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Michael Goldsworthy - Recall to Prison Unlawful, Disproportionate and Unreasonable

1. By this claim for judicial review, the Claimant seeks to challenge the decision of the Defendant made on 9 August 2017 to recall him to prison. The Claimant says that the decision was unlawful, disproportionate and unreasonable, and that in consequence his detention is unlawful at common law and under Article 5 of the European Convention on Human Rights.

2. At the conclusion of the hearing on 8 September 2017, I indicated that I had decided that the claim should succeed, and ordered the release of the Claimant from prison. This judgment sets out the reasons for that decision.

3. The Claimant was born on 21/06/1945, and is 72 years old. He was convicted on 5 January 2006 of a number of serious sexual offences committed in the early 1990s, including rape, incest, and assault occasioning actual bodily harm, and sentenced to life imprisonment, with a four year tariff. Taking into account the time he had spent on remand, his tariff expired on 11 October 2009.

4. The Claimant suffered from bowel cancer in 2009. He has a number of chronic physical disabilities, including nerve damage. He has restricted mobility, and suffers from incontinence. He uses a stoma and a colostomy bag. He suffers from neuropathic pain in his hands and feet which makes walking difficult, and uses a walking frame or a wheelchair. He also suffers from depression.

5. The Claimant was the subject of a number of Parole Board reviews between 2009 and 2016. His case was eventually considered by a panel of the Parole Board at an oral hearing on 8 August 2016. By a decision made following that hearing, on 22 August 2016, the panel concluded: "Having carefully considered the whole of the evidence the panel is satisfied that in principle, and subject to an appropriate release and risk management plan being put in place, your risk would be manageable on licence in the community."

6.Since no suitable accommodation had yet been identified, and an appropriate risk management plan was not yet in place, the panel adjourned the hearing for these matters to be addressed.

7. Notwithstanding the panel's conclusion, the Claimant was not released until May 2017, because of the difficulty in finding appropriate accommodation for him.

8. However, by a further decision dated 15 May 2017, the Parole Board panel Chair ordered his release. In making that decision, the panel Chair conducted an up to date assessment of the risk presented by the Claimant, taking into account his progress in custody and changes since August 2016. The panel Chair's conclusion was as follows: "Nothing which has occurred since the oral hearing has caused the panel chair to alter the assessment which he and the other two panel members made in August 2016. The panel chair has reminded himself, as all three panel members did in August 2016, that the Board's task is to assess your current risk of serious harm to the public, which in the context of this case must mean the risk of your causing serious harm by future sexual offending. There is no evidence that you have ever posed any risk of sexual offences against males, so the panel is concerned only with your risk, if any, of causing serious harm by future sexual offending against females. The fact, if it be the fact, that you may on occasions cause offence to females or behave inappropriately towards them, without causing them any serious harm, is immaterial to the panel's decision.

The offences which led to your two lengthy prison sentences were committed against specific victims (your own daughters who were teenagers at the time of the offences) in specific situations which will clearly never recur; and in the panel chair's view the risk of your committing sexual offences against any other females in the future is properly described as low. The panel chair is in complete agreement with the views expressed by Mr Payne at the oral hearing [Mr Payne is a forensic psychologist who had assessed the Claimant, and who gave evidence at the hearing in August 2016]. He had concluded in his assessment that you would pose a low risk of sexual violence if you were released into the community. In his addendum report of February 2017 he saw no reason to change his view of your risk of future sexual violence. He did not believe, and the panel chair does not believe, that anything which has happened since the oral hearing has afforded any evidence of an increase in risk. Whatever criticisms may be made of your occasionally poor behaviour in custody, there is nothing to suggest an increased likelihood of serious harm caused by future sexual offences. Your behavioural lapses can be put down in part to your problematic personality traits which include a somewhat narcissistic and self-centred approach to life and significant difficulty in understanding other people's positions or views.

It is Mr Payne's opinion that your risk of future non-sexual violence is actually higher than your risk of sexual violence: he places it at the low-moderate level. He has explained this as follows: "At times, [Mr Goldsworthy] will present as appreciative and grateful to staff he feels understand his special needs and meet them, However, he is also likely to be very sensitive to treatment he feels does not meet what he is entitled to and should be provided with. His response to this perceived substandard care may vary, but could include contempt for staff he feels do not understand or are not competent, voicing suspicion that staff are deliberately withholding care, or signs of anger and frustration in the form of verbal aggression (insults, swearing, abusive language). On occasions where Mr Goldsworthy feels his response does not produce an improved level of care, increasing levels of anger and frustration may lead to physical violence, most likely in the form of the throwing of an object that is to hand."

The panel agrees with Mr Payne's analysis, but the risk of future inappropriate behaviour of this kind is entirely different from the risk of future sexual violence upon which the panel is required to focus: it falls a long way short of the kind of risk which would make it necessary for you to continue to be confined in prison in order to protect the public from serious harm. The manageress of the care home to which it is proposed you should be released is aware of your offending history and has seen Mr Payne's report, but is nevertheless willing to accept you as a resident. No doubt the kind of petulant behaviour to which Mr Payne refers is not altogether uncommon in elderly residents in care homes. It is not a reason for locking them up in prison for the protection of the public."

9. As this passage indicates, accommodation had been arranged for the Claimant at a care home: Lyle House, in Roehampton. The Claimant was released to that address on 17 May 2017.

10. The conditions of the Claimant's licence included a condition that he should be "of good behaviour", and a condition that he should not commit any offence.

11. On 28 June 2017, the Claimant was informed by doctors at St Thomas' Hospital that he had been diagnosed as suffering from a metastatic colorectal cancer which had spread to his liver, and that his condition was terminal. He was told that it was likely that he had between about three months and one year (or possibly two years, as the recall report records) to live.

12. Following the diagnosis, the Claimant's relationship with some carers at Lyle House deteriorated. It was said that he had sworn at a night carer. The recall report notes that the home generally deals with vulnerable adults with dementia, and that the Claimant is different from their usual client group. It was suggested that additional training for some staff might be needed.

13. On 7 August 2017, Anna Dillon of the Probation Service was informed of further problems with Mr Goldsworthy's behaviour. It was a matter of particular concern, given his offending history, that

a staff member had reported a possible incident of him inappropriately touching the leg of a 90 year old resident, though it was said to be unclear whether he "was being tactile or had an ulterior motive".

14. Anthony Gosling of the Probation Service attended Lyle House on 8 August to meet Mr Goldsworthy and discuss his behaviour with him.

15. On the following day, 9 August, the Probation Service was informed that the Claimant's behaviour had become significantly worse overnight. He had threatened staff members, stating that he would "get you sorted out" and "take your head off". He had also thrown a bag belonging to a member of staff against the wall, breaking an ipad and mug that were inside. Staff felt intimidated, and residents had to be moved for their safety. Staff called 999, but the police did not attend. It appears that staff did not inform the police of the Claimant's history when making the emergency call.

16. As a result of this incident, the management of Lyle House were not prepared to permit the Claimant to remain there any longer.

17. Ms Dillon noted in her recall report dated 10 August 2017 that she had been able to obtain alternative emergency accommodation, in the form of a disabled access studio flat in Hounslow. However, her report states that "it was decided that Mr Goldsworthy's risk could not be managed in the community. An out of hours recall was initiated by Mr Josling". No reason was given in the recall report as to why the Claimant's risk could not be adequately managed in a studio flat, such as the one which had been identified.

18. The Claimant was thus recalled to prison at HMP Wandsworth late on 9 August 2017.

19. An urgent application for interim relief was made on 21 August 2017, with a claim for judicial review of the recall decision being issued on 22 August 2017.

20. On 22 August 2017, Nicola Davies J granted permission for judicial review, expedited the claim, and ordered the defendant within three days to review and reconsider the decision to recall the Claimant's licence. She also made an order requiring the Hounslow flat to be retained for possible occupation by the Claimant in the meantime.

21. The decision to reconsider the recall was made on 24 August 2017, by Ian York, Head of Post-Release Casework. The decision to recall the Claimant was reaffirmed. The reasons were stated to be increasing concerns about the Claimant's behaviour, and, in particular, the incident when the Claimant had threatened violence against staff at Lyle House, and had thrown the member of staff's bag against the wall, breaking her ipad and mug. It was noted that the Claimant had already been placed on a behaviour management plan, as a result of his previous poor and threatening behaviour, and that staff were in no doubt that this incident was a "deliberate act of aggression".

22. The letter referred to the touching of the elderly resident's leg by the Claimant, but stated that it had now been confirmed that this incident was "non-threatening".

23. Mr York also stated that the Parole Board in May 2017 had advised the Claimant to avoid angry and offensive behaviour towards staff at Lyle House, and pointed out the risk of recall in such circumstances, and referred to the Claimant rejecting advice from his Offender Manager regarding his behaviour.

24. Mr York acknowledged that since the Claimant was serving an indeterminate sentence, there must be a causal link between his behaviour and his index offence in order for him to be recalled. He stated: "Due to the sexual and violent nature of your index offences I am satisfied that the reported aggressive and violent behaviour was more than sufficient to establish that link. Whilst at the time of the recall the concern surrounding the alleged sexual contact was appropriately taken into consideration, in reviewing that decision, and now discounting that incident, I do not find that it would have made any difference to the decision to recall. I am also satisfied that due to the type of residence in which you had been housed and the vulnerability of the other residents (many very

elderly, infirm, and suffering from dementia) that you posed an increasing risk to both staff and residents. It may be that the sort of behaviour you displayed can be contained and managed in a prison environment with staff who are trained in dealing with violent and aggressive behaviour. You, however, were placed in a care home which is staffed by people who are not trained and do not have facilities to deal with such violent and aggressive behaviour. As such I consider that your behaviour raised an immediate risk to the safety and mental welfare of other residents and staff and on that basis I cannot see how your risks could have been safely managed in the community and there was no alternative but to recall you. "

25. The decision letter went on to note that further information recently received in the Claimant's risk management plan provided detail from the care home manager outlining an appalling level of verbal abuse, intimidating behaviour, and manipulation, and stated that "it is of significant concern that abuse, intimidation and manipulation were important features of your index offences."

26. There was no consideration in this letter of the question whether the Claimant's risk could be adequately managed in the studio flat identified as available. The reasoning proceeds from a statement that the Claimant's risk could not be safely managed in the care home, because of the training of the staff, the nature of the facilities, and the presence of vulnerable residents, to the conclusion that "there was no alternative" but to recall him.

27. The Claimant was informed that his case had been referred to the Parole Board, who would consider his recall, and whether he could be re-released. No timescale for this exercise was provided, though it was stated that the Board had been asked to expedite the hearing.

28. As a prisoner serving an indeterminate sentence, of which the tariff portion had expired many years earlier, the Claimant could lawfully be detained only if his detention was necessary for the protection of the public against sexual or violent harm.

29. The Parole Board had the power to release him on licence under s. 28 of the Crime (Sentences) Act 1997 ("C(S)A 1997"). His recall to prison was governed by s. 32 of the C(S)A 1997. Under s. 32(1), the Defendant has the power in the case of any life prisoner who has been released on licence, to revoke his licence and recall him to prison. The prisoner has the right to be informed of the reasons for his recall, and has the right to make representations in relation to it.

30. The legislation itself does not set out the test to be applied for recall. However, the test is the same as for initial release on licence (see R v Parole Board, ex parte Watson [1996] 1 WLR 906. The Claimant could lawfully be recalled only if (1) there were reasonable grounds for concluding that there was a breach of his licence conditions, and, (2) in all the circumstances, his recall was necessary for the protection of the public, because of the dangers posed by the prisoner when out on licence: R (Jorgensen) v Secretary of State for Justice [2011] EWHC 977, paragraphs 16 and 25. As Silber J stressed in this case at paragraph 18, detention is justified only as a last resort, where other less severe measures have been considered and found to be insufficient to safeguard the public interest which might require detention. I note that the test applied by Silber J in Jorgensen was conceded by the Defendant to be correct and applied by the Court of Appeal in the case of R (Calder) v Secretary of State for Justice [2015] EWCA Civ 1050, paragraphs 27 – 28.

31. The Defendant operates policies which apply in relation to the recall of indeterminate sentence prisoners. Under PSI 30/2014 "Recall, Review and Re-release of Recall Offenders", revised and re-issued on 24 January 2017, it states, at paragraph 6.2: "Test for recall for indeterminate sentence prisoners

6.2 When making a request to recall an indeterminate sentence offender on licence there must be evidence that there is an increased risk of harm to the public before recall is agreed. The [Probation Officer] must take into account the extent that the offender's behaviour presents an increased risk of sexual or violent harm to others, regardless of the type of index

offence for which he or she was originally convicted…"

32. Similarly, Chapter 13 of the Indeterminate Sentence Prisoner Manual (PSO 4700) gives guidance to a Probation Officer making a recall request which states:

"In detailing the circumstances leading to the recall request, you must show the deterioration in behaviour/compliance, which leads you to assess that the risk of harm to life and limb has increased to an unacceptable level. Whilst the seriousness of any breach is a factor, the level of risk to life and limb is paramount."

33. There was disagreement between the parties as to the appropriate standard of review applicable in this case. The Claimant submitted that, since the case concerns a decision to deprive a person of their liberty, the Court ought to apply a proportionality standard. On the other hand, the Defendant urges a Wednesbury approach, with a wide margin of discretion being afforded to the Defendant, on the basis that this is a decision that engages the safety of the public, of necessity taken in circumstances of urgency.

34. In my judgment, it makes no difference to the outcome of this case whether the test applied is one of proportionality or pure Wednesbury irrationality, because the flaws in the decision to recall the Claimant are such that the decision cannot be rationally sustained. The reasoning for the decision failed to take account of obviously relevant considerations, and failed properly to apply the Defendant's own policy guidance. On that basis, the decision was unlawful whatever standard of review is applied.

35. First, there was no evidence of any deterioration in the Claimant's behaviour, such that the risks he posed in August 2017 were any greater than those identified by the Parole Board panel Chair when he was released in May 2017. On the contrary, the risks of poor behaviour, including the abuse of carers, the use of threatening language, and violence (particularly throwing objects) were specifically identified by the panel Chair, and, crucially, were judged by him not to be sufficient to warrant the Claimant's continued detention. What the Claimant did at Lyle House was precisely what the panel Chair had expected that he would do. The panel Chair had considered whether conduct of this nature was sufficient to warrant the Claimant's continued detention, and had concluded that it was not.

36. In that situation, it was not rational for the Defendant to recall the Claimant to prison, and moreover the decision to do so was contrary to the Defendant's own policy guidance set out above. His behaviour showed no deterioration or greater risk than anticipated, but, rather, was entirely consistent with the panel Chair's assessment of the type of risk which he posed, which had been judged to be insufficient to justify his detention.

37. The Defendant argued that the threat of violence made against Lyle House staff was an escalation from the types of abuse considered by the Parole Board. However, in reaching his decision in May 2017, the panel Chair had before him evidence of threatening language, including a threat made to a female member of the prison staff to "get out his spanking stick and spank her". The panel Chair also took into account the risk of actual physical violence on the Claimant's part, including throwing objects. The specific threats made to Lyle House staff are obviously hyperbolic, particularly coming from a severely disabled elderly man. It is significant that the panel Chair considered that the Claimant's behaviour, strikingly similar to that manifested at Lyle House, fell "a long way short" of the type of conduct which would justify detention.

38. Secondly, one significant concern at the date of the original recall was the incident concerning the touching of the 90 year old resident's leg. However, it rapidly became apparent that this was not a matter which ought to have been taken into account against the Claimant,

since it appears to have been entirely innocent, or, at least, "non-threatening".

39. Thirdly, much of the concern appears to have arisen because of the difficulty encountered by the staff at Lyle House in managing the Claimant's undoubtedly challenging and obnoxious behaviour. It appears that staff may not have been trained to deal with conduct such as his. In addition, his behaviour appears to have caused considerable concern in an environment largely consisting of vulnerable elderly residents, many of whom had dementia.

40. It may thus be that Lyle House was not a suitable place for the Claimant to live. However, it does not follow from this that he had to be recalled to prison. When the original decision to recall him was made, a studio flat in Hounslow was available. Nicola Davies J ordered that this flat should be retained, so that it remained available when his recall was reconsidered. However, neither the original recall decision nor the reconsideration explained why the risk presented by the Claimant, such as it was, including the risk of him upsetting elderly care home residents, could not be adequately managed if he was accommodated in his own studio flat, with assistance being provided to him by visiting carers. This approach was unlawful, and amounted to a failure to take account of relevant considerations. As Silber J observed, detention is a last resort. It was incumbent on the Defendant to consider reasonable alternatives to prison before recalling him, and particularly to consider the viability of managing him in alternative accommodation which had already been identified as available.

41. Fourthly, no consideration appears to have been given to the exceptionally stressful circumstances of the Claimant when the incidents at Lyle House blew up. The Claimant had very recently been informed that his cancer had returned, and that it was terminal. He had been told that he might have as little as three months to live. In that situation, the manifestation of frustration and stress through abusive or aggressive behaviour was understandable. Consideration ought properly to have been given to measures to be taken to assist him in coming to terms with his situation, rather than simply deciding to recall him to prison. That was particularly important, given the very harsh impact of recall to prison on a man with potentially only a few months to live. There was a real risk that he would die in prison before the Parole Board had been able to assess his case.

42. Finally, the attempts by the decision makers to identify a causal link between the Claimant's index offence and his behaviour were in my judgment misconceived. As the Parole Board panel noted in May 2017, behaviour of this kind is entirely different from the risk of future sexual violence, and falls a long way short of the kind of risk which would make it necessary for the Claimant to continue to be confined in prison in order to protect the public from serious harm.

43. The Parole Board panel Chair pointed out that "petulant behaviour" of the type in which the Claimant indulges is not uncommon amongst elderly care home residents, and that "it is not a reason for locking them up in prison for the protection of the public."

44. That judgment was reached by an independent judicial body, which had considered all the evidence in the round, including at an oral hearing. There was no rational basis on which it was open to the Defendant to reach a different view, in circumstances where the behaviour which had materialised was in substance the same as that which the panel Chair had described, and had anticipated.

45. Accordingly, I conclude for these reasons that both the initial decision to recall the Claimant, and the reconsideration of that decision on 24 August 2017 were unlawful. Both decisions are accordingly quashed.

46. It follows that there was no justification for the Claimant's detention, which was unlawful from the time of his recall to prison.

47. The Claimant's claim for damages for false imprisonment is to be determined by way

of written submissions, in accordance with directions agreed between the parties.

Victor Nealon Spent 24 Unlawful Years in Jail and Received No Compensation

Abdulrahman Mohammed spent 14 months Unlawfully Detained and Got £78,500 Damages

Mohammed v The Home Office [2017] EWHC 2809 (QB) (08 November 2017)

Abdulrahman Mohammed is a 39-year-old Somali citizen. He came to the UK on 2 February 1996 at the age of 17. He has spent much of the last two decades in and out of custody, largely for serious criminal offences but he has also been detained by the Home Office pursuant to its powers to order the detention of foreign criminals who are liable to deportation. By this action, Mr Mohammed complains that three periods of immigration detention, totalling some 445 days, were unlawful: 2.1 41 days from 12 September to 22 October 2012; 2.2 139 days from 6 January to 24 May 2013; and 2.3 265 days from 14 June 2015 to 4 March 2016.

Accordingly, Mr Mohammed claims damages for false imprisonment. Following the earlier judgment of Hayden J. upon Mr Mohammed's claim for interim relief ([2016] EWHC 447 (Admin)), the Home Office conceded that he had been falsely imprisoned for 149 days between 8 October 2015 and 4 March 2016. This case was listed before me to determine the remaining issues of liability. However, the Home Office conceded liability in respect of all three periods of detention late on the afternoon before trial. Furthermore, the Home Office abandoned its argument that the Court should only award nominal damages. It therefore falls to me to assess damages. Mr Mohammed gave brief evidence in support of his case. In addition, he relied on the written evidence of Dr Lisa Wootton, a consultant in forensic psychiatry. The Home Office did not call any evidence. 65. In my judgment, the correct sums for damages are as follows: £8,500 for the first period of 41 days; £25,000 for the second period of 139 days; and £45,000 for the third period of 265 days, making a total award in this case of £78,500.

Postscript: Some reading this judgment might well question why a foreign citizen who has so thoroughly abused the hospitality of this country by the commission of serious criminal offences is entitled to any compensation. There are, perhaps, three answers to such sceptic: First, there are few principles more important in a civilised society than that no one should be deprived of their liberty without lawful authority. Secondly, it is essential that where a person is unlawfully imprisoned by the state that an independent judiciary should hold the executive to account. Thirdly, justice should be done to all people. In R (Kambadzi) v. Secretary of State for the Home Department [2011] UKSC 23, [2011] 1 WLR 1299, Baroness Hale said, at [61]: "Mr Shepherd Kambadzi may not be a very nice person. He is certainly not a very good person. He has overstayed his welcome in this country for many years. He has abused our hospitality by committing assaults and sexual assault. It is not surprising that the Home Secretary wishes to deport him. But in Roberts v. Parole Board [2005] UKHL 45, [2006] 1 All ER 39, at [84] … Lord Steyn quoted the well-known remark of Justice Frankfurter in United States v. Rabinowitz (1950) 339 US 56, at 69, that 'It is a fair summary of history to say that the safeguards of liberty have frequently been forged in controversies involving not very nice people.' Lord Steyn continued: 'Even the most wicked of men are entitled to justice at the hands of the State.' And I doubt whether Mr Kambadzi is the most wicked of men."

Mr Mohammed is a prolific and violent offender. I can well understand why the Home Secretary might wish to deport him. She has not, however, been able to do so, largely because of the very real risk that deportation to Somalia would pose. Like Mr Kambadzi, he is not the most wicked of men, but his presence in the UK is not conducive to the public good. Nevertheless, in a civilised society, he is entitled to justice. Specifically, he is entitled not to be falsely imprisoned and, given the Home Office's admission that he has been unlawfully

detained, he is now entitled to the compensation that I have awarded.

Defendants Must Reveal Nationality in Magistrates Courts

Owen Bowcott, Guardian: Defendants will have to disclose their nationality at their first appearance before magistrates in England and Wales from next week under powers that human rights groups say will undermine the right to a fair trial. The changes to criminal cases are being introduced as part of the government's drive to deport more foreign criminals. Failure to disclose the information could result in a prison sentence of up to a year. Civil liberties organisations have likened the changes to bringing "border controls into our courtrooms". Some magistrates are also understood to be anxious that requiring defendants to reveal their nationality at the opening of the case could be prejudicial and damage the defendant's trust in the impartiality of the criminal justice system. It has been argued that revealing it at the end of a trial would be less discriminatory.

Penelope Gibbs, the director of Transform Justice and a former magistrate, said: "What relevance does a defendant's nationality have if they are pleading not guilty? Or if they are accused of a crime which is not imprisonable? The point of the criminal courts is to convict and sanction the guilty, not to act as an arm of the UK Border Agency." Martha Spurrier, the director of Liberty, said: "The government is well aware – thanks to David Lammy's recent report – that racial bias is a serious problem at every level of our criminal justice system. Forcing defendants to reveal where they come from in court can only worsen that discrimination and lead to unfair trials. "Most offences have absolutely nothing to do with immigration, let alone nationality. Bringing border controls into our courtrooms is simply another manifestation of this government fuelling anti-migrant sentiment, division and suspicion."

Magistrates have been sent details of the new regulation introduced under section 162 of the Policing and Crime Act 2017. Requiring disclosure at the first court appearance was not in the bill but brought in through criminal procedure rules not debated by MPs. The notice from HM Courts and Tribunals Service states: "In the magistrates court, the requirement must be imposed at the first hearing in the case where the defendant is present. The magistrates court may also impose this requirement at any subsequent hearing where, for example, the defendant did not appear at the first hearing." Defendants are also obliged to give their name and date of birth. The rule comes into effect on 13 November.

Meanwhile, the Migrants' Rights Network, represented by Liberty, has launched a legal challenge to a data-sharing agreement between the Home Office, the Department of Health and the NHS, which it is claimed violates patient confidentiality by passing on information about the nationality of those seeking medical treatment. Fizza Qureshi, the director of MRN, said: "We are gravely concerned that immigration enforcement is creeping into our public services, especially the NHS. And therefore, it is important to challenge this data-sharing agreement, which violates patient confidentiality and discriminates against those who are non-British. "Health professionals should not have to be forced to act as immigration officers, or to have to breach patient confidentiality. We want the NHS to live up to its founding principles, to be a place of help and support for those who need it regardless of their immigration status." The claim is being funded through the website, Crowdjustice.

Lara ten Caten, a lawyer for Liberty, said: "We are proud to be representing Migrants' Rights Network in their challenge to this toxic data-sharing arrangement. It undermines every principle our health service is built on – it is discriminatory, shows contempt for patient confidentiality and privacy, and is putting lives at risk. This case is an important step forward in the fight to dismantle this government's 'hostile environment' regime, which has seen the tentacles

of immigration enforcement reach into our schools and hospitals, turned trusted public servants into border guards and spread racial profiling, suspicion and fear into every corner of society." A government spokesperson said: "Under these changes, courts will be required to ascertain details of defendants' nationality when they attend at the very beginning of a case. Where an individual is identified as a foreign national offender, this will allow the Home Office to begin consideration of deportation action as quickly as possible. We are absolutely committed to removing foreign national offenders from the UK and continue to work closely with international governments to increase the number of prisoners deported."

Complaint Concerning Alleged Police Entrapment Declared Inadmissible

The case of Mills v. Ireland concerned the applicant's complaint that his conviction for selling drugs was unfair as it was based on evidence obtained by police entrapment. In its decision in the case the European Court of Human Rights has unanimously declared the application inadmissible. The decision is final. The Court concluded that the role of the police in the case had been essentially passive and that their conduct had not crossed the line to become entrapment or incitement to commit an offence. Moreover, the course of the domestic proceedings had demonstrated that, had Mr Mills succeeded in demonstrating that he had been entrapped, the evidence against him would have been deemed inadmissible. At the same time, the Court underlined that – as highlighted by the Irish courts in Mr Mills' case – there was a need for some sort of formal procedure in domestic law regulating undercover operations by the police.

Truth & Justice for Onese - 20 Year Battle

Ann Power has campaigned for the past 20 years to uncover the truth about what happened when her husband, Onese Power, died in a high-speed police pursuit in 1997. She now has permission from the Attorney General to make an application for a High Court Order to open a fresh inquest. Ann has raised over £3,000 to fund this process via the legal campaign funding website Crowd Justice. Ann represented herself in the first inquest in February 1998, while an experienced barrister represented the police. After hearing evidence of an alleged contact between a pursuing police car and Onese's motorbike, an inquest jury returned an inconclusive 'Open Verdict'. Since then, a suppressed report has revealed that the Met investigated an expert whose influential evidence was presented to the coroner's court.

After twenty years Onese's family are still fighting for answers concerning his death. Their campaign has public significance, not least because it is a heart-breaking story of how a bereaved family was denied disclosure of documents by the police, denying the family the opportunity to prepare its questions before the inquest, but also because even with the support of the Attorney General, Ann has to find the money to take her case to the High Court for the Order requiring a fresh inquest.Although Ann's legal representation at a fresh inquest may well qualify for exceptional legalaid funding, the task of securing a fresh inquest does not. This is another example of where crowdfunding has replaced or supplemented legal aid to ensure robust and effective oversight of public bodies involved in fatalities.

Ann Power says: "We passionately believe that all deaths involving the police must be investigated properly and explored in much greater detail than happened in Onese's case. We are asking for help in our struggle to ensure that we secure a full and fearless fresh inquest into his death. We also want to raise public awareness about the need to ensure that, in the wake of controversial deaths, bereaved families are not left living in limbo, perhaps for the rest of their lives."

Daniel Machover, the solicitor supporting Onese's family, says: "The police must be open and transparent when confronting allegations that mistakes have been made. This obligation is acutely important in fatal cases. The persistent failure to provide timely disclosure of all the relevant information on Onese's death will remain a blot on their record whatever the result. We are confident of helping Ann to secure a fresh inquest but it's really disappointing that the Met has made things so difficult for Ann over the years. This case is a positive reminder that the public will step in to ensure police accountability where legal aid cannot."

MPs Back Seni's Law on Use of Restraint Against Mental Health Patients

Jon Robbins, 'The Justice Gap': MPs have backed new legislation to end the disproportionate use of force against mental health patients. The Mental Health Units (Use of Force) Bill, proposed by Labour MP for Croydon North Steve Reed, passed its second reading in Parliament on Friday. It comes after years of campaigning by families of those who have died in police custody and would increase oversight of use of force in mental health units, require police to wear body cameras when attending units, and mandate an independent investigation following a death. Sarah Foss reports. The Bill is also known as 'Seni's Law' named after Olaseni Lewis, a 23-year-old Black man Olaseni who died after his restraint by 11 police officers during a mental health episode in 2010. Lewis' mother, Ajibola, described how her son, who had not previously exhibited erratic behaviour or violence, was restrained 'with brute force' by police at Bethel Royal Hospital, 'a restraint that was maintained until Seni was dead, for all intents and purposes.' Speaking in the debate as MPs backed the Bill, Steve Reed said: 'We can honour his memory by making sure that no one else suffers the way he did, and by making our mental health services equal and safe for everyone. I dedicate this Bill to Seni Lewis. This is Seni's Law.'

Deborah Coles, director of INQUEST, said the Bill was 'an important attempt to increase visibility and protections around the use of force against some of the most vulnerable people in our society'. She said that the aim was 'to ensure that people in mental health units can feel safe, and are treated with dignity and humanity, ensuring any use of restraint is kept to an absolute minimum'. 'Seni's law would also ensure that when the absolute worst happens and a patient dies, there is a robust and independent system for investigating deaths,' Coles added. 'It is hard to believe that investigations into deaths of those in mental health units are significantly less rigorous than those in other forms of detention. Access to justice for families bereaved by state related deaths, and open, independent investigations are essential to enable proper accountability and learning.'

The vulnerability of mentally ill people in police custody was highlighted in the Angiolini Review released last week. It noted that in the 10 years up to 2015, almost half of those who died (47%). You can read the report here. The review also cited a 2015 Home Affairs Committee Report which found that the shrinking of mental health services had turned the police into a 'service of last resort' with 2,100 of the 28,271 of the detentions under section 136 of the Mental Health Act were to police stations. The Government recently published new guidelines on policing those with mental illness in October, including that the maximum period of detention be shortened from 72 hours to 24 hours (extended to 36 hours only in exceptional circumstances); the police should only detain people in a police cell when there is no other option; and healthcare professionals should be present throughout any period of detention.

Nancy Collins, civil liberties lawyer at Hodge, Jones & Allen, welcomed some of the changes but highlighted its lack of provisions for those detained under the use of force. Collins represented the family of Joseph Phuong, a man who was restrained six times by police whilst having a schizophrenic episode and left naked in a cell before his death at Springfield Hospital in June 2015. The lawyer emphasized that the guidelines needed to 'ensure better treatment for those needing help at their most vulnerable'. Despite calling the guidelines 'a step in the right direction', she noted that

due to their lack of statutory status, they 'may not even be implemented as a matter of course.'

US: Rule Would Push Prosecutors to Release Evidence Favourable to Defence

New York Times: In an unusual move meant to make criminal trials fairer, New York State's top judge has issued a new rule specifically requiring judges to order prosecutors to search their files and disclose all evidence favourable to the defence at least 30 days before major trials. The measure, set to take effect on Jan. 1, was published on Monday by Chief Judge Janet DiFiore, who oversees the state's court system. It establishes a formal rule ordering an entire state judiciary to prompt prosecutors to obey their obligations to both actively look for and speedily hand over exculpatory evidence. The order, said to be the first of its kind in the country, will give judges throughout New York the power to level contempt charges against prosecutors who withhold such evidence, a key component in wrongful convictions.

Under a landmark 1963 Supreme Court decision — Brady v. Maryland — prosecutors are obligated to provide their adversaries with any evidence that could be construed as being favourable to the accused. Known as Brady material, the evidence — however slim — could include police reports that cast doubt on a defendant's guilt or witness statements indicating that someone else may have committed the crime. Though Brady material is supposed to be given to the defence as soon as prosecutors obtain it, a report by the New York State Bar Association found that withholding it — wilfully or not — was among the leading causes of wrongful convictions. Judge DiFiore's new rule not only puts the onus on the prosecutors to comb their records for Brady material, but also places them on notice that they could face punishment for not disclosing it. Moreover, the measure gives defence lawyers a novel form of leverage, allowing them to proactively request that judges make sure that evidence is released in a timely fashion, instead of having to complain after the fact that the prosecution was slow to show its hand. There is the sentiment that if a judge orders it and reminds prosecutors "of what constitutes Brady material, it's more likely it will actually be turned over to the defence," said Seymour W. James Jr., the attorney in chief at the Legal Aid Society. "It will be difficult to claim they didn't realize they should provide that information."

Mr. James, who welcomed Judge DiFiore's order, noted that it would not directly affect New York's antiquated discovery law, which heavily favours prosecutors. Unlike a handful of other states, which have passed legislation forcing prosecutors to hand over all discovery material as fast as possible, New York currently permits district attorneys and their assistants to delay giving defence lawyers some forms of evidence until a jury is sworn in. That makes it harder for the defence to prepare for trials and effectively cross-examine witnesses, providing prosecutors with what critics have called an unfair tactical advantage.

For decades, New York's district attorneys have opposed legislation requiring them to turn over witness statements earlier. They have presented a powerful counterargument: the safety of witnesses. More than a dozen such bills have failed in the past quarter of a century. Judge DiFiore's rule was first recommended in February by a state justice task force that consulted with advocates for legal reform from organizations like the Innocence Project, which works to free the wrongfully convicted. It suggested a provision ensuring that prosecutors quickly disclose not just materials that could fully exculpate a defendant, but also evidence that could be used to impeach the prosecution's theory of a case.

"This is a very big deal," said Barry Scheck, a co-founder of the Innocence Project. "They should be doing it before trial." Under federal law, prosecutors are immune from being sued for most actions taken while performing their official duties and are rarely held accountable,

even for egregious courtroom errors. In keeping with that trend, Judge DiFiore's order was specifically tailored to permit sanctions only against prosecutors who commit "wilful and deliberate" misconduct, sparing those who merely make mistakes.

The Manhattan district attorney, Cyrus R. Vance Jr., who served on the task force, said he supported the idea of having judges officially order prosecutors to scour their files for exculpatory material, especially when the goal is to prevent wrongful convictions. "I can't see any reason to object to an order that requires us to do something the law already requires us to do," Mr. Vance said. Mr. Vance said the new order would clarify a principle for front-line prosecutors that he has tried to instil in his assistants: to err on the side of caution whenever one has a doubt about whether a piece of evidence might be helpful to the defence by handing it over. He said he was uncertain that the new rule would significantly change the course of trials or help make the legal process speedier. "I don't think it changes the ground game at all," he said. "I think it simply puts in an order what is already in law."

William J. Fitzpatrick, the district attorney in Syracuse, predicted that the order would prompt discussions early in criminal proceedings "so there is no opportunity to later claim confusion or lack of awareness." But Mr. Fitzpatrick noted that the rule was hardly fool proof. "I think the immediate effect will be a period of increased awareness for prosecutors of obligations they already have," he said in an email. "Sadly, the rare outlier who is an unethical prosecutor will probably not be deterred by a judicial order."

'Greater Good' Pair Cleared of BAE Criminal Damage

BBC News: Two men have been acquitted of criminal damage at a site owned by defence company BAE Systems after arguing they acted for the greater good. The Reverend Daniel Woodhouse, 30, and Samuel Walton, 31, broke into the site in Warton, Lancashire, on 29 January. They said they were trying to stop Tornado jets being used by Saudi Arabia to bomb Yemen. A district judge in Burnley accepted their beliefs were sincerely held and found them not guilty.

After the verdict at Burnley Magistrates' Court, the two men said they did not regret taking the action and "would do it again in a heartbeat. We did not want to take this action, but were compelled to do so in order to stop the UK government's complicity in the destruction of Yemen," they said in the statement. Mr Woodhouse, of Armley Grange Drive in Leeds, and Mr Walton, of Cromwell Road in Lambeth, south London, accessed the site but were prevented from reaching the aircraft by BAE Systems' security. They said they wanted to disarm the jets.

The pair's lawyer, Mike Schwarz of Bindmans, said Mr Woodhouse, a Methodist minister, and Mr Walton, a Quaker, relied on their religious conviction to explain their actions. "Sometimes moral and legal arguments coincide. This is one such case," Mr Schwarz said. A spokesman for BAE Systems said: "We note the verdict today. This matter was for the magistrates' court to resolve."

Extradition of 'Tartan Terrorist' to US Would Be 'Unjust And Oppressive'

A man wanted by authorities in the United States of America to face bomb threat charges will not be extradited because of his failing health, a court has ruled. Prosecutors in the US wanted the "tartan terrorist", referred to as "SN", arrested and extradited to America to face trial over allegations that he made more than 40 bomb threats in 2012 to various institutions, including the University of Pittsburgh in Pennsylvania and the Pittsburgh Federal Court House. However, a sheriff ruled that it would be "unjust and oppressive" to extradite the 71-year-old founder of the Scottish National Liberation Army due to his "poor and precarious" health.

Busby, of Paisley, Renfrewshire, fled from Scotland to Ireland in 1980 after orchestrating a series of minor terror attacks in Scotland against military sites, oil companies and high-profile public figures using primitive letter bombs. He was was jailed for four years in 2010 by an Irish court for sending emails claiming flights from London to New York City had explosives on board. He was due to face terror charges in 2015 at the High Court in Glasgow for making hoax bomb threats and threatening to poison water supplies but was ruled unfit to stand trial.

Unfit to stand trial: Sheriff Frank Crowe at Edinburgh Sheriff Court heard that SN had been extradited from Ireland under a European Arrest Warrant in 2015 in respect of contraventions of the section 114 of the Anti-terrorism, Crime and Security Act 2001 and section 51 of the Criminal Law Act 1977 over hoaxes involving noxious substances and bomb threats, but subsequently was considered to be unfit to stand trial here in terms of Part VI of the Criminal Procedure (Scotland) Act 1995, which deals with the criminal responsibility of "mentally disturbed persons". The court was told that, having been remanded in custody on his return from Ireland, SN went on a 90-day hunger strike which led to him being admitted to hospital. Medical reports attached to the extradition request signed by the US Attorney General revealed that SN had been diagnosed with multiple sclerosis in 2009 and Crown Counsel took the decision to abandon the case against him after he was pronounced by psychiatrists to be unfit for trial in 2015. A CT scan also showed frontal dementia with cognitive impairment due to Korsakoff's psychosis. He presented as elderly, confused and disorientated as to time and place - he still believed he was in Ireland and said he had been born in 1792 - and did not understand the charges, nor could he name his lawyer. SN, who was being administered nine different medications each day, was assessed as not being able to cope within a prison environment and a medium security psychiatric placement was not thought appropriate as he showed no signs of dangerous behaviour. He was currently residing in a care home, where he was described as being the "most dependent patient", as he required full nursing care and assistance for all activities of daily living.

Extradition request: In terms of the Extradition Act 2003 proceedings begin when the Minister issues a certificate confirming that a valid request has been received. In the normal case court proceedings follow the grant of an arrest warrant and the judge decides whether there are any bar to extradition, and if there are none the Minister has to decide whether extradition should take place, which decision may be appealed. The medical reports suggested that if SN could be prevented from going on hunger strike again his condition might improve, but the reports also stated that his cognitive functioning was impaired to a "significant level" and his health had "deteriorated" over the last two years. He was unfit for trial in 2015, was not fit to travel to the US now nor was he fit to engage in a criminal trial, the sheriff said. Helen Knipe on behalf of the Lord Advocate advised the court that she had received assurances through diplomatic channels that should SN be extradited but found unfit to stand trial he would be returned to the UK provided that certain conditions were met. However, the sheriff noted that SN's lawyer Paul Reid could argue that extradition would be "oppressive" on human rights grounds and due to his physical and mental condition.

Unjust and oppressive to extradite: Following an extradition hearing in SN's absence at Edinburgh Sheriff Court, the sheriff ruled that he should not be extradited. In a written judgment, Sheriff Crowe said: "The circumstances are exceptional and the proposed proceedings relate to an individual who has been well known to the criminal authorities in this jurisdiction for many years. "SN suffers from a degenerative condition for which there is no cure. He was diagnosed with the condition in 2009, was assessed as being unfit for court proceedings by various medical practitioners in 2015 since when there has been a further deterioration in SN's condition and powers of communication. To have granted the warrant would simply have been to authorise a charade, well knowing in light of the unchallenged reports produced to me that his condition is such that it would be unjust and oppressive to extradite him in view of his physical and mental condition. Accordingly I have exercised my discretion not to issue a warrant for the arrest of SN. It is quite clear that seeking to issue a warrant in the present circumstances, given SN's poor and precarious health, would place those seeking to enforce such a warrant in an invidious, impractical and frankly impossible position. The assurances given by the Requesting Authority are quite proper in the circumstances but it is seems clear a similar finding of unfitness inevitably would be made, were it possible and practicable to arrange the transfer of SN to the United States of America. It follows that SN is discharged from this process."

Landmark Review on Deaths in Police Custody

The Independent review of deaths and serious incidents in police custody by Dame Elish Angiolini has been published by the Home. It is the first and only review of policing practises and related processes following police related deaths. The report offers the government a blueprint for change to urgently implement in the face of numerous recent concerning deaths. It makes over 100 evidence based recommendations, which are intended to be a pragmatic way forward. These include important recommendations on: • Access to justice for families, including through non-means tested legal representation for bereaved families from the earliest point following the death. • Strengthening systems and structures of accountability, holding the police to account at an individual and corporate level. • National Oversight and learning from deaths, such as through an 'Office for Article 2 Compliance' which would monitor and report on recommendations arising from deaths. • Improved investigation, including through the phasing out of Ex-police officers as lead investigators within the IPCC. • Tackling discrimination, through recognition of the disproportionate number of deaths of BAME people following restraint and the role of institutional racism, both within IPCC investigations and police training. • Better treatment of vulnerable people, including through proper resourcing of national healthcare facilities to accommodate and respond to vulnerable people in urgent physical or mental health need coming into contact with the police. • An end to delay, in which Article 2 related cases should be dealt with in the same time scales as a civilian homicide case.

The review was commissioned by Theresa May, then Home Secretary, after meeting the families of Olaseni Lewis and Sean Rigg, both of whom died following restraint by police officers whilst suffering mental ill health. Dame Elish Angiolini is the former Solicitor General and Lord Advocate in Scotland, and conducted the review. INQUEST's Director Deborah Coles was Special Advisor to the Chair and INQUEST facilitated meetings for Dame Elish to hear directly from a large number of families with varying experiences, as well as groups of lawyers who regularly represent families.

During the 10 months wait for the review to be published there have been a number of concerning deaths following police contact. The deaths of Rashan Charles and Edson Da Costa in particular have reignited widespread public concern. Since January we are aware of at least eight deaths involving restraint or Taser and other use of force, and five deaths of people who 'became unwell' or were found unresponsive while in custody. There have also been a number of conclusions in police misconduct hearings and trials that have led bereaved families to question the state of learning and accountability processes.

Deborah Coles, director of INQUEST said: "This seminal report is an indictment of the failing systems of investigation, learning and accountability which follow the long running issue of

deaths in police custody. It is a hugely important opportunity to bring about changes that could save lives. The recommendations extend to the police service, health service and justice systems and are a blueprint for change that would benefit everyone. The value of this report must ultimately be judged by the changes it brings about. The vital need for action is revealed by recent restraint related deaths of young black men and vulnerable people with mental ill health who have died in police cells since the report was finalised. We call upon the Government to urgently respond with a programme of action to implement the recommendations in full."

Rape Evidence Dismissed After 'Tainted' Police Report

STV News: Evidence in a rape trial was dismissed after a judge branded a police officer an "evasive and not credible" witness. Judge Lady Scott revealed that she had barred the jury from hearing Jake Hawkins, 22, police interview after calling the questioning of him "wholly improper". Mr Hawkins was found not guilty of raping a woman at a property in Dundee in August 2016. Mr Hawkins was advised by his solicitor to answer "no comment" to all questioning, but Judge Scott said the interview was inadmissible after ruling that police had sought to "undermine" that decision. Mr Hawkins told the court that police made him feel his solicitor "didn't care or know what he was doing" and that the person who had given him advice before his interview was "rubbish and didn't know what was going on". As a result, after more than an hour of maintaining his right to silence, Hawkins said he "didn't know whether he could trust his lawyer" and that he was "making a bad decision listening to the solicitor".

He then told officers "it seemed wrong saying no comment" before giving a lengthy narrative of "incriminatory" statements to police. But judge Scott ruled the interview was "tainted" because of "undue pressure" applied to Hawkins. She said statements given by accused people must be "spontaneous and voluntary" and that the Crown "had not established this interview was fair and the statements made can properly be said to be voluntary". In a 12-page written report, the judge blasted one officer - identified only as DC Anderson of Tayside Division in Dundee - and said police had effectively "cross examined" Hawkins, a tactic long ruled illegal.

The judge wrote: "I did not find DC Anderson a credible witness. "On occasions, he did not always directly answer questions and he shifted his position (for example as to whether he had misled the accused). I found him evasive and in particular I found his denial that he sought to undermine the legal advice given, not credible. I accepted the evidence of the accused. In particular I accepted that he understood the statements made about his solicitor was that the solicitor gave him bad advice and the effect upon him was he did not know whether he could trust him."

Lady Scott added that Hawkins was asked 213 separate questions about the alleged rape - and had replied "no comment" to each one. The detectives insisted they were "impartial" - but then told Hawkins they believed he was responsible for the rape and knew he had done wrong. They also told Hawkins his lawyer didn't know what evidence they had against him - which the cops knew was a lie. She added: "On repeated occasions and at length, the police suggested to the accused he should reconsider the advice of his solicitor to make no comment. Although the police also told the accused it was his right or choice not to answer, the admitted purpose behind these statements was for the accused to change his position and the way this was done constituted pressure. Within this statement were made to the accused about his solicitor and the legal advice given. This included the suggestion that the solicitor did not know what the evidence was, which was a suggestion the interviewer knew had no factual basis. Here there did not appear to be any other purpose for making these statements, other than to undermine the legal advice in the effort to get the accused to depart from it. It should be obvious to the police that to seek to undermine a solicitor's advice to a suspect is wholly improper."

An End to Private Hearing Deals and Unilateral Emails to Court:

Neil Rose, Litigation Futures: A default position that all court hearings should be conducted in public, and parties and witnesses named, is under consideration by the Civil Procedure Rule Committee (CPRC) as part of a push to emphasise the importance of open justice, it has emerged. A rewrite of CPR 39 and its practice directions may also provide that parties cannot agree to waive the right of the public to open justice, and bring an end to unilateral communications with the court. The CPRC set up an open justice subcommittee in June 2017 to review the rules so that they reflected "more properly" the principles of open justice.

In a preliminary paper to last month's meeting of the CPRC, the subcommittee – chaired by Mr Justice Kerr – said: "We believe consideration should be given to whether to include in CPR 39.2 a provision explicitly stating the default position that hearings are conducted in public, and parties and witnesses named, unless an exception is made on the specific grounds provided for and is found justified on the facts. "Although this is already implicit in CPR 39.2 and reflects the substantive law, we believe it may assist parties, advisers and witnesses if it is made explicit." It said derogations from the general principle could only be justified in exceptional circumstances, when they were strictly necessary as measures to secure the proper administration of justice. Derogations should, where justified, be no more than strictly necessary to achieve their purpose.

Other issues included the "consent fallacy", which the subcommittee described as the "common misconception that the parties can agree to bestow anonymity on a witness or party, or even agree that the hearing of their case should be held in private". It said that even where they understood that this was not the law, parties may start with an expectation that the judge would accept consent of the parties as in practice bound to override the public right to a hearing in open court. "We think changes to CPR 39.2 could help to promote awareness that the parties cannot waive the right of the public to open justice."

The subcommittee identified a "disturbing increase in parties communicating with the court (often by email) without copying the other party, and without good reason not to do so". It said: "This is a serious denial of open justice of a particular kind; it is self-evidently objectionable, other than in exceptional cases, for a party to engage in a private dialogue with the court behind the back of the other party." The subcommittee said it was considering whether the time has come to include an explicit obligation in the CPR to copy the other side when communicating with the court, and a separate obligation to confirm to the court that this has been done.There would need to be a "compelling justification" to exclude the other party from the communication – such as at an early stage in a without-notice freezing order or search and seize application) – in which event the reason should be stated in the communication. "We will need to consider also how to deal with telephone calls by a party to the court, which by their nature are normally unilateral not bilateral communications."

Sanctions for breach of the proposed obligations could include disregard of the communication, sending it back, wasted costs or, "in extreme cases", striking out. The subcommittee also discussed what a court should do to allow the public into court – existing case law from 1974 holds that there is no general duty on the court to take reasonable steps to accommodate the public. "We propose to consider whether some provision is needed to deal with, for example, a case raising acute local controversy, listed to be tried in a very small court with room for only a small proportion of those wishing for good and legitimate reasons to attend the hearing," the subcommittee said. "We appreciate that this has resource implications and space cannot be unlimited; but it is difficult to say that justice is done openly if the court is in reality closed to all but a few."

Other issues highlighted by the committee included a procedure for determining open justice issues – particularly for unlisted hearings, such as those by telephone, public access to court documents, and the recording and transcribing of proceedings, especially where litigants in person are involved. The CPRC said it was content with the progress and direction of travel of the subcommittee. A consultation paper will be published next year.

Prison Officers Guilty of Torture of Detainees Unpunished Due to Lack of Adequate Legislation

Cirino and Renne v. Italy; Concerned the complaint by two detainees that in December 2004 they were ill-treated by prison officers of the Asti Correctional Facility, and that those responsible were not appropriately punished. The European Court of Human Rights held, unanimously, that there had been: violations of Article 3 (prohibition of torture and of inhuman or degrading treatment) of the European Convention on Human Rights, both as regards the treatment sustained by the applicants (substantive aspect) and as regards the response by the domestic authorities (procedural aspect). The Court held that the ill-treatment inflicted on the applicants – which had been deliberate and carried out in a premeditated and organised manner while they were in the custody of prison officers – had amounted to torture. In the Court's view, the domestic courts had made a genuine effort to establish the facts and to identify the individuals responsible for the treatment inflicted on the applicants. However, those courts had concluded that, under Italian law in force at the time, there was no legal provision allowing them to classify the treatment in question as torture. They had had to turn to other provisions of the Criminal Code, which were subject to statutory limitation periods. As a result of this lacuna in the legal system, the domestic courts had been ill-equipped to ensure that treatment contrary to Article 3 perpetrated by State officials did not go unpunished.

Ministry of Justice Abandons Court Battle on Prisoners' Legal Aid

Owen Bowcott, Guardian: Legal aid for prisoners will be restored for three key categories of claims after the Ministry of Justice abruptly abandoned what was expected to become a supreme court battle. The highly unusual government decision to throw in the towel after appealing against an earlier courtroom defeat comes in the wake of the department's announcement that it has begun reviewing the impact of deep cuts to legal aid imposed five years ago. The decision, presumably approved by the justice secretary, David Lidington, may indicate a greater willingness to restore legal aid where its removal has proved highly controversial.

In April, the court of appeal ruled in favour of the Howard League for Penal Reform and the Prisoners' Advice Service, deciding that legal aid for inmates should be restored in three areas: pre-tariff reviews by the Parole Board, category-A reviews and decisions on placing inmates in close supervision centres. The three appeal court judges, Lady Justice Gloster, Lord Justice Patten and Lord Justice Beatson, observed: "At a time when ... the evidence about prison staffing levels, the current state of prisons, and the workload of the Parole Board suggests that the system is under considerable pressure, the system has at present not got the capacity sufficiently to fill the gap in the run of cases in those three areas." The MoJ declared promptly that it would appeal to the supreme court to reverse that ruling. Seven months later, however, before the supreme court had even agreed to hear the case, the department has now capitulated.

Welcoming the legal U-turn, Laura Janes, legal director at the Howard League for Penal Reform, said: "One hopes that it's part of a wider respect for the rule of law and an understanding of the importance of access to justice for everybody. "For the past seven months, hundreds of prisoners have been stuck in the system without the legal support they need to move forward, even though the court of appeal made it clear that this was inherently unfair and therefore unlawful. "We are pleased that the Lord Chancellor [Lidington] has now withdrawn his appeal and hope that urgent steps will be taken to give effect to the judgment."

Deborah Russo, joint managing solicitor of the Prisoners' Advice Service, said: "After a long wait and years of battling through the courts we ... very much welcome the secretary of state's decision to finally accept the court of appeal's ruling of inherent unfairness of the legal aid cuts imposed on prisoners back in December 2013. "We believe that urgent action is now required to reinstate legal aid for some of the most vulnerable members of our society." The government's withdrawal of its application means that the court of appeal's decision is final. Legal aid remains unavailable in two other areas: in appeals against disciplinary decisions and disputes over access to prison courses paving the way towards eventual release. Since cuts to legal aid for prisoners came into force in December 2013, the two charities point out, violence and self-injury in prisons have risen to record levels.

Police Custody in North London –Too Many Children Held For Too Long

Detainees in police custody suites in a large area of north London were usually well treated, and held in good conditions, but too many children were kept in cells overnight and even at weekends, according to a joint criminal justice inspectorates report. Evidence from nine suites across north and north-east London showed that the Metropolitan Police Service (MPS) closely monitored the number of children in custody but lacked a central focus on diverting them from the criminal justice system. The report by HM Inspectorate of Prisons and HM Inspectorate of Constabulary and Fire & Rescue Services found that frontline officers were aware of the importance of avoiding taking children into custody. However, the seriousness of some offences and the lack of diversion schemes limited the opportunities to keep children out of the criminal justice system. Peter Clarke, HM Chief Inspector of Prisons, and Dru Sharpling, HM Inspector of Constabulary, said: "Too many children who were charged and refused bail remained in custody overnight, and sometimes the weekend, when they should have been moved to alternative accommodation provided through the local authority. The MPS was some way behind other forces in developing the necessary strategic links to make progress in this area."

Roger Khan Case

Emily Bolton, Centre for Criminal Appeals: Roger maintains his innocence and is outraged that the CCRC has not recognised the strength of the evidence that shows his conviction is unsafe. We showed the trial was unfair as Roger was unrepresented, that the appeal was an empty formality, that the mastermind of the crime was manipulating the trial, that a police officer had a link to that mastermind, that the DNA evidence pointed elsewhere. But the CCRC seems ill-equipped to do the digging needed to cut through the tangled web of connections in the case to expose the whole truth. For a fresh application, we need to present fresh evidence, and are keen to hear from anyone who may have information about Faruk Ali, or the the "hired thugs" that co-defendant Abdul Ali told the court actually delivered the beating. While we recognise that there is a code of silence in prison and on the streets about such things, when an innocent man is serving an effective death sentence for a crime he did not commit (Roger is 64 and in ill health), giving that prisoner's representatives a steer in the right direction is striking a real blow for justice. The "wall of silence" is in fact another wall keeping Roger in prison. That can't be right. "

Anthony Grainger Police Murder: Inquiry Into Senior Officer's Evidence

BBC News: A senior police officer is being investigated over evidence he gave to a public inquiry into the death of an unarmed man who was shot by police. Anthony Grainger, 36, of Bolton, was shot dead in a car park in 2012 during a Greater Manchester Police operation. Assistant Chief Constable Steve Heywood is being investigated by the Independent Police Complaints Commission (IPCC), the BBC has learned. Mr Heywood approved the operation which resulted in Mr Grainger's death. Greater Manchester Police has been approached for comment by the BBC.

Father-of-two Mr Grainger was shot dead by an officer through the windscreen of an Audi in a car park in Culcheth, Cheshire. He was being watched amid suspicions he was part of a gang believed to be conspiring to commit armed robberies. The BBC understands the IPCC's investigation into Mr Heywood is examining evidence regarding a firearms logbook, which he was questioned about during a public inquiry into Mr Grainger's death earlier this year. The notes appeared be a contemporaneous record of what happened in the days before Mr Grainger's death, as the police operation was planned.

However, the inquiry heard it was likely some of the notes had been written after the shooting, leading to claims they gave a "false impression" of intelligence. Mr Heywood admitted there were "some flaws" in his record keeping, but strongly denied deliberately misleading the inquiry and said he "apologised unreservedly". He told the hearing: "This was not any great conspiracy from Greater Manchester Police. This is my personal failing as a firearms commander for not doing the paperwork. I have got an unblemished 28-year police career. I would never knowingly mislead a court of inquiry." The BBC understands Mr Heywood has not returned to work since giving his evidence.

The public inquiry into Mr Grainger's death began in January and has heard from 80 witnesses. It heard mistakes were made, including officers being given inaccurate intelligence and some firearms officers having failed training courses. Inquiry chairman Judge Teague is in the process of writing his report. In 2013, the IPCC launched a widespread investigation into the circumstances of Mr Grainger's death. A spokesman said it would consider publishing the results of that investigation following the conclusion of the inquiry. He also confirmed the IPCC had later launched separate investigations into two individual officers regarding the evidence they provided at the inquiry.

The Onanist Defence

A man caught hiding bullets in his home told Irish police he was out of breath and sweating when they arrived because he had been "having a wank". Gardaí, who suspected he was attempting to flee or to hide something, said they did not accept his explanation. Glen Synott, 23, later pleaded guilty at Dublin Circuit Criminal Court to possession of firearm ammunition under suspicious circumstances and was given a suspended five-year sentence under strict conditions. Garda Christopher Sweeney told the court he obtained a search warrant for the house Mr Synott shares with his mother. When he entered, he saw Mr Synott in the hallway, out of breath and sweating heavily.A black sock containing four 9mm Makarov calibre rounds was subsequently found underneath the decking in the back garden and, when questioned, Mr Synott admitted he had hidden the sock there. Mr Synott was arrested and told interviewing gardaí he had been asked to hold on to the bullets due to a drug debt of €200. Brian Storan BL, defending, told the court that when gardaí asked if he had anything further to add to his statement, Mr Synott explained he was sweaty when they entered because he had been "having a wank".

'Disastrous' Offender Tagging Scheme Hit by Fresh Delays

Alan Travis, Guardian: Fresh delays have hit the government's scandal-hit programme for the electronic tagging of offenders, which mean the next-generation satellite tracking tags will not come into use until early 2019, MPs have been told. MPs on the Commons public accounts committee told senior Ministry of Justice officials on Monday that the programme to develop a world-leading, GPS tracking tag that was launched in 2011 had been nothing short of disastrous. The scheme was intended to save up to £30m but instead has so far cost the Ministry of Justice £60m on top of its original £130m budget. Already running five years late, it was further delayed because the snap general election postponed the letting of part of the contract.

Senior MoJ officials admitted that major mistakes had been made in the programme, including a failure to pilot the new development, but denied it was a disaster saying they hoped about 1,000 offenders a year could be tracked when it is eventually implemented in early 2019. The private security company G4S has now been appointed to complete the project. The current MoJ permanent secretary, Richard Heaton, told MPs that he had been "startled and stunned" by the over-ambition of the original programme, which had envisaged that 65,000 offenders would be electronically tagged in the community as part of their sentence. We got it wrong but to characterise the whole thing as a disaster is wrong," said Heaton. "It is in mid-flight and we are determined that it is going to succeed," he said adding that only £5m of the extra £60m spent could be classified as "fruitless expenditure".

There are currently only 12,000 offenders on first-generation radio frequency tags, which do not have tracking ability and can only monitor whether someone is at a particular address or not. They are mostly used to monitor prisoners released early on home detention curfews, those on bail or out of prison on temporary licence. A programme to introduce satellite tracking tags for offenders in England and Wales was first promised by David Blunkett when he was Labour home secretary in 2004. His promise to provide a "prison without bars" for the 5,000 most prolific offenders has been repeated by practically every prime minister since then. Confidence in the government's tagging programme as an alternative to prison had already been rocked by an overcharging scandal which triggered a Serious Fraud Office investigation into the basic tagging contract run by G4S and Serco. The two companies repaid £179m but the SFO inquiry continues.

Three North Wales Police Officers to Face Misconduct Proceedings

The IPCC investigation looked at the police response to a call from a member of the public on the morning of 18 July 2016, the day Ms Baum's body was found. It also examined contact police had concerning Ms Baum on three previous occasions. In the investigator's opinion, two officers have a case to answer for misconduct for allegedly failing to respond appropriately to concerns which Ms Baum's mother stated she raised with them directly on the morning of 17 July 2016. One officer has a case to answer for misconduct for allegedly failing to comply with the force's domestic violence guidance.

Hostages: 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, 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.