanced treatment and recovery services. It will begin in five areas with some of the highest rates of drug misuse: Blackpool, Hastings, Middlesbrough, Norwich and Swansea Bay.

A further £6 million will be spent in the coming year improving the work done across Government to reduce reoffending. Dedicated staff will be appointed in an initial eleven prisons to act as brokers for prisoners so that they can get quicker access to accommodation, healthcare and employment support services as they are released. The £20 million Prison Leavers Project is also underway bringing together charities, public and private partners to find and test new ways to prepare offenders for life on the outside and ensure they don't fall back into criminal lifestyles. Local organisations will be able to bid for grants to join-up their existing services and a £1 million competition is being launched to encourage start-ups to create new technology-based support services. Taken together, this £220 million investment represents a gear shift in the Government's approach to tackling crime, helping to build back safer from the pandemic.

would have been disclosed to him and he could then have made representations as to its content. Whether or not that might have been sufficient to amount to a fair procedure is academic because it quickly became apparent that route was not open to the Board.

63. Once it was appreciated that the Panel would get no further information through the route of a psychologist report, it is my view that it was an obvious and necessary step to allow the Claimant to give further oral evidence on the issues raised by the statement and, as a result, to provide an opportunity to directly address the Panel's obvious concerns. The duty was on the Board, given the Claimant had not seen the full statement, to ensure that there was a fair opportunity to respond to the issues raised. The Board needed to take a view as to his credibility and/or ability to understand the damage that he had caused to his children and how they felt about him and to do so they needed to hear, and then evaluate, what he had to say.

64. Simply proceeding to determine the matter on the papers was not in my view sufficient to give the Claimant a fair opportunity to deal with issues which were causing concern to the Panel (and about which he had no detailed knowledge), including, but a) b) c) d) e) not limited to: the Claimant's understanding of the trauma which his children had experienced and its effects (given the sharp variance between the picture painted by the Claimant and that set out by B) hiswishtoresumecontactwithKandB his ability to respect K and B's independence and need for distance (which requires him to appreciate the damages caused by the trauma which they had experienced) whether he has tried in the past, or may seek, in the future, to manipulate his son and daughter whether he appreciates that further serious psychological harm could be caused if he attempted to contact/contacted his son.

65. The variance between the Claimant's oral evidence and B's statement underpinned the Board's conclusion. It was stated that (given what B had said) the Claimant was "distanced from reality" and either did not understand the impact the murder had on his children or chose to misinterpret or manipulate the true position to the Board. As a result of not understanding, or deliberately underplaying, the impact that the death of their mother at his hands had upon K and B, and the damage it had caused, and continued to cause, the Panel was concerned that he would not respect his children's need for independence, i.e. to contact them or attempt to contact them and that as a result there was a serious risk of psychological harm. So, the issue of how the Claimant could have arrived at the view that essentially all was well with his son (if he ever did) was a central consideration which the panel decided, in effect, "against" the Claimant without giving him a proper opportunity to deal with the issue.

66. Looking at the process as a whole, I find that the procedure adopted by the Defendant in the present case is unfair and involved significant injustice to the Claimant.

67. I was initially troubled by the effect of the direction that B's full statement should be released to his solicitor and the fact that no objection had been raised to the procedure. This gives rise to the question as to whether the Claimant had waived the defect in procedure.

68. After having heard submissions, I am satisfied that it would be wrong to decide that, on the facts of this case as presented to me, the Claimant should be found to have waived his right to subsequently challenge the unfair procedure.

69. The Claimant's solicitor refused to view the full statement for the reason which she set out in her e-mail. I cannot properly determine in this hearing whether she was right, or duty bound, to do so or not. I was informed by Mr Withers and Mr Vanderman that this approach has been taken on other occasions, although they differed in their experience as to how commonly the stance was taken. In my view it is important, given that Rule 17 expressly provides for release to legal rep-

3. The second challenge concerns the Defendant's final assessment of the Claimant's risk made on 25 March 2020, whereby it found that he posed a high risk of serious psychological harm to his adult children and refused to recommend his transfer to open conditions to the Interested Party.

4. The Defendant responded to the claim and stated that whilst it was not actively defending these two decisions it sought guidance from this Court on a range of issues. The Interested Party has not substantially participated in this claim.

5. Permission to challenge the decisions on three grounds (with an extension of time to purse the first ground; a challenge to the decision of 18th December) was granted by His Honour Judge Lambert on 16 October 2020.

Facts: 6. On 7th November 2006 the Claimant was sentenced to a mandatory life sentence with a tariff of 17 years (less 1 year and 33 days on remand) for the murder of his wife. His tariff expires on 5th October 2022, when he will eligible for release by the Parole Board. He is currently located at HMP Erlestoke as a category C prisoner.

Analysis: 56. In his oral evidence to the Board, the Claimant explained how his son was happy with life, happy to talk to him, had always been "very laid back" and had probably not been in contact recently because he was at the age where he had other interests. The Claimant stated that in his view he did not think him being in the community was "a big deal" for his son. Neither the offender supervisor nor the offender manager gave evidence to the contrary.

57. Without descending into any detail as to the content of B's statement, and as is plain from the comments of the Board in its direction as to a psychologist's report and its final decision, its content was at direct variance to his father's evidence. B powerfully describes being anything but laid back about what had happened to his mother and the severe impact which the very traumatic experience had upon him. The divergence understandably concerned the Board well before the final decision was reached.

58. In addressing the question whether, in any case, the procedure has been such as to breach a prisoner's rights under the common law by compromising his ability effectively to test or challenge evidence which bears upon the legality of his continued detention, it is necessary to look at the proceedings as a whole. Where a decision has been taken by the Board using a procedure which involves significant injustice to the prisoner, then this Court will quash that decision, if the Board might not have arrived at the same decision had a fair procedure been followed.

59. Where a Rule 17 direction has been made a fair procedure requires the panel Chair or full panel, to carefully consider directions with regard to the material, in particular steps to mitigate the effects of any non-disclosure. Such considerations are necessarily case and fact specific. What was adequate and fair in one case may not be in another.

60. Here the Chair had to consider the effect of the disclosure of only the gist of B's statement, in circumstances where the full statement presented such a very different picture to that previously given by the Claimant, such as to give rise to the expressed concerns underpinning the direction for a psychologist's report.

61. It was necessary to consider if the effect of the inability to address its full content could and should be mitigated in any way beyond the provision of its gist.

62. The first step which the Board took was to seek to obtain a psychologist report into the issues of concern which arose solely by virtue of B and K's statements. The Claimant was likely to have had direct input into the compilation of such report; probably having been questioned about his views of the trauma to his children and its effects, but in any event it

Taking Liberties: A Simple Guide to 'Deprivation of Liberty' (DOL)

Jack Harrison, Transparency Project: This article is about Deprivation of Liberty involving children. To understand Deprivation of Liberty, I am afraid we have to start elsewhere completely, Secure Accommodation. Secure accommodation is a special kind of placement for children who are in care, who have a history of running away from their placement, are likely to do it again, and will be seriously harmed if they do. It's also available for children who, if they are not kept in secure accommodation, might hurt themselves or other people. These places are often occupied by the most troubled and vulnerable of the children that the care system is tasked with keeping safe. In 2020, there were 252 places available for children who require secure accommodation. The number of available places fell from the year before, when there were 259 places. The Department for Education says that, in 2020, 184 of those places were filled by children who were placed there by order of the family court. For a long time there have not been enough secure accommodation places for children who need them. Demand far outstrips supply and any family lawyer who has ever had to advise a local authority will have had the experience of being told that there simply is not a bed available for the child.

Now we can talk about 'Deprivation of Liberty'. I am going to refer to this as DOL. Can we pause there? I am not calling it DOLS; DOLS means something else about a case called Bournewood and an amendment to the Mental Capacity Act 2005. DOLS happened to ensure that people in care homes and the like weren't being detained indefinitely. So calling Deprivation of Liberty in this sense 'DOLS' is confusing for everybody. Stop it, guys. Why does all this matter? The answer lies in our old friend Human Rights, specifically Article 5 of the European Convention: Everybody has a right to liberty and security of person. Nobody can be deprived of that liberty except if the law allows it in some way. There are many ways that a child can be deprived of their liberty in a way that the law allows however. They include: Secure Accommodation; under the Mental Health Act if a child is under 16 and suffering from a mental disorder; the Mental Capacity Act if a child is over 16 and lacking capacity; a criminal court sentencing a child to be detained; and a couple of other ways. But outside of that, it's unlawful and a violation of the rights of the child.

So if there are not enough secure accommodation places to meet the demand, that means there are a number of children who need detaining for their own safety but there is no legal way of doing it. The Supreme Court has said in 2019 that a parent cannot authorise these sorts of restrictions by exercising their Parental Responsibility. These interventions are so serious, that they must be approved by a Court in some form.

Step up, the High Court. The High Court is really important. Like Ferrero Rocher important. The main reason that the High Court is important is because it has what my friend Suespicious Minds likes to call magic sparkle powers – that is the ability to step in and provide protection for somebody in need where the law doesn't cater for them. Nowadays it is a safety net, and used to make sure that nobody slips through the net. And the lack of secure accommodation is a flipping great hole in the net. This is known as the Inherent Jurisdiction – the power the Court implicitly has arising from the duty of the Crown to protect the vulnerable.

Where a child needs to be deprived of their liberty and there is no secure bed, the local authority can go to the High Court and ask the Court to approve the arrangements. The Court will examine what restrictions are proposed and, if they are necessary, approve them as lawful. So this might mean that somebody always has somebody supervising them, or is locked in their room at night, or has their phone messages interrogated on a continuous basis. It may also mean that somebody may have to be regularly restrained, although the act of restraining a young person can be done lawfully and in an emergency without an order thanks to the Children's Home Regulations. Whether it

can be done regularly without a DOL authorisation is another matter for another day (spoiler: no).

There are some important differences: for example, secure accommodation placements are regulated by OFSTED whereas DOL placements are regulated only by DTBWCWNPALRO (that's short for 'doing-the-best-we-can-with-no-placements-and-little-regulatory-oversight'). It would be funny if it wasn't true. It should be said that the prevailing wind from the courts is one of despair. Only last week, Mrs Justice Knowles in Re Q echoed the words of the former president of the Family Division of the High Court, Sir James Munby: "The lack of appropriate placements for highly vulnerable children and adolescents identified in much of the recent case law is, in the words of Sir James Munby, former President of the Family Division, "disgraceful and utterly shaming""

An increasing shortage of secure placements and an increasing reluctance on the part of those secure placements to accept young people with the level and complexity of needs demonstrated by Q has meant that the courts have accordingly been asked to sanction the placement of young people in Q's position in regulated and unregulated placements under the auspices of an order made under the inherent jurisdiction of the High Court authorising the deprivation of their liberty as an alternative to secure accommodation…"

The choice is sometimes an impossible one. Mr Justice Macdonald in LCC v G N [2020] EWHC 2828 commented: "The stark choice thus faced by the court is to refuse to authorise the deprivation of G's liberty in an unregistered placement, which will result in her discharge into the community where she will almost certainly cause herself possibly fatal harm, or to authorise the deprivation of G's liberty in an unregistered placement that all parties agree is sub-optimal from the perspective of her welfare because that unregulated placement is, quite simply, the only option available."

As I have noted above, it is a fundamental principle of a democratic society that the State must adhere to the rule of law when interfering with a person's right to liberty and security of person. Within this context, I am left asking myself whether, where there is only one, sub-optimal option open to the court apart from allowing G back into the community where she may well end her own life, the court is really exercising its welfare jurisdiction if it chooses that one option, or if it is simply being forced by mere circumstance to make an order irrespective of welfare considerations. At best, the decision can be based on only the narrowest of such considerations, namely the bare need to prevent G from harming herself. Within this context, I echo the words of the former President in Re X (A Child)(No.3) as I am left acutely conscious of my powerlessness, of my inability to do more for G." Both of these cases are within the past three months, but I could name 20 from the past few years that echo the experience of practitioners day in and day out.

Where do you draw the line? One of the big questions in this area of law is where to draw the line between a deprivation of liberty and doing what a parent should do to keep a child safe. So for example, you wouldn't need a DOL authorisation for a six year old because you would expect their parents to keep them under near constant supervision and to not let them out on their own. You would expect a parent to do that as part of their responsibility to keep the child safe. To decide what sort of cases need DOL authorisation, the courts have developed what we call the 'acid test' – this is 'whether a person is under the complete supervision and control of those caring for her and is not free to leave the place where she lives'. This is made more difficult in the modern world because, as Sir James Munby noted in a leading case, the average 15-year-old is often not free to leave their home. So we need to take a deeper look at what being confined actually means, and whether a young person is really under 'complete supervision and control'.

Complete supervision implies that it is constant; perhaps that every waking moment of the young person will be supervised, apart from some time for personal care. As Mr Justice

Macdonald noted in another important case, it does not matter whether the objective of this is to treat or protect in some way – it is still confinement that goes beyond what is normally lawful. The characteristics of the young person also does not matter – a young man with an intellectual disability will be just as confined as a young man without. Similarly, if the young person does not object that does not mean that the restrictions are lawful if they are unable legally to give consent. This is ultimately a question to be answered on a case-by-case basis, and a judgement call for the social workers, lawyers and ultimately the judge.

What does a DOL look like? Each case is different. Here are some of the common restrictions that may amount to a deprivation of liberty: Sometimes a young person will be subject to intense supervision on a 1:1 or maybe even 2:1 basis (or more). The young person may be locked in their room or the placement may have locks on the doors that stop the young person leaving. The young person may not be allowed out on their own, or they may be supervised or followed if they do. The young person might be restrained if they attempt to hurt another person, or if they try to leave the placement. A young person may have their telephone monitored, messages read and/or their internet access intensively monitored. These restrictions should be regularly reviewed by the Court and should only be authorised if they are necessary and proportionate. There are no hard and fast rules; only that the restrictions should be appropriate as a response to the harm that the young person may suffer if they weren't there, and that at all times the Court must be satisfied that the restrictions are in the best interests of the young person.

Some final thoughts: These are difficult cases; the consequences of getting it wrong can be catastrophic for the young person either way. Confinement can cause anguish and hurt to a child, but equally so can the harm you need to protect them from as a social worker. So where should we draw the line? Is it possible? There are too many decisions where the Court is faced with Catch 22, as above, and DOL may be considered in those circumstances as the least worst option. Does the present situation, where DOL has emerged as a sticking plaster to a much bigger problem, do us credit as a society when this is the response to our most vulnerable?

In Lancashire County Council v G/N (I have referred to this above), several judgments were published by Mr Justice Macdonald expressing dissatisfaction at the availability of placements and the suitability of DOL as a response to our most vulnerable children.

Jerry Springer used to finish his shows by leaving ther audience with something to think about. Well, Mr Justice Macdonald's opening thought from the Lancashire Case will be my last for today*: "In relation to children, [the measure of a society being measured by how it treats its most vulnerable people] was perhaps most eloquently and most memorably expressed as "there can be no keener revelation of a society's soul than the way in which it treats its children" *Will I get dis-barred for comparing one of Her Majesty's Judges to Jerry Springer? Let's hope not. I have nothing but admiration for both.

Michael Gifford-Hull -v– Parole Board For England/Wales (Procedural Unfairness)

1. The Claimant brings a claim for judicial review in respect of two decisions made by the Defendant during his pre-tariff parole review.

2. The first challenge concerns a decision of the Defendant, made by a panel chair on 18th December 2019, that the victim's personal statement made by the Claimant's adult son should not be disclosed to him in full, rather a 'gist' of the statement should be served instead (with a full copy provided to the Claimant's solicitor upon the giving of an undertaking not to disclose its content to the Claimant).