Miscarriages of JusticeUK (MOJUK)
22 Berners St, Birmingham B19 2DR
Tele: 0121- 507 0844 Email: mojuk@mojuk.org.uk Web: www.mojuk.org.uk

MOJUK: Newsletter 'Inside Out' No 589 (30/06/2016) - Cost £1

CCRC Refers Drugs Supply Conviction of Stephen Lawless to Court of Appeal

CCRC has referred the conviction of Stephen Lawless to the Court of Appeal. Mr Lawless pleaded not guilty to possession of heroin with intent to supply when he stood trial at Greater Grimsby Crown Court in October 2003. Mr Lawless accepted that he was in possession of heroin for personal use, but denied that he had supplied, or intended to supply the drug to anyone else. He was convicted of possession with intent to supply and sentenced to five years' imprisonment. He tried unsuccessfully to appeal against his sentence in 2004 but did not try to appeal against his conviction. He applied to the Commission in November 2010.

Following a long and complicated investigation, the Commission has decided to refer the case to the Court of Appeal because it believes there is now new material that gives rise to a real possibility that the conviction will be quashed. The basis of the referral includes new information relating to the conduct of a police officer involved in the case. However, the detailed reasons for the referral are of a highly sensitive nature. As a result, the Commission has been able to disclose to Mr Lawless and his legal representative only a limited amount of information about the reasons for the referral. A document detailing the exact reasons has been sent to the Court of Appeal. It will now be for the Court to decide how much information it is appropriate to disclose in relation to the appeal itself. The Commission can usually only consider a case if the applicant has exhausted their normal appeal rights. Mr Lawless had not previously appealed against his conviction. The Commission concluded that, it would be impossible for Mr Lawless to obtain the evidence on which the referral is based without access to the Commission's resources and statutory powers to obtain relevant material and that therefore there were "exceptional circumstances" that meant we ought to investigate in spite of their having been no previous appeal against conviction in this case. Mr Lawless was represented in his application to the Commission by Mr Mark Newby of Quality Solicitors Jordans, 4 Priory Place, Doncaster, DN1 1BP.

Victory in Indian Extradition Case

Doughty Street Chambers

David Rhodes fought a 3 year battle to resist extradition to India of a political activist, V, for whom the case has dominated 24 years of his life. In a comprehensive and forceful judgment District Judge Purdy refused to allow the extradition of a former refugee, accused of terrorist offences in India in 1992. Amongst other findings, the District Judge held that V had been tortured in the past by the Indian Q Branch (security police) and if extradited there was a real risk of inhuman and degrading treatment (Art 3) and a flagrant denial of a fair trial (Art 6). India has declined to appeal the ruling. V was a communist and civil rights campaigner in India. He contended that the allegations that he had been involved in a 'bomb blast' on a railway in 1992 were fabricated and politically motivated. He was arrested and held in custody from 1992 to 1996, during which time he was subjected to ill-treatment, contrary to Art 3. He stood trial between 1994 to 1996, by which time all the evidence had been heard. He was granted bail pending verdict, but no verdict ever came. By 2002, he was petitioning the President of India and the Chief Justice to compel a resolution to his case. During his time on bail, he was subjected to regular detentions and interrogations, under torture, for his political activities.

As a result, he came to the UK in 2002 and claimed asylum. The Immigration Adjudicator accepted that V had been fleeing 'persecution not prosecution' in India due to his political activities. In 2003, he was granted asylum from the very prosecution for which his extradition was sought a decade later. Had he remained a refugee, he could not have been extradited. He relied on the safe haven granted by the UK to settle and start a family. After living a laudable and hard working life here for 5 years, he became a British citizen. His world was torn apart in 2013 when he was arrested on an extradition warrant. Over the 3 years that followed, David Rhodes, instructed by Kate Goold at Bindmans LLP, mounted a spirited defence to the extradition request. The Court heard many days of legal argument and evidence from V, numerous experts from India and the UK, and reading thousands of pages of evidence, including undisputed evidence that V had been tortured in custody. The Court also considered the complexities of 'TADA', the controversial counter-terrorism legislation in India.

On 27 May 2016 DJ Purdy, whilst bearing in mind the importance of the presumption of mutual trust between States, discharged the extradition warrant with a finding that V had fled persecution, not prosecution and so was not a fugitive when he arrived in the UK to achieve sanctuary in 2002. He made a finding that India had "actively obstructed" the inspection of the proposed prison where V would have been detained, by an independent British expert, jointly instructed by the CPS and the defence. DJ Purdy held that to allow V's extradition would: (1) Be both unjust and oppressive due to the passage of time of more than 20 years. (2) Violate the prohibition on torture or inhuman and degrading treatment, given prison conditions in India – especially prison overcrowding, state sponsored violence especially against political prisoners, and non existent treatment for any mental health condition in custody; (3) Violate the right to a fair trial (trial within a reasonable time) due to the unacceptable delays in the Indian trial process between 1992 to 2002. (4) Extradition would be unjust or oppressive given V's long-standing PTSD and the lack of appropriate mental healthcare in Indian prisons. On 10 June the CPS confirmed that India would not be appealing the Judgment.

Kate Goold, Partner of Bindmans LLP, said: "These proceedings have taken over 3 years out of V's life. He thought he was safe in the UK and was then dealt with this hammer blow. The Indian Government, having decided to issue the extradition request after V was in the UK for over 10 years and in full knowledge that he had been tortured in custody, failed to cooperate with the evidential process and "actively obstructed" legitimate enquiries made. We welcome this ruling but this extradition request should never have been made when the Indian Government were well aware of the delays and torture that V had already suffered and were unwilling to cooperate during the extradition process." V said:"I thank my legal team for all the hard work and in particular the independent experts who cast a bright light on the true state of human rights in India, which is often ignored in the UK and other western countries"

'Limbs in the Loch' Murderer Fails in Damages Claim Over Opening of Letters

Scottish Legal News: The man found guilty of the "limbs in the loch" murder has had a claim for damages refused after his confidential correspondence was opened by prison officers. William Beggs was seeking £5,000 compensation after a judge had ruled that his human rights were breached in jail when "privileged" mail addressed to him was opened. Lady Stacey held that the Scottish Prison Service failed to respect the killer's rights under article 8 of the European Convention on Human Rights, which provides that people have the "right to respect" for their "private and family life" and their "home and correspondence." The judge found that the SPS failed to follow their own guidelines when between January 2013 and January 2015 they opened letters from the UK Information Commissioner's Office addressed to Beggs, who was sentenced to life imprisonment

in 2001 after murdering 18-year-old Barry Wallace and dismembering his body in December 1999 at a flat in Kilmarnock, and discarding the limbs and torso of his victim in Loch Lomond and disposing of his head by throwing it into the sea off the Ayrshire coast.

Lady Stacey had now issued a further opinion having heard counsel on the “appropriate remedy” in light of that finding. Counsel for the petitioner argued that confidential correspondence was an “important matter” and the seriousness of the situation should be marked by the court pronouncing a decree of declarator. In arguing that damages should also be awarded, it was submitted that the courts should be guided by any clear and consistent practice of the European Court of Human Rights and that the quantum of awards under section 8 should be broadly reflective of the level of awards made in comparable cases brought by applicants from the UK. For the respondent, counsel argued that neither should declarator be pronounced nor damages awarded, as the findings made in the court’s first judgment were “just satisfaction”.

The judge observed that while that Beggs was “annoyed” over the issue of his letters, he had not suffered distress of the severity discussed in the 2005 House of Lords case of R (Greenfield) v Secretary of State for the Home Department, which concerned a breach of article 6 of the European Convention and considered “judicial remedies” under section 8 of the Human Rights Act 1998. In a written opinion, Lady Stacey said: “I find that just satisfaction is constituted by my finding of breaches of the petitioner’s article 8 rights. I considered carefully whether the fact that the petitioner raised three actions, showing that the system was not reformed after the first or second action, necessitated an award of damages. I have decided that it did not. The breaches did not involve any reading of confidential mail. Apologies were made following complaints made by the petitioner and investigated by the respondent.The system for recognition of such mail was altered as a result of the petitioner’s complaints and actions. The petitioner was annoyed. I do not find that he suffered distress of the severity discussed in the case of Greenfield.”

Punished Twice for the Same Offence Violation of Article 4 of Protocol No. 7

Igor Tarasov v. Ukraine: Igor Andreyevich Tarasov, is a Ukrainian national who was born in 1957 and lives in Sevastopol (Ukraine). The case concerned administrative and criminal proceedings brought against him following an altercation in a bar. In the early hours of the morning on 26 January 200 Mr Tarasov was involved in a fight in a local bar. Bar staff were injured and damage was caused to property in the bar. The police arrived and arrested Mr Tarasov who was found guilty two days later in administrative proceedings of minor disorderly acts (namely, using obscene language, grabbing and swinging a wooden chair leg and threatening physical violence) and sentenced to five days’ administrative detention. Shortly afterwards, criminal proceedings were also brought against him for causing injuries to the bar staff and damage to property. He was convicted in October 2003 of two offences, namely intentional infliction of medium-severity bodily injuries and disorderly acts with aggravating circumstances, and sentenced to three years’ imprisonment. The first-instance court dismissed Mr Tarasov’s argument that he had already been convicted of an administrative offence for the same incident on the ground that the first case dealt with a different type of legal responsibility. His conviction was subsequently upheld on appeal and his appeal on points of law was dismissed by the Supreme Court in January 2005. Relying in particular on Article 4 of Protocol No. 7 (right not to be tried or punished twice), Mr Tarasov complained about being tried and punished twice for the same offence. Violation of Article 4 of Protocol No. 7 Just satisfaction: The Court held that the finding of a violation constituted in itself sufficient just satisfaction for the non-pecuniary damage sustained by the applicant.

Stop Criminalising Drug Users

Royal Society for Public Health (RSPH), with support from the Faculty of Public Health (FPH) – are calling for the personal possession and use of all illegal drugs to be decriminalised. The call forms part of a wider package of measures aimed at moving UK drugs strategy away from a predominantly criminal justice approach towards one based on public health and harm reduction. A representative poll of more than 2,000 UK adults found more than half (56%) agree drug users in their area should be referred to treatment, rather than charged with a criminal offence. Less than a quarter (23%) disagreed. The recommendation is made in a new RSPH report, Taking a New Line on Drugs, endorsed by FPH and with the backing of Parliamentarians, drugs reform charities and law enforcement groups. The report, which is published ahead of the Government’s expected drugs strategy, argues a new approach is needed since, although overall drug use has fallen in recent years, drug-related harm – including drug-related death – has continued to rise. Other key recommendations include: • Universal provision of evidence-based drugs education to young people through statutory Personal, Social, Health and Economic (PSHE) education in schools. • Moving lead responsibility for drugs strategy from the Home Office to the Department of Health and aligning more closely with alcohol and tobacco strategies. • Use of evidence-based drug harm profiles to inform enforcement priorities and public health messaging.

RSPH and FPH advocate a Portuguese-style model whereby, although drug possession is still prohibited, users are referred to treatment and support programmes, rather than charged with a criminal offence. Producers and suppliers would still be prosecuted. International evidence suggests this could lead to significant reductions in many forms of drug-related harm, without promoting increases in problematic use. The report argues that criminalisation itself leads directly to additional long-term health and wellbeing harm, including greater exposure to drugs in prison, severing of family relationships, and barriers to education and employment. This harm falls disproportionately on disadvantaged ethnic and socio-economic groups – who are far more likely to be charged for drug possession despite similar levels of use – exacerbating existing health inequalities. Simultaneously, the report argues, criminalisation fails to address underlying substance misuse issues and discourages those with an addiction from coming forward for treatment – one in four young people say they would be put off seeking help by a drug’s illegal status.

Shirley Cramer CBE, Chief Executive of RSPH, said: “For too long, UK and global drugs strategies have pursued reductions in drug use as an end in itself, failing to recognise that harsh criminal sanctions have pushed vulnerable people in need of treatment to the margins of society, driving up harm to health and wellbeing even as overall use falls. On many levels, in terms of the public’s health, the ‘war on drugs’ has failed. The time has come for a new approach, where we recognise that drug use is a health issue, not a criminal justice issue, and that those who misuse drugs are in need of treatment and support – not criminals in need of punishment.”

Professor John Middleton, President of FPH, added: “We need a new, people-centred approach to drug policy, rooted in public health and the best available evidence. This report is an important part of a growing, powerful evidence base that sets out what that approach should look like. The time for reframing the global approach to illicit drugs is long overdue. The imbalance between criminal justice and health approaches to illicit drugs is counterproductive. Criminalisation and incarceration for minor, non-violent offences worsen problems linked to illicit drug use, such as social inequality, violence and infection. Possession and use should be decriminalised and health approaches prioritised.”

Baroness Molly Meacher, speaking on behalf of the All-Party Parliamentary Group for

Drug Policy Reform, added her support: “The report of the Royal Society for Public Health is very much welcomed. It argues that the valuable work of health professionals in dealing with the health and social consequences of the harms caused by drugs is impeded rather than assisted by a muddled prohibitionist framework that criminalises some users of psychoactive drugs whilst very harmful psychoactive drugs including alcohol and tobacco remain legal. It calls for a rational, evidence-based approach to address the harms of all psychoactive substances led by the Department of Health; focussing resources on a health approach to drug harms based on the decriminalisation of the possession of drugs. The resources released should be used to enhance the role of the wider public health workforce to assist in the harm reduction and recovery of problematic drug users and the support to communities damaged by the illicit drug trade.”

Pair Found Not Guilty of Remembrance Day Beheading Plot

Dominic Casciani, BBC News: Two men have been cleared of planning to behead a poppy seller, soldier or a police community support officer (PCSO) during Remembrance Day commemorations. An Old Bailey jury heard they had been accused of plotting an attack inspired by so-called Islamic State (IS). Yousaf Syed, 20, of High Wycombe, was found not guilty of preparing a terrorist act in 2014, after a retrial. Co-accused Haseeb Hamayoon, 29, of west London, was cleared by the judge after the jury failed to reach a verdict. Prosecutors confirmed they would not seek a highly unusual third trial for Mr Hamayoon. Mr Syed's cousin, Nadir Syed, 23, of Hounslow, west London, was convicted of preparing for the attack at the end of the first trial last year. The prosecution of the three men was the first case to come before the courts of an alleged attack plan in the UK linked to Syria in which none of the defendants had actually travelled there.

Gory material: The case was one of seven referred to in Parliament by Prime Minister David Cameron as part of evidence of the threat posed by IS, or its alleged supporters. But throughout both trials Yousaf Syed and Mr Hamayoon denied playing any part in planning an attack, saying that while they had shared gory IS-related material among friends online, there was no evidence of a plot in Britain. Mr Syed was acquitted on Wednesday but the outcome could not be reported while the jury continued to deliberate over Mr Hamayoon. When he was acquitted, Mr Syed was overcome with emotion and held his head in his hands. For his part, Mr Hamayoon stood up in the dock, smiled, and thanked both the prosecution and his defence team. Nadir Syed will be sentenced on 23 June and faces a potential life sentence.

During the two trials, prosecutors said the three men shared an extremist mindset and an obsession with the killing of Fusilier Lee Rigby, in Woolwich. In the weeks leading up to Remembrance Sunday in 2014, the Syed cousins had recorded a video in which they stamped on a poppy and said it should go to hell. During his defence Yousaf Syed said he bore no ill will to British soldiers, but he had been angry about British foreign policy and the plight of Muslims around the world. The pair were also accused of trying to reach Syria in early 2014.

At his first trial Yousaf Syed said that he had simply gone on a cultural holiday to Turkey - but admitted at the second he had wanted to fight against the Syrian government of President Bashar al-Assad. All three were arrested hours after Mr Hamayoon and Nadir Syed bought a large chef's knife, days before the annual commemorations. Yousaf Syed was not present when the knife was bought but prosecutors alleged that he had intimate knowledge of a developing plan. Mr Hamayoon said that as a trained cook he was buying professional kitchen equipment for his new family home and had been advising his friends to do the same. The Pakistani national, who had moved from Australia to the UK through marriage, said he regretted sharing extremist material with his new friends in London, saying that he had only taken part in chats about the conflict in Syria in the hope of fitting in.

Defendants Must be Allowed Legal Advice Before Early Guilty Pleas

Law Gazette: New guidelines on sentence reductions for early guilty pleas must allow defendants to obtain legal advice before deciding to plead guilty, an influential group of MPs says today 14/06/2016. The House of Commons justice select committee says it is ‘particularly’ concerned about the potential impact of guilty plea discounts on unrepresented defendants ‘whose cases are factually or legally complex, or whose cognitive abilities are affected by learning disabilities, age, injury or a mental health condition’. The Sentencing Council says it wants to ensure that a reduction in sentences for guilty pleas ‘should be applied fairly and consistently, and that the guidelines should encourage defendants who are guilty to plead guilty as early in the court process as possible’. The MPs' report cites research by charity Transform Justice that shows around a fifth of defendants are now unrepresented in (non-traffic) trials and sentencing hearings. ‘Prosecutors suggested that among the main reasons were a range of potential barriers to legal aid and limitations on access to the duty solicitor,’ the committee says. ‘In addition, those with chaotic lives may not be organised enough to arrange a lawyer and judges were perceived to have become more resistant to granting adjournments to allow defendants to secure legal representation.’

The committee says it was also struck by the Criminal Cases Review Commission’s submission to the council’s consultation, which stated that a significant proportion of those who apply for a review of their guilty conviction had entered a guilty plea. ‘The [commission] observes that systemic and personal pressures to plead guilty are capable of extending to the factually innocent, as well as the factually guilty, and goes on to suggest that this may be a particular problem for vulnerable groups, such as those with mental health conditions.’ The committee recommends that an exception in the guideline allowing a defendant more time before deciding on their plea if further information or advice is necessary should be extended to ‘any situation’ where the defendant wishes to obtain legal advice before deciding whether to plead guilty and has been unable to do so. The exception should also extend to corporate defendants who may need to conduct detailed investigations before deciding how to plead, the committee says. Voicing additional concerns about the impact on the prison population, the committee recommends that the council delay finalising and implementing the new guideline until it has conducted further research into the factors that influence a defendant’s decision about whether and when to plead guilty, both in the magistrates’ and Crown courts.The Law Society has already warned that the new guidelines could make criminal defence practitioners liable for negligence.

Overcrowding Warning Over Scottish Female Prison Plans BBC News

Experts have questioned whether plans to transform the way Scotland locks up women will lower the prison population. The closure of Cornton Vale begins this year. It has a capacity of 375 and will be replaced by an 80-bed jail and five regional units holding 20 women each. Canada closed its large women's jail in the 1990s and built five regional units but it has had overcrowding issues. Justice Secretary Michael Matheson told a BBC Scotland investigation Scotland's plans differed from Canada's. He said "robust" community alternatives would need to be in place to divert people away from the custody or from the courts. Scotland already jails more women than almost anywhere in northern Europe, with the number of female inmates doubling in a decade. There are concerns that without changes to sentencing policy and alternatives to jail there could be a temptation for sheriffs to think that prison was a more attractive option.

A criminal justice system designed for men" The BBC Scotland documentary - Women Prisoners: Throw Away the Key? - is presented by leading human rights lawyer Baroness Helena Kennedy.She said: "One of the great scandals is that we have seen a massive increase in the numbers of women going to prison yet no significant change in the seriousness of women's offending. "Women very rarely commit serious crime. It is all low level offending and invariably is as a result of wretched circumstances." There are far fewer women in Scottish prisons than male inmates. And they differ because they are more likely to be jailed for relatively minor offences such as shoplifting. More women than men are put on remand - kept in prison before their case has been heard in court or before they are sentenced. Two-thirds of female admissions to Scottish prisons are for remand. And about 80% of women on remand do not go on to receive a jail sentence, a situation which has been criticised because many remanded women struggle to keep custody of children and retain their tenancies. About eight out of every 10 women in Scottish prisons are serving six months or less. The latest figures show that 69% of women serving those sentences were reconvicted within two years.

A more radical approach: Justice Secretary Michael Matheson was widely praised last year for scrapping plans to replace Cornton Vale with another large 300-capacity prison for women. He said Scotland had to take a more radical approach to deal with female offending. The minister announced new plans to replace Cornton Vale with a much smaller facility near the same site in Stirling. The new prison will house 80 female inmates serving long-term sentences and those presenting a risk to the public. Women serving short sentences and those on remand will be held at one of the five regional units across the country. They will be run by the Scottish Prison Service, with prison officers taking on a more therapeutic role alongside care professionals.

Rhona Hotchkiss, governor of Cornton Vale, who is leading the new development, said: "They won't look like prisons; they will look like the buildings that are around them, so there won't be any barbed wire or bars on the windows. "A lock on the outside door? Absolutely. But within the units women will live in a small flatted house. There will be four or five women to a house, they will be sharing living and dining and cooking facilities, and all have the keys to their own doors. "When the women go to these units after a period of assessment, they will be out and about accessing the community, using local health services, education, perhaps going to visit their families. I need to emphasise that these will be women whose assessed risk is low."

Prisoners and children • When a father goes to prison in Scotland, 95% of children stay with their mother. When a mother is jailed, 17% stay with their father. The rest live with relatives or are put into social care. • In 2013, only 38% of mothers in prison received visits from their children. The Canadian experience - A similar scheme was introduced in Canada in the late 80s, after a task force recommended closing the country's large Prison for Women, and establishing small regional facilities for women offenders. However, in the intervening years the number of female prisoners have more than trebled, from 203 in 1989 to 676 in 2014-15. Kim Pate, executive director of the Canadian Association of Elizabeth Fry Societies, said: "It was cast as one of the best reform initiatives internationally. "They were talked about as being cottage-style, community-integrated, not having fences and staffing being really about providing support and therapeutic interventions. "Unfortunately now, 26 years on, it's been not a dismal failure but pretty darn close and we have now more than three times the number of women in prison. "We see judges and lawyers actually saying let's send the women there because there's a presumption there are more programmes. "And in actual fact there are fewer vocational opportunities than existed at the Prison for Women. The massive overcrowding is leading to not surprisingly fewer resources." She added: "We started off with the idea that

our units would be small community-based, allowing women greater access. Our country's a lot larger than Scotland but those sorts of issues I think would be similar in terms of any country."

Scotland's prison reform: Concerns have also been raised over the Scottish government's plans here in Scotland. Cyrus Tata, professor of law and criminal justice at the University of Strathclyde, said: "We should applaud the imaginative and bold work that the Scottish Prison Service (SPS) is doing to try to reconfigure what prison is like. "But on its own, it is not going to be the answer because what will happen is that prison will only become a more attractive place to send people, who have not committed serious offences, but who have complex needs." Phil Fairlie, chairman of the Prison Officers' Association Scotland, said his members were keen to take on a different role in the new regional units, but that the scale of the cuts to prison places would be difficult to achieve. "I think the numbers are optimistic because I'm not sure yet that all that's in place that needs to be in place outside of prison, not just inside," he said. "It's going to require a change in terms of our courts and sentencing policy." The justice secretary said: "Building five units for a maximum of 20, which will give us less capacity than we have at the present moment, is not simply going to be the answer to this. "We've got to make sure that we've got good strong robust community alternatives in place so that we can either divert people away from the custodial environment or divert them away from the justice system in the first place, to reduce the risk of them committing offences."

Sentencing variation: Statistics released under Freedom of Information legislation have shown significant variations in the proportion of jail sentences handed down in sheriff courts across Scotland. Courts like Stirling, Kilmarnock and Dundee were jailing nearly 20% of women appearing before them, compared to 7% in Edinburgh and 5% in Airdrie. The judiciary said it was not appropriate for an active sheriff to be interviewed for the programme, but retired sheriff Peter Gillam gave the view from the bench. He served as a sheriff from 1991 until 2013, and said the variations reflected the independence of the judiciary. He said: "Every judge is his own person or her own person, and they all have different ways of dealing with things. They all have different views and they are all independent."

Alternatives to custody: The BBC Scotland investigation heard from two of those community alternatives - Tomorrow's Women and the 218 project - which can be recommended by sheriffs as an alternative to prison. At Tomorrow's Women, which deals with the most hard-to-reach women in Glasgow, reoffending rates among the 75 current users have dropped by 42%. The 218 project has a 12-bed unit, and is the only service in the country offering residential services for female offenders. After admission, the number of shoplifting charges dropped from a total of 1,719 among all service users in the six months before referral, to 40. Despite the apparent success rate of community alternatives, the documentary heard criticism about their funding. Lisa MacKenzie from Howard League Scotland, a penal reform charity, said: "Even some of the best known projects in Scotland don't have financial certainty year to year. It is a hand-to-mouth existence. "Prison, year to year, doesn't have to prove itself. It's given its £350m to run, and yet we know that prison doesn't work, particularly for people who are sent there for short sentences. "But these community services are required, understandably, to justify their budgets and show that they're having an impact, to show that they're contributing to reducing reoffending. "There isn't parity with the prison service. There's a huge imbalance in resources." Mr Matheson said: "We've been providing Scottish government funding to community-based organisations to look at different models that can help to reduce the risk of a woman receiving a custodial sentence by providing specific services in their areas.

"I accept there may be times when sheriffs feel as though there aren't alternatives there but I don't accept that's always the case. "I believe there are times when sheriffs could make other decisions around where they think someone should actually go to to meet their needs." A spokeswoman from the Judicial Office for Scotland said: "Sentencing is a matter for the judge in each case taking into account the particular facts and circumstances. "These may include the need for the courts to protect the public, to mark the seriousness of the offence and to secure the offender's rehabilitation. "Training is provided to all judges and sheriffs on the sentencing of women offenders. It is also made available on sentencing in general, including the sentencing options which may be applicable."

Race Failures are Damaging the Police, Says Top Met Officer *Vikram Dodd, Guardian*

Scotland Yard's new head of diversity has said the Met still treats black people worse than white people on the street and blights the careers of its own ethnic minority staff by racially discriminating against them. Ch Supt Victor Olisa said discrimination by officers includes negative typecasting of black people, leading to more force and coercive tactics being used against them by officers in the street. In a Guardian interview, the Met's most senior black officer said: "My view is that on occasions we work on stereotypes and that stereotypes of black men being more aggressive, more confrontational, is a stereotype that plays on some officers' minds and that can lead to a different level of policing style and force being used on a black suspect than it probably would do otherwise." He said this may have been a factor in deaths after contact with the police, including cases such as Roger Sylvester and Cynthia Jarrett. Olisa said: "If you look at the circumstances leading up to instances of some people who have died in custody, it points to a disproportionate level of force being used."

The incoming strategic lead for diversity said he believed that most officers in the Met wanted to do a good job, but warned that a rump of officers from the top to the bottom was holding back progress on race. He said there were few active racists in the Met, with most discrimination being unwitting. Olisa added that prejudice in the police had left him on the verge of retiring after being told he was not good enough to be considered for promotion. But he changed his mind after the personal intervention of the Met commissioner, Sir Bernard Hogan-Howe. Olisa said: "What more can I do? I have cut crime, boosted confidence, have a doctorate." The officer was seen as a symbol of progress by police. He appeared in the landmark BBC documentary series The Met, and was even seen on publicity posters alongside Hogan-Howe to promote the series in 2015. He led officers in one of the toughest areas in British policing, Tottenham in north London, dealing with the fallout from the Mark Duggan shooting and the 2011 riots, and is currently a borough commander in Haringey, north London.

Olisa warned that the Met's longstanding failings on race were damaging its legitimacy, and its ability to police by consent, which is a central tenet of British law enforcement. The issue of race continues to haunt policing around the country, despite promises of reform stretching back decades. He also voiced concern over the ethnic composition of his force. Currently 12% of Met officers are from ethnic minorities while London is 40% black and minority ethnic (BME), a 28 percentage point gap, which is the biggest in Britain. At the current rate of progress, Olisa said it would not be until half this century has passed, at the earliest, that the Met would be representative of the population it serves: "If we keep on at the rate we are, the Met will not look like the population it serves within my lifetime, not by 2050."

The Met promised in 1999, after the public inquiry into the Stephen Lawrence scandal, that

it would to look like the area it polices by 2009. Olisa added: "It is taking much longer than it ought to do." The home secretary, Theresa May, has publicly criticised Hogan-Howe over stop and search and also warned the police on race, attacking them for the low confidence they command among black communities. Olisa said the force had made progress, such as on stop and search, but overall on race it was too slow, too "evolutionary". He said: "These are all things that the Met are working on, but these are all things that just seem to be taking much longer than they ought to do, to the extent where you have got the home secretary making public comments that it is not good enough and also the home affairs select committee." However, he backed the Met unequivocally over one of its biggest controversies, the killing of Duggan in 2011. He rejected claims that Duggan's race had played any part in an officer shooting him dead, saying it was the fact Duggan was trying to get a gun and not his skin colour that led to the deadly confrontation: "The danger was in the weapon rather than in the person." Once in the police, Olisa said, promotion is harder for ethnic minority officers, and cited a recent promotion process for the rank of chief superintendent when all six BME candidates failed. "Did all six have a bad day?" he said, adding that progression up the ranks in the Met "is woefully slow for ethnic minorities". The Tottenham MP, David Lammy, who is leading a review of discrimination in the justice system for the prime minister, said: "I am astounded that the police service believes he has not got the qualities to be promoted. It offends community sensibilities, and it offends common sense. I've met senior officers who don't have his qualities and abilities."

TS/248: Appeal Against Sentence by Terry G.M. Smith

The latest news in the fight for justice occurred in November 2015 when the Essex crime writer Terry Smith was advised by a renowned prison lawyer that the controversial prison sentence he had been given an indeterminate sentence for the protection of the public otherwise known as IPP, was wrong in principle and should be amended to a fixed term. Basically, the prison lawyer noted the crime writer was going nowhere fast waiting year after year for his Grounds of Appeal against Conviction to be drafted and lodged at the Court of Appeal and that he should Appeal against Sentence in the meantime. insofar, if the Appeal against Sentence was successful and the sentence was commuted to a fixed term, due to the time served, the crime writer would be able to fight the miscarriage of justice from his home address and not from the restrictive confines of a prison cell.

The Appeal was predicated along the lines that the sentence was wrong in law as the sentencing judge should have due to the gravity of the offence and dangerousness of the offenders sentenced the accused to a term of imprisonment for life and not the controversial IPP regime. This is where section 225 of the Criminal Justice Act 2003 states; where the gravity of the offence and dangerousness are satisfied, under subsection r(a)(b) and 2(a)(b) of the Act, the judge must, and I emphasize must pass a discretionary life sentence. Furthermore, under subsection 3 it states; in a case not falling within subsection (2) the court may impose a sentence of imprisonment for public protection. Therefore, it was argued, the gravity of the offence clearly vaulted the threshold of a discretionary life sentence and IPP should not have applied and the sentence should now be commuted to a fixed term. More generally, the appeal was riding on the back of the recent landmark judgment of N.v.Robeiis and Others [2016] EWCA Crim 71. This is where Lord Chief Justice Lord Thomas advocated the problem with the IPP regime is not the fault of the courts as the sentence of IPP have been 'faithfully and properly applied' and it is a constitutional matter and should be taken up with Parliament.

It really is a sight to behold when the Chief Law Lord of the land advises the people of the nation to appeal to Parliament to correct a sentencing Anomaly - that has been regretted by its creator, the former Home Secretary David (Lord) Blunkett and described as a "terrible scourge" by the former Supreme Court Justice Lord Brown. In conclusion, the reader will not be surprised to learn on 27 May 2016, the Court of Appeal considered the renewed applications for (i) Extension of Time, (ii) Leave to appeal against sentence, (iii) Representation Order and has refused the applications. Moreover, the crime writer was not represented by counsel and he was not allowed to represent himself as he was in prison custody.

Please take note, this is Access to Justice in the Year of our Lord 2016. Leave to appeal was considered on the papers and dismissed. Another miscarriage of justice of grotesque proportions where the crime writer was not only framed by bent cops who resigned from the Police Service en bloc weeks after a formal complaint was lawfully suppressed, but is now serving a highly contentious prison sentence that was abolished months after it was handed out. when will the institutional matrix of deceit and corruption ever stop! We are now up to our necks in it. As the old adage proclaim "If my Rights don't matter today; it may be your rights tomorrow.' Any queries/comments let me know.

Terry Smith, A8672AQ, HMP Swaleside, Sheerness, Kent, ME12 4AX'

Judges Decide Inquest was Deficient but Refuse to Order a Fresh Inquest

[To that extent only, the application is well founded and the inquest was deficient. However, a fresh inquest is unnecessary and would serve no useful purpose (as was decided, despite a misdirection, in R (P) v. HM Coroner for the District of Avon [2009] EWCA Civ 1367, [2009] Inquest LR 287; see paragraph 33 of Maurice Kay LJ's judgment). The present application before the court, and the court's judgment, suffice to make good the deficiency, without any further order or relief being granted. The Record of Inquest should therefore not be quashed, and subject to hearing counsel, we do not consider that any further relief is required beyond a declaration that the application is well-founded to the extent identified in this judgment.]

I*nmate James O'Neill Died Eight Months After Being Jailed For Attack*

The death of a prisoner eight months after he was jailed for a frenzied attack on his partner was due to natural causes, an inquest jury decided. James Edward O'Neill, 46, died from cancer in the Royal Preston Hospital just weeks after the disease was diagnosed at the city's prison. The inmate, who had been serving a sentence of 12 years and eight months for bludgeoning his girlfriend with a beer bottle, developed an aggressive tumour in the oesophagus which spread to his lungs, liver and bowel. But Coroner Dr James Adeley told the jury after a two-day hearing that, while there were a number of unanswered questions about when the disease was first picked up by prison medical staff, they had only two choices – natural causes or an open verdict.

And he told O'Neill's family: "I appreciate in your view an earlier diagnosis could have resulted in surgery, however there is so much uncertainty about when that time occurred and when Mr O'Neill would have presented symptoms." The former refuse collector was jailed in February 2013 for a vicious assault on his 51-year-old partner Hazel Peters at the home they shared in West End Road, Morecambe. It was said in court he knocked Ms Peters to the floor with a bottle and then struck her around 20 times as she lay defenceless on the floor. As he attacked her he told his victim several times he was going to kill her. O'Neill then stripped off his clothes and made his escape on a bus wearing only his underpants. The hearing was told that the prisoner, who was a smoker, had alcohol and drug problems and suffered from depression, had tried to cut his own throat in prison with broken glass and a razor blade. Medical witnesses said O'Neill first complained in January 2013 about a lingering cough, which eventually resulted in him coughing up blood. He had failed to return sample jars given to him and it was some time later that he was eventually diagnosed with cancer.

Dr Adeley told the jury: "For legal reasons the choices you can consider are very limited. You may wonder why you have given your time. The reason is firstly the Government takes a view all deaths in custody should be heard before a jury to dispel rumour. *Lancashire Evening Post*

Application of Teresa Tainton - v - HM Senior Coroner Preston & West Lancashire

1. This is the judgment of the court to which we have both contributed.

2. On 23 October 2013, James O'Neill, who had been a serving prisoner prior to his release on compassionate grounds, died of cancer of the oesophagus. It was and remains common ground that the inquest which followed his death had to meet the obligations of the United Kingdom under Article 2 of the European Convention on Human Rights and Fundamental Freedoms (ECHR) and thus required an investigation into the circumstances of the death. This application which proceeds with permission granted by Judge Stephen Davies raises questions as to the directions which ought properly to be given to an inquest jury by a coroner in such an inquest both generally and specifically directed to the facts of this case.

3. In short, Mr O'Neill's mother, the claimant, challenges the decision of the defendant, Dr James Adeley, HM Senior Coroner for Preston and West Lancashire ("the coroner"), not to leave to the jury the issue whether admitted failings on the part of medical staff responsible for his care while in prison significantly hastened or may have significantly hastened Mr O'Neill's death by delaying the diagnosis of his cancer. The claimant seeks an order quashing the record of inquest and an order that a fresh inquest be held.

4. Thus, propositions advanced in support of this application are, first, that the coroner erred in law by not leaving to the jury the question whether, on the balance of probabilities, the admitted failure of medical care did significantly hasten Mr O'Neill's death. In the alternative, the coroner should have exercised his discretion to leave to the jury the question, even if not proved on the balance of probabilities, whether it was a possibility that his death was thereby significantly hastened.

Analysis - 56. We can deal quite briefly with the rival contentions of the parties. The state's procedural obligation under article 2 ECHR arises when there is an investigation into a death in circumstances "where it appears that one or other of the … substantive obligations [under article 2] has been, or may have been, violated and it appears that agents of the state are, or may be, in some way implicated" (per Lord Bingham, on behalf of the Judicial Committee, in Middleton at paragraph 3).

57. Where, as in this case, the instrument by which the state discharges its investigative obligation under article 2 is an inquest, the verdict (now conclusion) must establish not only by what means the deceased met his death, but in what circumstances he met his death (ibid., per Lord Bingham at [35]); see now the Coroners and Justice Act 2009 (the 2009 Act) and, in particular, s. 5(1)(b), read with s. 5(2).

58. As Lord Bingham added at [36], it is a matter for the coroner, in the exercise of his discretion, to decide how best in a particular case to elicit the jury's conclusion on the central issue or issues. In some cases, a traditional short form verdict (now conclusion) will suffice; in other cases, the jury's factual conclusions need briefly to be summarised. All this is now settled law and uncontroversial. We turn next to consider how those principles and propositions apply to this case.

59. There was never any doubt that Mr O'Neill died from cancer of the oesophagus and

that this was a death by natural causes. If that had been all there was to the case, no question could have arisen as to whether anything further than a short form "natural causes" conclusion was required. Indeed, if there had no shortcomings in the standard of medical care he received, the article 2 procedural obligation may not have arisen at all and, if it did, would have been readily satisfied by a short form verdict.60.

60.The reason why that obligation arose, and it is common ground that it did arise, was not just because Mr O'Neill died while in custody but also, of more importance, because the circumstances in which he met his death included, in the last year of his life, starting in October 2012 when he began to complain to prison medical staff of symptoms and ending with his death about a year later, instances of substandard medical care. These are documented in Dr Bicknell's review and in the PPO report, and are admitted in email of 4 March 2015 from the Trust. The admissions were repeated orally on behalf of the Trust at the inquest and in evidence by those responsible for the errors.

70. In the analysis up to this point, there is no real difference between the parties. As regards causation of death, the submissions of the parties were marked by differences of emphasis rather than of principle. We received confirmation at the hearing that there was no disagreement between the parties about the principles on the basis of which the cause of Mr O'Neill's death fell to be addressed by the coroner. They are as follows.

80. First, an event or conduct said to have caused the death, must have contributed more than minimally, negligibly or trivially to the death. The conduct or event must make an actual and material contribution to the death of the deceased. As Ms Dolan pointed out, it is not enough, in the present context, to show that a particular event, or particular conduct, deprived the deceased of an increased chance of life or, to put the point the other way round, made his death more probable than it would otherwise have been.

81.Second, causation of death (in the above sense) must, in the context of an inquest of this type, be proved to the civil standard, i.e. on the balance of probabilities. In this case, if the issue of whether the shortcomings in Mr O'Neill's medical care hastened his death were to be left for the jury to decide, the jury would be required to decide that issue on the balance of probabilities, i.e. whether it was more likely than not that those shortcomings caused (again, in the sense explained above) Mr O'Neill's death.

82.Thirdly, the coroner was bound to leave that issue to the jury if, but only if, his answer was "yes" to both the questions (a) whether there was evidence on which a jury properly directed could properly conclude that the shortcomings in Mr O'Neill's medical care measurably hastened his death; and (b) whether it would be safe for the jury to reach that conclusion on the evidence before it (the latter being the "plus" part of the test).

83.In the present case, if the issue were approached by reference to the first of those two questions only, but not the second, a reasonable coroner might conceivably have reached the conclusion that the answer to the question was yes. There was some evidence pointing to that conclusion: Dr Young, at one point, appeared to accept the proposition that it was "more likely than not [that] if it [the cancer] had been diagnosed before it had spread … that his life would have been extended in a material and measureable way". As noted above, she answered: "he would have been able to be offered treatment which could have extended his life yes".

84.That was the high water mark of the evidence supporting that proposition, but it was founded on the triple assumptions (i) that the cancer had not already spread too far as at February 2013, when the cancer should have been diagnosed; (ii) that Mr O'Neill would

have accepted an offer of chemotherapy at that stage (there being no evidence of his personal disposition on that issue one way or the other); and (iii) that he would have withstood the toxic side effects of the treatment sufficiently to benefit from it and extend his life measurably.

85.It is not surprising that Dr Young adopted a more cautious approach later in her evidence when those assumptions were drawn to her attention. She agreed with the proposition that in the light of those unknowns, it would be speculative to say that diagnosis of the cancer in February rather than July 2013 would have led to a measurably longer life for Mr O'Neill. The coroner's decision to withdraw the issue of causation from the jury was essentially founded on a negative answer to the second question: it would not be safe for the jury to reach the conclusion for which Mr O'Neill's family contended.

86. We are firmly of the view that the coroner was right to reach that conclusion, and that he was not bound to leave the issue of causation of death to the jury. We agree with his analysis: there were too many unknowns in the factual history; it would not be safe for a jury to accept the family's contention that Mr O'Neill's death was measurably hastened as a result of the admitted shortcomings in his medical care.

87. The coroner went on to consider the submission of Ms Favata that he had a discretion to leave the issue to the jury nonetheless. Ms Dolan accepts in this application that he had such a discretion: it was open to him in the exercise of that discretion to leave to the jury a cause of death that was a mere possibility, short of meeting the civil standard of proof on the balance of probabilities.

88. The coroner professed himself unconvinced that he had such a discretion. In this, he was not correct. But he went on to say straight away that if he were wrong and he did have the discretion to leave the issue of a possible hastening of death to the jury, he exercised his discretion against doing so. He would not be willing to leave that issue and would not leave open a narrative verdict "when so much of the evidence is missing".

89. In our judgment, the coroner was entitled to exercise his discretion in that way, and properly did so. We would not interfere with the coroner's decision on that issue; he was justified in not leaving a "neglect finding" as a potential finding for the jury to reach.

90. Thus far, the progress and conduct of the inquest was fair and lawful. However, there is one aspect of the case where we do consider that the coroner erred in a manner that was material. It arises from the admissions that were made by the Trust's representative at the inquest that there were serious shortcomings in Mr O'Neill's medical care. The evidence called by the coroner included admissions of those failings by the witnesses guilty of them.

91. Although these facts were not disputed, we consider that the coroner should have directed the jury to include in the Record of Inquest a brief narrative of the admitted shortcomings of the health care staff responsible for the late diagnosis of Mr O'Neill's cancer. In the light of the fact that the coroner withdrew the issue of causation from the jury, such a statement would have to have been supplemented by an explanation that it could not be concluded that these shortcomings significantly shortened Mr O'Neill's life. In this case, such a statement would have completed the incomplete account of the circumstances in which Mr O'Neill met his death, which the Record of Inquest contains (Form 2, Schedule to the Coroners (Inquests) Rules 2013), and would have been a fair reflection of the issues that the inquest had focussed upon even if the issue was left to the jury only on the basis of a choice between a conclusion of death by natural causes and an open conclusion.

92. Putting the point another way, in an inquest such as this, where the possibility of a violation of the deceased's right to life cannot be wholly excluded, section 5(1)(b)

and 5(2) of the 2009 Act should require the inclusion in the Record of Inquest of any admitted failings forming part of the circumstances in which the deceased came by his death, which are given in evidence before the coroner, even if, on the balance of probabilities, the jury cannot properly find them causative of the death.

93. This was a matter of fairness to the family of the deceased, and was required in this case in order to discharge in full the obligation on the state imposed by article 2 of the ECHR and on the coroner by section 5(1) and (2) of the 2009 Act. Our conclusion is not altered by the fact that the coroner was not bound to decide to make a report with a view to the prevention of future deaths under regulation 28 of the Coroners (Investigations) Regulations 2013. The coroner properly decided that he did not need to make such a report, because the Trust had addressed the criticisms of its health care staff, which had emerged from Dr Bicknell's review and from the PPO report.

94. Ms Dolan submitted that, because the criticisms had been publicly aired in those documents, and had been publicly admitted by the Trust and its witnesses at the inquest, inclusion of the narrative of those failings in the Record of the Inquest, as part of the conclusion, would be superfluous. She relied on the state's ability, recognised in Middleton and other authorities, to discharge its article 2 procedural obligation by means other than an inquest, such as a criminal trial or a public inquiry.

95. She submitted that in this case, the PPO and the public admissions at the inquest, combined with the natural causes conclusion, sufficed to perform the state's obligation. She pointed out that Lord Bingham in Middleton (at paragraph 20) had confined the requirement for a narrative verdict to cases where it was necessary to set out "the jury's conclusion on the disputed factual issues at the heart of the case". She reminded us that he did not say that a statement of undisputed facts had to form part of a narrative verdict.

96. We do not accept those submissions. In the present case, without the admitted failings forming part of the narrative in box 3 of the Record of Inquest, the conclusion was materially incomplete and verged on misleading by omission. Lord Bingham in the passage in Middleton to which our attention was drawn, was not dealing with a situation such as arose in this case. As Ms Favata pointed out, at paragraph 18 of his speech, Lord Bingham noted that: " a verdict of an inquest jury which does not express the jury's conclusion on a major issue canvassed in the evidence at the inquest cannot satisfy or meet the expectations of the deceased's family or next-of-kin. Yet they, like the deceased, may be victims. They have been held to have legitimate interests in the conduct of the investigation (Jordan 37 EHRR 52, para 109), which is why they must be accorded an appropriate level of participation: see also R (Amin) v Secretary of State for the Home Department [2004] 1 AC 653. An uninformative jury verdict will be unlikely to meet what the House in Amin, para 31, held to be one of the purposes of an article 2 investigation: "that those who have lost their relative may at least have the satisfaction of knowing that lessons learned from his death may save the lives of others."

97. There are no doubt cases in which public acknowledgment of failures on the part of agents of the state in a forum other than an inquest can indeed form part of the means by which the state discharges its investigative obligation. We are not suggesting that any admitted failings have to be included in every case. The manner in which the state discharges that obligation will, as Ms Dolan correctly submitted, vary from case to case. The position may be entirely different if, for example, a public inquiry or a criminal prosecution has taken place.

98. But this is not such a case. Here, there is real force in Ms Favata's submission that it was not reasonable or lawful for the admitted shortcomings in Mr O'Neill's medical care to be excluded from the Record of the Inquest, so that the conclusion as to the death was merely described as natural causes. The material facts leading up to the deceased's death included substandard care by agents of the state which, if they were to pass unmentioned, would render the bland short form "natural causes" verdict inadequate to describe properly the circumstances in which the deceased met his death.

99. In our judgment, the admitted failings of the Trust's medical staff were not otiose because they were admitted, as Ms Dolan submitted. On the contrary, they should have formed part of the inquest findings precisely because they were admitted, and formed part of the evidence heard by the jury.

100. We do wish to emphasise, however, that this does not mean the scope of investigations in inquests needs to be expanded. We are very far from saying that inquests should become more complex than they already are. That would be contrary to the public interest. It is not necessary to look into every possible issue. The narrative that ought to have been included in this case could have been expressed in a couple of brief sentences. This would have produced a more complete, publicly available, Record of Inquest.

101. To that extent only, the application is well founded and the inquest was deficient. However, a fresh inquest is unnecessary and would serve no useful purpose (as was decided, despite a misdirection, in R (P) v. HM Coroner for the District of Avon [2009] EWCA Civ 1367, [2009] Inquest LR 287; see paragraph 33 of Maurice Kay LJ's judgment). The present application before the court, and the court's judgment, suffice to make good the deficiency, without any further order or relief being granted. The Record of Inquest should therefore not be quashed, and subject to hearing counsel, we do not consider that any further relief is required beyond a declaration that the application is well-founded to the extent identified in this judgment.

Court Quashes Decision Not To Employ Former Convicted Terrorist

Mr Justice Maguire, sitting in the High Court in Belfast, quashed a decision taken by the Department of Finance and Personnel that a former convicted terrorist was not suitable to work with the Conservation Volunteers. He also found that the Minister in charge of the Department in 2007, Peter Robinson, breached the Ministerial Code by failing to bring his decision to dis-apply the existing policy on the recruitment of persons with conflict related convictions to the Executive Committee. Martin Neeson (“the applicant”) was convicted of a number of terrorist offences in 1975 and 1976 when he was 16 years old. The offences were murder, two counts of attempted murder, belonging to a proscribed organisation, common assault and carrying a firearm with intent. He spent 11 ½ years in prison and was released on life licence in 1987. He has not come under police notice since.

In June 1995 he began work with a charity called the Conservation Volunteers. He made his employer aware of his convictions. He continued to work there for 19 years and was regarded by his employer as a valued member of staff. In 2013 the financing arrangements for the Conservation Volunteers changed and while there was no change to the applicant’s job, it brought him within the suitability for employment requirements of the Northern Ireland Civil Service (“NICS”) and he became subject to a “baseline security check”. This involved his employer submitting his details, including criminal record details, to the Department. As the applicant had unspent convictions he was provided with the opportunity to make a disclosure statement setting out the context in which his convictions occurred, including any mitigating factors. A decision was then to be made about his suitability by a panel within the Department’s Appointment and Marketing Branch.

The applicant was considered to be “unsuitable” to work on the Conservation Volunteers

project he had been working on. In an affidavit, the Director of Corporate HR in the Department stated: "The convictions for murder and attempted murder were offences of the most serious nature, they could never be unspent, and remained relevant. In my view, they did demonstrate that Mr Neeson had a propensity to commit acts of very serious violence, despite the fact that they had taken place 38 years ago. Having weighed up all of the factors, the decision was made that he was not a suitable person to work either in the NICS or on NICS contracts. I was also of the view that clearing him for suitability would undermine the wider duty of care that the NICS had to all of its staff."

The Court heard that the reintegration of former prisoners into society assumed a more general importance under the Good Friday Agreement and the St Andrew's Agreement. Guidance was produced in 2007 entitled "Employers Guidance on Recruiting People with Conflict Related Convictions". The basic principal was that "any conviction for a conflict related offence that pre-dates the Good Friday Agreement (April 1998) should not be taken into account unless it is materially relevant to the employment being sought". The onus of demonstrating incompatibility was to rest with whoever was alleging it and the seriousness of the offence would not, per se, constitute adequate grounds. The guidance came into operation on 1 May 2007 and applied to the NICS. At this time the governance of Northern Ireland was under direct rule. When devolution was restored later in 2007, Peter Robinson MP MLA became the Minister in charge of the Department of Finance and Personnel and in September 2007 took a decision to dis-apply the guidance. From this date, the position has been governed by the risk assessment provisions of the NICS Recruitment Policy and Procedures Manual which states that where convictions cannot be spent, as in this case, a number of criteria must be considered in deciding if a candidate can be appointed. The applicant contended that the policy which legally should have applied to his case was that contained in the May 2007 guidance and that the attempt to dis-apply it made by Mr Robinson was unlawful. It was argued that Mr Robinson should have brought the matter to the Executive Committee because the subject matter was "cross-cutting" or "significant or controversial" in accordance with the Ministerial Code. The applicant also argued that the decision arrived at was unreasonable and should be quashed.

Issue 1: Failure to bring the decision to dis-apply the May 2007 guidance to the Executive Committee - Mr Justice Maguire said the decision to dis-apply the May 2007 guidance clearly related to a controversial and/or significant matter namely the reintegration of former prisoners with conflict related convictions into the world of employment. He said the matter should have been brought before the Executive Committee and Mr Robinson had therefore breached the Ministerial Code. Issue 2: The reasonableness of the substantive decision

Mr Justice Maguire said that the affidavit from the Director of Corporate HR did not explain the precise way in which the decision was arrived at. He felt it was clear that the Director gave substantial weight to the issue of the seriousness of the convictions but it was not apparent what weight he gave to what might be described as the obvious factors in the applicant's favour. In the court's view, a very important consideration would be the relevance of the convictions to the post: "This is not dealt with in [the affidavit] in a satisfactory way. For the court's part this is troubling. In this case the court is unaware of any suggestion that the job which the applicant had been doing and was proposing to continue doing had any substantial relationship to any sensitive security or other similar issue. Indeed he had been doing the job without any sign of a problem and to the satisfaction of his employers for many years. The court is left unaware from [the affidavit] how this aspect was evaluated and what weight was given to it. If it be the case, as the court considers it is, that the convictions have no, or at most only a very limited relevance to the post in question this must weigh strongly in the balance in the applicant's favour."

The court also considered the mitigation put forward by the applicant. Mr Justice Maguire said it was not made clear in the affidavit what weight, if any, was given to this factor: "In the court's view, it is difficult to see how this factor would not be one which should have weighed significantly in the applicant's favour. The court adopts this view not only because of the expiry of time since the offending (38 years at the time of the decision) but also because of the applicant's youth at the time of it, just 16. When these factors are married with the complete absence of the applicant coming under any adverse notice since his release from prison, it seems to the court that on any view a substantial quantum of mitigation is available which rationally must be weighty in the applicant's favour."

The affidavit from the Director of Corporate HR referred to the applicant's offences demonstrating that he "had a propensity to commit acts of very serious violence, despite the fact that they had taken place 38 years before". The judge said this seemed at the very least "highly questionable". He said that while no-one doubts the seriousness of the applicant's convictions, the assessment was carried out 38 years after the convictions and he questioned what evidence there was to support the assessment: "What gives rise to unease on the court's part is that the applicant is being viewed as having an inclination to offending of a serious nature at present on the basis of his 1976 convictions and nothing else. This savours of a fixed and inflexible approach which fails to recognise that there can and often are changes in the outlook of an offender and in the prevailing circumstances over time." Mr Justice Maguire said he had no hesitation in concluding that the decision was one which no reasonable authority could lawfully have arrived at because the decision "flies in the face of being a rational decision".

Remedies: As the court concluded that the decision was unreasonable it made an order of certiorari to quash it. The court, however, did not make a quashing order in respect of the Ministerial Code issue on the basis of the time elapsed since the failure to bring the decision to dis-apply the 2007 guidance to the Executive Committee and the fact that there will have been many decisions made in recent years. The judge said that a decision by the court to quash the use of the Recruitment Policy and Procedures Manual may be detrimental to the interests of good administration and might re-open old cases long closed. Mr Justice Maguire said he would simply make a declaration that the decision to dis-apply the 2007 guidance without bringing the matter to the Executive Committee was in breach of the Ministerial Code as the guidance was a significant or controversial matter outside the scope of the Programme for Government. It will now be for the Department to consider the matter afresh. Mr Justice Maguire said that, unless it is impracticable to do so, the decision should be taken by a senior official who has had no involvement in the case to date.

Winning Lottery Ticket Bought With Stolen Cash *Scottish Legal News*

A couple who helped steal more than $175,000 from a grocery store where they worked used that money to buy a winning $1 million lottery ticket from the same store, state police said. An American mother with a $1 million lottery ticket could end up in prison after being accused of conspiring to steal the money to buy it. Joan Lechleitner, 51, was arrested on four counts of conspiracy and one each of theft, theft by deception, receiving stolen property, and tampering with records, the Pottsville Republican Herald reports. She and her fiancé, daughter and nephew all worked in the same convenience store, where they're alleged to have worked together to ring up fake purchases and returns to the tune of $175,000. They have each been charged with the same offences.

Lechleitner already claimed a $261,905.50 payout from one lottery ticket said to have been

bought last September with the stolen cash. But having drawn suspicion, the family could be deprived of the spoils of their conspiracy by the court in Orwigsburg. They have been released afetr paying $25,000 each in bail and drove away from jail in a pickup truck - allegedly bought with the winnings.

Steep Court Fee Rises Are Tax On Justice, Say MPs *Owen Bowcott, Guardian*

Excessive court fees impose an unjustified tax on divorce, deny refugees the opportunity to establish asylum rights and prevent employees with legitimate grievances from obtaining justice, a report by a Conservative-dominated select committee has concluded. The justice select committee called for some charges to be rescinded as it dismissed “superficial” government excuses for failing to provide evidence to justify successive steep rises. The parliamentary group acknowledged that Ministry of Justice finances had not been ringfenced from austerity but warned that access to justice must be prevail over “cost recovery”. The scathing comments from the committee, chaired by the Conservative former barrister Bob Neill, reflect fears within the legal profession that access to justice is in danger of being restricted to the wealthy and that commercial litigants will be deterred from bringing cases to UK courts.

In recent years the department has levied more “enhanced” fees – greater than the cost of the hearing involved – in order to cross-subsidise the legal system. The main rises have been: • Employment tribunal fees of up to £1,200 introduced in 2013, which led to a 70% drop in the number of cases being brought. • Fees for financial claims for sums over £300,000 going up five-fold last year, from £1,920 to £10,000. A plan to double that level to £20,000 has temporarily been shelved. • The price of a divorce going from £410 to £550 – although the average cost of uncontested proceedings is estimated to be only £270. The MoJ is also considering increases of 600% for asylum and immigration tribunal fees. Applications for decisions on papers will rise from for £80 to £490 and for oral hearings from £140 to £800.

The committee’s report says: “The introduction of fees set at a level to recover or exceed the full cost of operation of the court requires particular care and strong justification. Where there is conflict between the objectives of achieving cost recovery and preserving access to justice, the latter objective must prevail.” On divorce fees, the MPs state that the latest increase, “which is approximately double the cost to the courts of providing the service, is unjustified”. They add: “It cannot be right that a person bringing a divorce petition, in most cases a woman, is subject to what has been characterised in evidence to us as effectively a divorce tax. We recommend that the increase in the divorce petition fee to £550 be rescinded.” On employment fees, the report describes the justice minister Shailesh Vara’s “heavy reliance on the figure of 83,000 cases dealt with at Acas early conciliation to support his contention that access to justice has not been adversely affected by employment tribunal fees [as], even on the most favourable construction, superficial.” If the six-fold increase in asylum and immigrations fees goes ahead, the report says, “there is a danger that they will deny vulnerable people the means to challenge the lawfulness of decisions taken by the state about their … status.”

The select committee says there have been inconsistencies in the government’s account of its review of the impact of employment tribunal fees. The report adds: “It is difficult to see how a minister can urge his officials to progress a review which they apparently submitted to him four months or more previously.” The report has still not been published. The MPs add: “There is a troubling contrast between the speed with which the government has brought forward successive proposals for higher fees, and its tardiness in completing an assessment of the impact of the most controversial change it has made. “We find it unacceptable that the government has not reported the results of its review one year after it began and six months after the government said it would be completed.”

The select committee report does not object to the principle of charging fees to court users, since “some degree of financial risk is an important discipline for those considering legal action.” Neill said: “We understand the financial pressures on ministers in a department with unprotected spending. We also understand that the MoJ does not always have the luxury to be as rigorous and meticulous in preparing the ground for controversial policies as it might wish. But it is important that in such circumstances the ministry is frank about that fact and does not represent the quality of its evidence base to be higher than it is. “The MoJ has argued that changes to employment law and the improving economic situation, as well as the pre-existing downward trend in the number of employment tribunal cases being brought, may account for part of the reduction in the number of cases. These may indeed be facts but the timing and scale of the reduction following immediately from the introduction of fees can leave no doubt that the clear majority of the decline is attributable to fees.”

Gillian Guy, Chief Executive of Citizens Advice, said: “People are being priced out of challenging employers that dismiss them unfairly, discriminate against them or withhold wages. “Four in five people who we help with problems at work would be put off making a claim to an employment tribunal because of high fees. Many people would have to save for six months to afford fees of £1,200, and for some people the fees are higher than the amount they are claiming. “The justice select committee is right to highlight that that at their current level employment tribunal fees put access to justice at risk. The Government should use this opportunity to consider how they can make employment tribunals a more affordable option.”

Prisoner at Serco-Run Facility Found Dead In Cell By Fellow Inmates

A prisoner who apparently hanged himself in his cell was found and cut down by fellow inmates after staff who unlocked his cell failed to notice the deceased man, the Guardian has learned. James Sullivan, 27, was found dead in his cell at Lowdham Grange prison in Nottinghamshire on 24 March . He was serving a life sentence for the murder of his partner. Prisoners at the jail have told the Guardian they were worried about Sullivan’s mental state and checked up on him when their cells were unlocked shortly after 8am. Two prisoners entered his cell minutes after others on the landing had been unlocked. They found him hanging, cut him down and alerted staff. He was in a single cell at the category B prison, which is Sullivan, from Nottingham, had pleaded guilty to murder in January 2011. The court heard he had become increasingly angry about the lack of contact with his young son and stabbed Sara West, 21, in the neck and left her house with the two-month-old child. Police arrested him on a bus and found the murder weapon in the child’s pushchair. The judge ordered Sullivan to serve a minimum of 20 years. Prisoners who knew him told the Guardian he had been acting strangely in the weeks before his death and had talked of ending his life. A Serco spokesman said Sullivan was not on an “at risk” register. A Prison Service spokesman said that Sullivan was found unresponsive in his cell , staff attempted CPR and an ambulance was called, but he was pronounced dead at 8.34am.privately run by Serco.

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.