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R (Application of The Public Law Project) (Appellant) v Lord Chancellor

Following a hearing at which the Court heard argument on the ultra vires issue and indicated that it did not need to hear argument on the discrimination issue, the Supreme Court unanimously allows the Public Law Project's appeal on the ultra vires issue.

Following the entry into force of the civil legal aid reforms made by the Legal Aid, Sentencing and Punishment of Offenders Act 2012, the Ministry of Justice decided to introduce a residence test for civil legal aid via secondary legislation. If approved by Parliament, this would restrict civil legal aid to persons who are lawfully resident in the UK, Crown Dependencies or British Overseas Territories at the time of the application for civil legal aid, and have resided lawfully for a continuous period of at least 12 months (with certain exceptions). The issues before the Supreme Court were whether the proposed civil legal aid residence test in the draft Legal Aid, Sentencing and Punishment of Offenders Act (Amendment of Schedule 1) Order 2014 is: (i) ultra vires the enabling statute and (ii) unjustifiably discriminatory and so in breach of common law and the Human Rights Act 1998. At the end of the hearing on 18th April the Supreme Court indicated that it was allowing the appeal on ground (1) and that it did not consider it necessary to hear argument on issue (2).

Background to the Appeal: This appeal concerns the legality of attempts by the Lord Chancellor to introduce a residence test for civil legal aid by amending the Legal Aid, Sentencing and Punishment of Offenders Act 2012 ("LASPO"). Part 1 of LASPO came into force on 1 April 2013. It includes section 9, subsection (1) of which provides that civil legal services are to be available to an individual if they are legal services described in Part 1 of Schedule 1, and the Director of Legal Aid Casework has determined that the individual qualifies for the services in accordance with Part 1 of LASPO. Part 1 of Schedule 1 accordingly sets out the services for which civil legal aid is available. Subsection 9(2) permits the Lord Chancellor to (a) "add" to, and (b) "vary or omit" services in Part 1 of the Schedule.

In April 2013, the Ministry of Justice ("MOJ") issued a paper in which it stated that, subject to certain specific exceptions, the Government would proceed with the introduction of a residence test so that only those who are lawfully resident in the UK (or Crown Dependencies or British Overseas Territories) at the time of the application and have so resided for a continuous period of at least 12 months at any point in the past would be eligible for civil legal aid.

In September 2013, the Lord Chancellor decided to proceed with the proposal and to make regulations to that effect in the form of delegated legislation ("the draft order"), which was put before Parliament on 31 March 2014.

Before the draft order was laid before Parliament, the Public Law Project applied to the High Court for a declaration that the draft order was unlawful on the basis that it was (i) ultra vires, i.e. outside the scope of the power granted to the Lord Chancellor by LASPO to bring forward delegated legislation; and (ii) unjustifiably discriminatory in its effect.

The Divisional Court held that the draft order was unlawful on both grounds. Following the decision of the Divisional Court, the Lord Chancellor withdrew the draft order before any debate in the House of Lords could take place. On appeal, the Court of Appeal allowed the Lord Chancellor's appeal on both grounds, holding that the draft order was intra vires and that, while it was discriminatory in its effect, the discrimination could be justified. The Public Law Project now appeal to the Supreme Court on both grounds.

Judgment: Following a hearing at which the Court heard argument on the ultra vires issue and indicated that it did not need to hear argument on the discrimination issue, the Supreme Court unanimously allows the Public Law Project's appeal on the ultra vires issue. Lord Neuberger gives the only judgment, with which the other Justices agree.

Reasons for the Judgment: The Public Law Project contend that the exclusion of a specific group of people from the right to receive legal services on the ground of personal circumstances or characteristics, which have nothing to do with the nature of the issue or services involved or the individual's need, or ability to pay, for the services, is not within the scope of the power accorded to the Lord Chancellor by section 9(2)(b) of LASPO, and that nothing in section 41 undermines that contention.

That argument is accepted by the Court [30]. In declaring subordinate legislation to be outside the scope of the statutory power pursuant to which it was purportedly made, the Court is upholding the supremacy of Parliament over the Executive [23]. Section 9(2)(b) provides a power to vary or omit services, but the relevant parts of the draft order do not seek to vary or omit services; rather, they seek to reduce the class of individuals who are entitled to receive those services by reference to a personal characteristics or circumstance unrelated to the services (i.e. length of residency) [30].

This interpretation of the wording of section 9(2) is supported by the wider statutory context. Each of the services identified in Part 1 and Part 2 of Schedule 1 is linked to a specific type of legal issue or claim, and has nothing to do with the personal circumstances or characteristics – in particular the geographical residence – of the potential recipient of the services [31].

This conclusion is also supported by contrasting the wording of the two subsections of section 9. Subsection (1) clearly distinguishes between the question of whether the particular services qualify and whether the particular individual qualifies [33]. Section 9(2) is concerned with the services which qualify, and it is section 11 which appears to be concerned with identifying the characteristics or circumstances of individuals who are to qualify for civil legal aid. The criteria that section 11 sets out all relate to the issue involved, the services concerned, or the need of the individual for financial assistance, in contrast to the draft order. This indicates that the draft order is attempting to do something which the legislature never had in mind when enacting section 9 [34].

The Court of Appeal concluded that section 41 could be invoked to defeat the contention that the Lord Chancellor could not make the draft order under section 9. While it is true that section 41(2)(b) permits any order made under section 9(2)(b) to "make provision by reference to… services provided for a particular class of individual", this cannot extend the power under section 9(2)(b) so as to exclude a whole class of individuals from the scope of Part 1 of LASPO by reference to their residence [36]. Section 41 is clearly intended to grant ancillary powers to those primarily granted under section 9 [36].

Accordingly, the appeal should be allowed on the first, ultra vires, issue, and the Court does not have to deal with the discrimination issue [39].

'Harry Potter' Lawyer Struck off for Accounts Breaches and False Statements

Controversial solicitor-advocate Alan Blacker was today struck off by the Solicitors Disciplinary Tribunal for a series of infringements including accounts failings and falsely claiming to have academic and other qualifications. He was ordered to pay costs of £86,000.

Letter From Republican Prisoner Nathan Hastings HMP Maghaberry

A Chara, although you are aware of the core issues of conflict surrounding Republican Prisoners in HMP Maghaberry there are also a host of other issues affecting the every-day lives of those held in Republican Roe House which are less well known. Many of those issues were raised with the International Committee of the Red Cross (ICRC) during their recent visits to the Republican wing over the course of two weeks in June.

In regard to education, Republican Prisoners have access to one art class and one guitar class per week. All other classes, including Irish, creative writing, ICT, English, hair-cutting and craft have been removed. Open University studies have been impeded at every opportunity. The OU facilitator was, at first, prevented from accessing Roe 4 by security who claimed, ludicrously, that there was a threat against him. He has since retired and has not been replaced; furthermore, Republican Prisoners have been prevented from accessing online course material and phone tutorials. Even at the time of writing I have been trying for three months to attain a prospectus. Republican Prisoners who wish to undertake informal education have been impeded by restrictions with only the three men undertaking OU degrees being permitted to use them. Previously the jail had ignored an Ombudsman recommendation to put the printer into the Roe 4 classroom and had instead kept in the SO's office. The printer has now been totally removed from the wing as an arbitrary measure and a day's notice is required for printing. We have also been denied access to the library and we have to purchase, or have family and friends purchase, our own books. Even requests for one-off presentations such as a "listener" course by The Samaritans or a drug awareness and treatment course by AD:EPT, both of which are already in the jail, have been denied. We now only have education which we have organised ourselves.

Cultural identity issues have also been noted by outside bodies. Over the past number of months there has been what can only be described as a campaign of cultural oppression waged against Republican Prisoners by the 'Senior Management Team' and the 'Security Department'. In March Irish language signs were ripped from the walls and guards began demanding that traditional music be turned off. Thereafter, Cd's and Dvd's such as '101 songs of Irish Rebellion' and 'H3' were banned and we were informed that these were now on a list of banned items. Similarly, a t-shirt featuring the lyrics of The Lonely Banna Strand was banned as it "commemorated a terrorist incident" and photographs of a 'Joint Enterprise Not Guilty by Association' (JENGbA) march were banned and deemed to be 'Republican Propaganda' only to be allowed in when solicitors became involved. During Easter week the jail administration demanded that a tri colour erected in commemoration of the executed leaders be taken down. The riot squad raided cells on three separate evenings to confiscate the National Flag and charged a Republican Prisoner for 'disturbing good order and discipline' by erecting the flag.

The arrangements for family relations have also been criticised, although criticisms and recommendations have been ignored. Families have to book visits via the phone; queues lasting over an hour are a regular occurrence, callers are often hung up on, visits are booked for the wrong date or not at all and visitors are promised call-backs which they never receive. Although the jail makes grandiose claims regarding family-relations policies, there is never an opportunity for families and loved ones to have privacy. Privacy is the cornerstone required for any comfortable exchange, yet the visiting area in Maghaberry offers no privacy between the visiting booths, it is lined with cameras and is staffed by 3-4 guards. Families often travel for hours only to greeted with ignorance and hostility, with many commenting on how the arrangements here are much worse than they ever were in the H-Blocks. This is further exposed

as ludicrous when compared to Portlaoise where no prior booking is required, visits are held in privacy and prisoners may have two, two-hour visits per day every day. Attempts were actually made in 2014 to further downgrade visiting conditions under the guise of refurbishment.

The quality of food has been a long-running issue. A number of bodies visiting the Republican Wing have been dismayed by what Maghaberry's administration is calling meals. In October last year the Jail stopped serving two hot meals and instead began serving one hot meal in the evening and a lunch in the afternoon consisting of a sandwich, a packet of crisps, biscuits and a piece of fruit. The quality of meals had never been satisfactory; however, the afternoon meal quickly deteriorated to the shocking quality in which it is presented today. It is now served in a smaller quantity with no biscuits and certain meals such as the cold sausage rolls, the chicken bap and the vegetable bap have been almost inedible leaving a number of prisoners physically sick. Despite complaints and letters from solicitors the meals have still not improved. Simple suggestions, such as, to send ingredients separate and prevent some fillings from spoiling other food have been rejected as that arrangement would be "too much like it was done in the H-Blocks"

Each of the aforementioned matters could be elaborated on further and there are also countless other issues which could be highlighted, however, these matters sufficiently highlight the conditions in the "Worst jail in Europe"

Is mise le meas, Nathan Hastings, Roe 4 HMP Maghaberry.

Joint Enterprise: The Need for Clarity and Transparency

Joint enterprise is an aspect of the criminal law of England and Wales that has long been complicated, confusing, and subject to multiple and often conflicting interpretations. Guidance on joint enterprise issued by the CPS in 2012 identified three broad types of joint enterprise, namely: 1. Where two or more people join in committing a single crime, in circumstances where they are, in effect, all joint principals. 2. Where D assists or encourages P to commit a single crime. 3. Where P and D participate together in one crime (crime A) and in the course of it P commits a second crime (crime B) which D had foreseen he might commit.

Following the February 2016 Supreme Court judgement in R v Jogee and Ruddock v The Queen (Jamaica) [2016] UKSC 8; [2016] UKPC 7, the third of the above types of joint enterprise – commonly described as 'parasitic accessorial liability', and the source of much if not all of the recent controversy about joint enterprise – has effectively been abolished. The Supreme Court ruled that the law had taken a 'wrong turn' in introducing this form of secondary liability around three decades ago. The essential error was that defendants' foresight of an offence was treated as equivalent to their intent to assist or encourage that offence, which had the effect of over-extending the scope of secondary liability.

It is to be hoped that this judgment will substantially reduce the potential for miscarriages of justice and perceived 'dragnet' prosecutions and sentencing under the joint enterprise doctrine. However, to whatever extent the Supreme Court judgment serves to 'correct' certain problems in the development and application of the law on joint enterprise, the damage that has been done to the legitimacy of the courts system and judiciary as a consequence of these problems is likely to be substantial. Recovery from the deficit in legitimacy will doubtless take time.

Meanwhile, constructive debate on the law on joint enterprise, and consistency and fairness in its application, may be hampered by continuing misperceptions and misunderstandings. Even if the Supreme Court judgment goes some way towards simplifying the law, questions

of how and why principal and accessorial liability are ascribed in serious cases remain complex. As things stand, furthermore, there are no provisions for routine recording and monitoring of cases involving forms of joint enterprise, and hence systematic information on the application of the doctrine is almost entirely lacking. There is an urgent need for the existing information gap to be addressed and for greater clarity and transparency in the prosecution of joint enterprise cases. The following recommendations, aimed at policy-makers and practitioners engaged in all aspects of the judicial process, are intended to enhance clarity and transparency in the prosecution of joint enterprise cases.

Recommendations on Charging Decisions and Recording:

1.The CPS should ensure that, in all cases in which more than one defendant is charged with the same offence in relation to the same incident(s), the alleged basis of liability is identified and recorded on file. This should entail routine notification, as part of completion of the charging decision form, of the following information with respect to each defendant: • Whether the defendant is charged as a principal, accessory or as either a principal or accessory - If charged as a (possible) accessory, the basis of this – for example: - Having participated in the offence to assist its commission - Having assisted the commission of the offence without being present - Having encouraged the commission of the offence - Having counselled or procured the offence - A combination of any of the above

2. The recording of alleged principal and/or accessorial liability should be updated where charges are amended during the prosecution process and at the verdict.

3. The Ministry of Justice or HM CPS Inspectorate should undertake a review to support the trialling and development of the new charging and recording system outlined above, and to monitor prosecutions following the introduction of the system. The findings of this review should, further, help to determine whether there is a need for legislative change, alongside the evolution of case law, to promote more consistent and proportionate approaches to prosecuting multi-defendant cases.

Recommendations on Communications

4. As part of current development of the Common Platform for digital management of case information across the criminal justice system, provision should be made for collation and publication of national figures on: • Cases in which two or more defendants were convicted of the same offence in relation to the same incident, by offence category and CPS area • Defendants so convicted, by offence category and CPS area.

5. Better identification and recording of the basis of (principal and/or accessorial) liability as alleged against each defendant in multi-defendant cases should help to ensure that practitioners fulfil their existing obligations to keep defendants and complainants fully informed about charges and any forthcoming trial.

6. Guidance should be provided to judges on appropriate ways to cover issues of principal and accessorial liability in their delivery of sentencing remarks, with a view to ensuring that defendants, victims and all others concerned in a case (including any reporters covering it) have a clear understanding of the basis on which each individual has been convicted.

7. In recent years, the term 'joint enterprise' was subject to differing definitions and, because of the surrounding controversies, became increasingly toxic. With its observation that 'joint enterprise' is 'not a legal term of art', and by limiting joint liability to scenarios in which defendants either are joint principals or one aided, abetted, counselled or procured another, the Jogee and Ruddock ruling takes a large step away from the older terminology. Relevant bodies should seek to develop an alternative terminology which will aid rather than inhibit clear communication about multi-defendant cases.

Recommendations on Sentencing

8. The Sentencing Council should give consideration to the provision of guidance on the principles to be followed in the sentencing of multiple offenders whose specific roles with respect to the offence or offences are not known.

9. Where a defendant is convicted for murder as an accessory and is substantially less culpable than the principal, the judge has limited capacity to reflect this at sentencing because of the mandatory life sentence for murder. As has been urged in the past by the Law Commission among many others, we recommend that the government should review the mandatory life sentence for murder.

This piece is drawn from Joint Enterprise: Righting a Wrong Turn? by Jessica Jacobson, Amy Kirby and Gillian Hunter from the Institute for Criminal Policy Research.

Islamic Extremists in Prisons 'Should be in Isolated Units' *Alan Travis, Guardian*

A hardcore of proselytising Islamic jihadis inside prisons in England and Wales are so dangerous they need to be isolated in special units in maximum security prisons, an official review into prison extremism has said. The justice secretary, Michael Gove, told MPs on Wednesday 13/07/2016, that he was "extremely sympathetic" to the plan for the high-security "incapacitation" units, which will need the backing of the new home secretary before it can be implemented. Ian Acheson, the head of the as yet unpublished prison extremism review, said the intelligence was now sufficient to say there was a small hardcore group of jihadi prisoners whose "proselytising behaviour" among the 12,500 Muslim inmates in England and Wales was so dangerous that they should be separated from the rest of the prison population.

He hinted in evidence to the Commons justice select committee that this hardcore of jihadi prisoners is already sometimes managing to engineer "the de facto separation" between Muslims and non-Muslims in some prison wings. Acheson insisted the special units to be created in existing high security prisons would not be punitive but would need to be physically isolated from the rest of the prison grounds. "There is intelligence that there are a small number of people whose behaviour is so egregious in relation to proselytising this pernicious ideology, this lethal nihilistic death cult ideology, which gets magnified inside prison particularly when you have a supply of young, impulsive and often highly violent men, that they need to be completely incapacitated from being able to proselytise to the rest of the prison population," Acheson told the Commons justice select committee on Wednesday.

The development of the special units is a step away from the 50-year-old policy of dispersing the most dangerous terrorist and criminal prisoners throughout the network of high-security jails. Acheson, a former Home Office official and prison governor, including in Northern Ireland's Maze prison, said the review team spent more time talking about the concentration of highly dangerous Islamic extremists versus their dispersal than any other issue. He said the group of hardcore jihadis that need to be separated had not all been convicted of terrorist offences; some had been convicted of criminal offences and had developed into extremists while in custody.

Acheson said they "tested the idea to destruction" over concentration versus dispersal and visited Maghaberry prison's Roe house, the "prison within a prison" that holds some of Northern Ireland's most high-profile terrorist prisoners. They visited prisons in the Netherlands, France and Spain where they are also starting to separate their jihadi prisoners to beneficial effect. He said a sophisticated approach had to be taken in which each prisoner had an individual deradicalisation

programme and the units were not seen as places where people would stay. Acheson told the MPs that if the special units were only punitive then they would fail and would create all the conditions for magnifying the sense of grievance that fuels some Islamic extremist behaviour. Although some will claim the special units are Britain's mini-Guantánamos, Acheson said: "It is not about prisons for Muslims or prisons for terrorists. It is a nuanced response that holds out the possibility of redemption." Gove told the MPs he was "very sympathetic" to the recommendations Acheson had made but the plan would need the backing of the new home secretary. The review, which will only be published in a short summary, makes 65 recommendations and is sharply critical of the current approach for dealing with radicalisation inside prisons. Its recommendations include the recruitment of more Muslim prison officers and much better Prevent training for staff.

Satellite-Tracking Schemes for Offenders to be Trialled This Autumn

Alan Travis, Guardian: Pilot schemes involving the satellite tracking of about 1,000 criminals will begin this autumn – but they will not include the "weekend jail" scheme highlighted by the prime minister in his recent prisons speech. The schemes will focus on using the next generation of location-monitoring electronic GPS tags for defendants on bail who might otherwise be remanded in prison. The pilots are intended to give the courts an option to toughen community orders and encourage prison governors to make greater use of temporary release schemes. However, they will not include plans to test the introduction of weekend-only prisons, which David Cameron floated in his prisons speech earlier this year. He said the new tags could "help some offenders with a full-time job to keep it, and just spend weekends in custody instead".

A justice ministry source confirmed the weekend-only prison option will not be tested in this year's pilot schemes, and that work on the plan is only in the "very early" stages. "This is being considered. No decisions have yet been made," the source said. However, the Ministry of Justice is "exploring" how satellite tracking could provide additional safeguards "that might enable offenders, some of whom may be women with babies, to be given a community sentence where at present they would be sent to custody". In his prisons speech, Cameron said it was a "sad, but true, fact" that last year 100 babies were living in prisons in England and Wales.

The latest satellite-tracking pilot schemes will last for 12 months and will take place in eight police force areas across the Midlands and in south-east England. Plans to introduce satellite tracking of offenders were first announced 12 years ago. The technology was tested in official trials that concluded in 2007 and questioned whether the benefits could be delivered at a price that justified a national rollout of the scheme. The justice minister, Dominic Raab, announced the details of the new schemes in a letter to the justice select committee. He said they would be used to test the GPS tags on a range of offenders and suspects.

However, the timing of the pilots means that only offenders who can already be tagged under existing primary legislation can take part. A spokesperson for the Ministry of Justice said: "Earlier this year we announced our intention to launch a GPS tagging pilot to help us develop new approaches to the management of offenders in the community and help reduce reoffending. "GPS tagging will allow us to monitor the movements of high-risk and persistent offenders who often cause so much harm in our communities. It will contribute to the creation of a safer society with fewer victims. This work is in its early stages and the results will be used to help inform future use of satellite tags." The GPS tagging pilot schemes are separate from the delay-hit programme to provide a new generation of electronic tags to be used for the up to 14,000 offenders who are already subject to this monitoring at any one time. A decision was taken in February to terminate a £32m contract to develop

a bespoke electronic tag in favour of buying off-the-shelf tracking technology.

Human Rights Group Condemns - Prevent Anti-Radicalisation Strategy

Owen Bowcott/Richard Adams, Guardian: The government's Prevent strategy aimed at combating homegrown terrorism is stifling freedom of expression within the classroom and risks being counterproductive, a human rights report warns. Children as young as four are being wrongly identified as having been radicalised simply because of the way they pronounce words or because of clothes they wear, the study by Rights Watch UK alleges. Its release on Wednesday 1307/2016, coincides with the publication of a study by Ofsted, the schools inspectorate, which warns that many further education colleges and private training providers are failing to comply with the government's anti-radicalisation programme, leaving students vulnerable to exposure to extremism. In nearly half the institutions inspected, Ofsted found colleges lacked the policies to deal with student access to extremist websites through their computing networks, while others failed to check or monitor external speakers as required by Prevent.

While 22 colleges and providers visited by Ofsted had properly implemented the procedures required, another 13 providers were barely meeting the regulations. Two private providers had failed to implement any parts of Prevent, despite their legal obligations to do so since September last year. The two reports adopt opposed views on the benefits of Prevent in schools and colleges. The Counter-Terrorism and Security Act 2015, promoted by Theresa May's Home Office, requires teachers from the childcare sector up to university to identify apparent signs of student extremism and refer youngsters to the government's deradicalisation programme, known as Channel.

The Rights Watch investigation suggests it is counterproductive, driving children to discuss terrorism, religion and identity issues outside the classroom and online where simplistic – and jihadist – narratives go unchallenged. Among new cases highlighted by the report, entitled Preventing Education? Human Rights and UK Counter-Terrorism Policy in Schools, is that of an eight-year-old Muslim child from east London who was "referred for intrusive questioning without his parents present" because of an apparent misidentification of an Arabic name on his T-shirt. It carried the name Abu Bakr al-Siddique, an early convert to Islam, but was misread by school staff as being a reference to Abu Bakr al-Baghdadi, the leader of Islamic State. After the incident, Rights Watch said, the child was reluctant to return to school or engage in classes. In another incident, a 16-year-old from Hampshire with special needs was referred to Prevent after borrowing a book on terrorism from the school library. The teenager's mother was asked questions by Prevent officials about whether he was being radicalised. She told Rights Watch: "If a child isn't allowed to take a book out of a library and read it, what do they have it for? If that book is in a library any student can go and read it, then if he can't read it, who is allowed to read it?"

The report quotes an east London teacher, Rob Faure Walker, who said: "Numerous students have said that they are scared to talk openly with adults now … I have got no doubt that Prevent isolates Muslim students." A sixth-form student, identified only as Muniadiah, told Rights Watch she was scared to speak out because the promotion of "British values" made her worry that she might say "something too extreme or someone might misunderstand … and report you to Prevent". The report also refers to previous controversial cases such as the four-year-old judged to be at risk of becoming a terrorist because "a teacher thought his pronunciation of 'cucumber' sounded like 'cooker bomb'"; the child questioned for using the word "l'écoterrorisme" in a French lesson discussing environmental tactics; and the 17-year-old referred to Prevent for expressing solidarity with Palestine after handing out leaflets highlighting water shortages in Gaza. "At a time when effective and lawful counter-terrorism poli-

cies are more important than ever, the UK government's Prevent strategy is instead leaving a generation of young Britons fearful of exercising their rights to freedom of expression and belief," the director of Rights Watch UK, Yasmine Ahmed, said. "Our research has found that Muslim children across the United Kingdom are self-censoring for fear of being reported under Prevent. Their fear is not unwarranted. We have uncovered a number of instances where children have been referred to Prevent for legitimately exercising their right to freedom of expression in situations where they pose no threat to society whatsoever."

Rights Watch calls for the Prevent strategy in schools to be abandoned, however, in response to its report, a government spokesperson said: "Schools should provide a safe space for debate and be places where young people can discuss any issue and develop the knowledge to see extremist ideologies for what they are and challenge them. The Prevent duty is about safeguarding children from extremist ideologies, not about shutting down debate – to suggest otherwise is just wrong. "Since 2011 more than 400,000 people, including teachers, have received training on how to recognise the signs of radicalisation and what steps they should take. Our recent teachers' omnibus survey shows the impact of that with 83% per cent of school leaders confident in how they should implement the Prevent duty. We have also published a range of advice and resource materials via our Educate Against Hate website."

The Ofsted report, in contrast to that of Rights Watch, said: "Too many providers see the Prevent duty as little more than a 'tick-box exercise' and do not regard it as an important part of their responsibilities towards learners." Paul Joyce, Ofsted's deputy director for further education and skills, said: "It is concerning that in some colleges and providers the progress made in implementing the duty has been slow. It is worrying that inspectors saw examples of poor practice that I've no doubt would shock parents and learners alike."

In one case highlighted by the report, a student was able to circumvent computer firewalls and access an Isis video showing a person being beheaded. "The learner had been watching the video for some time before being challenged by a teacher walking through the [resource centre]. The teacher made the learner close the web page. The learner showed no remorse about what she had done. The learner received no support or counselling from the college and was not reprimanded in any way," the report said. Ofsted also found that six of the colleges had no arrangements to check the suitability of external speakers, while nine providers allowed external speakers to appear without following their own monitoring procedures. But Ofsted did praise some institutions for their efforts, including Luton sixth-form college for developing influential links with local groups as well as the borough council. David Corke, the director of education and skills policy at the Association of Colleges, said: "Colleges have been working incredibly hard to implement the duty and they will continue to do so as the threat of radicalisation and terrorism is ever present."

Improving People's Health Can Prevent Offending

Before coming into political office I worked in occupational therapy, which left me with a lasting impression of the importance of providing tailored support to individuals to give them the opportunity to become active members of society. I understood what the health service and the justice system have in common: our most deprived communities are those most likely to experience poor health outcomes and high levels of crime. Improving people's physical and mental health can help to reduce and prevent offending. People should be held to account for their behaviour, but thereafter our justice system and other key services should aim to support them to take their place as active and responsible contributors to society.

This principle underpins our approach to transforming the way we deal with women in prison, with a move towards a model of custody that helps to maintain links with the community. Evidence tells us that housing women in smaller, community-based units closer to their families, and providing additional support to address underlying issues, is what we need to do to stop them from committing further crimes. In certain cases, custodial sentences will always be required and it is critical that we ensure that custody provides opportunities to help people turn their lives around. The Scottish prison service has a renewed focus on the delivery of purposeful activity in our prisons and it is committed to working in partnership with health and social care and to improve the health and wellbeing of people in custody.

For the vast majority of people who offend, custody is not the best approach. I want to see prison used less frequently and a stronger emphasis on robust community sentences. This is not about being soft on crime, it is about being smart by addressing the factors that cause reoffending. We know that the provision of flexible and coordinated approaches, working with people as individuals with strengths, needs and aspirations rather than simply seeing them as "offenders", can help them to make positive, lasting changes in their lives. There is growing acceptance and support for this agenda and I want Scotland to seize this opportunity to make a decisive shift in how we tackle the factors that cause reoffending and help people to transform their lives and benefit our communities. *Michael Matheson, Scottish Government Justice Secretary*

Phillip Harkins Case Referred to Grand Chamber ECtHR

Jurisdiction has recently been relinquished in favour of the Grand Chamber of the European Court of Human Rights in the following case: Harkins v. the United Kingdom (application no. 71537/14), concerning an extradition order to face trial for first-degree murder in the United States of America (USA). The applicant, Phillip Harkins, is a British national who was born in 1978 and lives in Manchester (the United Kingdom).

Mr Harkins is wanted for murder in the United States of America. Accused of having killed a man during an armed robbery attempt together with an accomplice, he was indicted in the USA in 2000. Mr Harkins was arrested in the UK in 2003 and the US authorities sought his extradition. In a Diplomatic Note issued on 3 June 2005 the United States Embassy assured the United Kingdom Government that the death penalty would not be sought. In June 2006 the British Secretary of State ordered Mr Harkins' extradition. He complained unsuccessfully before the British courts that, if extradited, he risked execution or a sentence of life imprisonment without parole. In 2007 the High Court found that there was no risk of execution if Mr Harkins were to be extradited and, in 2011, it found that the life sentence without parole imprisonment did not violate Article 3 (prohibition of inhuman or degrading treatment) of the European Convention on Human Rights.

In the meantime, in 2007, Mr Harkins had applied to the European Court of Human Rights for the first time (Harkins and Edwards v. the United Kingdom, no. 9146/07). In January 2012 the Court found that Mr Harkin's extradition would not violate Article 3 of the European Convention. It rejected as inadmissible the complaint concerning the alleged risk of the death penalty, considering that the diplomatic assurances, provided by the US to the British Government were clear and sufficient to remove any risk of Mr Harkins being sentenced to death if extradited. As concerned his complaint about life imprisonment without parole, the Court was not persuaded that it would be grossly disproportionate for Mr Harkins to be given a mandatory life sentence in the US. He had been over 18 at the time of his alleged crime, had not been diagnosed with a psychiatric disorder, and the killing had been part of an armed

robbery attempt – an aggravating factor. Further, he had not yet been convicted, and – even if he were convicted and given a mandatory life sentence – keeping him in prison might continue to be justified throughout his life time. And if that were not the case, the Governor of Florida and the Florida Board of Executive Clemency could, in principle, decide to reduce his sentence. Following this judgment, Mr Harkins raised further issues domestically, which ultimately resulted in a decision by the High Court in November 2014. The High Court principally refused to re-open the proceedings, finding that the ECtHR judgments in the cases of Vinter and Others v. the United Kingdom2 (nos. 66069/09, 130/10 and 3896/10) of July 2013 and Trabelsi v. Belgium3 (no. 140/10) of September 2014 had not recast Convention law to such an extent that Mr Harkins' extradition would result in a violation of Article 3 of the Convention.

Mr Harkins then – on 11 November 2014 – applied to the European Court a second time. Relying on Articles 3 (prohibition of inhuman or degrading treatment) and 6 (right to a fair trial) of the Convention, Mr Harkins complains about his extradition to the United States, alleging that a firstdegree murder conviction in the United States carries a mandatory sentence of life in prison without parole. Mr Harkins' extradition was suspended on the basis of an interim measure granted on 13 November 2014 by the European Court of Human Rights under Rule 39 of its Rules of Court, which indicated to the British Government that he should not be extradited to the USA until further notice. The case was communicated4 to the Government of the United Kingdom, with questions from the Court, on 31 March 2015. At the same time, the Chamber decided to grant the case priority under Rule 41 of the Rules of the Court. A statement of facts submitted to the Government is available on the Court's website. On 5 July 2016 the Chamber to which the case had been allocated relinquished jurisdiction in favour of the Grand Chamber. A Grand Chamber hearing will take place in Strasbourg on 11 January 2017.

EU Law Backs French Woman Sacked For Wearing Hijab *Qwen Bowcott, Guardian*

A French design engineer who was dismissed for wearing an Islamic headscarf should have been allowed to cover her head at work, a senior EU lawyer has said. In an influential preliminary opinion, an advocate general at the European court of justice found in favour of Asma Bougnaoui who lost her job with Micropole SA, a French IT consultancy, in June 2009. The advocate general has advised that the Muslim woman's dismissal amounted to discrimination on the grounds of religion or belief. Bougnaoui, who had worked for Micropole for a year, was fired without prior warning. After she had travelled to a meeting with clients at a big French insurance firm in Toulouse, the insurance firm complained to her superiors that her headscarf had "embarrassed" some of its staff working with her. The insurance company also demanded "no headscarf next time". Micropole asked Bougnaoui to comply with the request for no headscarf on her next visit. When she refused she was dismissed, and she challenged her dismissal in the French courts. A French industrial tribunal and an appeals court compensated Bougnaoui over the fact that she was fired without prior warning but ruled that her dismissal was founded on a"real and serious cause". Micropole had said it felt her wearing a headscarf hindered the company's development because it meant the company could not properly interact with its client.

The French supreme court, before ruling on the case itself, had asked the European court of justice to examine the case. The ECJ was asked to advise on whether a requirement not to wear an Islamic headscarf when providing IT consultancy services could be regarded as a "genuine and determining occupational requirement", therefore falling outside the scope of the prohibition on discrimination on the grounds of religion or belief provided for by a EU directive. But advocate Eleanor Sharpston, one of the senior British members of the judiciary on the Luxembourg court, said the EU directive should be interpreted strictly and that Bougnaoui's dismissal amounted to direct discrimination on those grounds. The ECJ said there could be no exemptions from the EU directive preventing discrimination on the grounds of religion or belief. In a statement, it said: "The advocate general rejects the idea that a prohibition on employees wearing religious attire when in contact with customers of their employer's business may be necessary for the protection of individual rights and freedoms necessary for the functioning of a democratic society." Sharpston said a company policy requiring an employee to remove her hijab when in contact with clients constituted unlawful direct discrimination.

France has some of the toughest legislation on headscarves in Europe. The veil, or niqab, is banned in all public spaces. In 2004, France banned girls from wearing simple headscarves, or hijab, in state schools – and all other religious symbols, such as crosses or turbans. By law, French public sector workers, including hospital staff, must be seen as neutral and cannot show religious belief with an outward symbol. This means, for example, that some nurses who wear the hijab must take it off before arriving at work and put it back on when they leave. This law applies only to the public sector. A series of legal issues over private companies' attitudes to staff wearing headscarves has led to recent discrimination complaints brought before French courts.

Sharpston said: "It seems to me that in the vast majority of cases it will be possible, on the basis of a sensible discussion between the employer and the employee, to reach an accommodation that reconciles adequately the competing rights of the employee to manifest his or her religion and the employer to conduct his business. "Occasionally, however, that may not be possible. In the last resort, the business interest in generating maximum profit should then in my view give way to the right of the individual employee to manifest his religious convictions. Here, I draw attention to the insidiousness of the argument, 'but we need to do X because otherwise our customers won't like it'. Where the customer's attitude may itself be indicative of prejudice based on one of the 'prohibited factors', such as religion, it seems to me particularly dangerous to excuse the employer from compliance with an equal treatment requirement in order to pander to that prejudice." Sharpston said the EU directive was intended "to confer protection in employment against adverse treatment (that is, discrimination) on the basis of one of the prohibited factors. It is not about losing one's job in order to help the employer's profit line." Advocate general opinions are usually followed when the ECJ finally delivers its subsequent full judgment. ECJ rulings are legally binding on all EU member states and will be enforceable in the UK until British withdrawal has finally been achieved. Boris Johnson criticised the powers of the ECJ during the EU referendum campaign.

Australia: Adrian Bayley's Jail Term Cut by Three Years On Appeal

Australian Associated Press: Jill Meagher's killer and serial Victorian rapist, Adrian Ernest Bayley, has had three years cut off his jail term after a conviction for raping a sex worker in 2000 was overturned. Bayley appealed two rape convictions and sentences that increased his non-parole period to 43 years. Victorian court of appeal judges Marilyn Warren, Mark Weinberg and Phillip Priest on Wednesday reduced his sentence to 40 years and acquitted him of one rape conviction – but dismissed his appeal against the other conviction.

Bayley had appealed two rape convictions for attacks on women in St Kilda in 2000 and 2012. At a hearing in March, Bayley's barrister, Saul Holt QC, said there were weaknesses in evidence

linked to identification in the trial over the 2000 rape of a sex worker in St Kilda. The court of appeal found the identification evidence should have been excluded from Bayley's trial because it had "virtually no probative value. Without the identification evidence, there was no evidence upon which a jury could find Bayley guilty," the judges said. Bayley's conviction over the 2000 rape was one of three rape trials that had increased the non-parole period on his life sentence from 35 years to 43 years. The 44-year-old received the life sentence for the 2012 rape and murder of Meagher.

Having quashed the 2000 rape conviction, the court of appeal fixed a new non-parole period of 40 years. The judges dismissed Bayley's appeal against his conviction over the 2012 rape of a Dutch backpacker on the grounds that telephone evidence was flawed. The court of appeal rejected this argument and found the telephone records were clearly relevant. In re-sentencing Bayley, the judges said his offending was "utterly abhorrent" and noted his long history of sexual assaults. "The history left little room for optimism concerning his prospects for rehabilitation," they wrote.

Detention Under Mental Health Act

Paul Beresford MP: As an ethnic minority immigrant to this country, I am intrigued by the way the House works. We have had two days of a deeply serious international debate, and now an ethnic minority immigrant has an opportunity to put a point on a small but important issue that is almost local by comparison. I am referring to the possibility of a small change in the Mental Health Act 1983 to enable our policemen and women to act somewhat more promptly in the care of any person they find to be in need of mental health assessment and immediate care. I raised this issue in a ten-minute rule Bill in 2014. I did not proceed, as I was informed that there was an ongoing review. That review has come and gone, and I have read it, but this small point was not referred to in it. However, there will possibly be a negative change—from my point of view—in the Policing and Crime Bill as it progresses through the other place.

I was initially prompted to seek changes having seen the need for them first hand. I was on a police parliamentary scheme in 2014, as part of which I went round Wandsworth on foot or by car. I joined two young uniformed police officers in their response car. The first call was a dash to a flat on the 14th floor of a council residential tower block. The mother of the household nervously let the officers in to see her daughter—aged 22—who was standing on the window ledge and threatening to jump. It was quickly established that the daughter had a short history of suicide attempts. With the back-up of two plainclothes officers, and with great expertise, the young woman was persuaded to come down. A young female officer sat on the bed beside her, and they calmly discussed the problem. The police officer suggested the young woman might want to go to a place of safety for psychiatric and medical help. That was refused, and when the woman was pressed a little further, it was followed by agitation and threats to jump out of the window.

Meanwhile, police officers outside the flat had contacted the psychiatric unit at St George's hospital for assistance. After a couple of hours, an individual from the hospital arrived with an ambulance and crew. There was further alarm and rejection, and a struggle ensued, but in due course this sad lady was transported to the hospital as a designated place of safety. The whole pantomime had occupied five police officers and three NHS staff, and it had taken about three to four hours to sort out. It was obvious from the beginning that the police themselves could have taken care of the young lady very quickly, therefore reducing the police and NHS manpower hours needed and the risk of the young lady leaping out of the window.

I have a second personal case, which involves a Mole Valley resident. A lady in a block of flats has been threatening neighbours with bizarre and often aggressive behaviour to

such a degree that some other residents actually fear for their lives, let alone obtain any peace at any hour of the day. Contact between the mental health team and the police has not coincided until very recently. I asked the police officer in charge about section 136. Predictably, I was told the lady's home was a private place, so no police action was legally possible. From discussions with Met police officers, I have found that that situation is far from unusual.

A more tragic case was the death of Martin Middleton in 2010. He was taken to a Leeds police station by officers who had visited him in his home and noted his serious preparations for committing suicide. The police officers believed they had arrested Mr Middleton under section 136. When they arrived at the police station, the custody sergeant refused to detain Mr Middleton, as the arrest had taken place in his private residence. The police officers therefore had to take him to what they hoped was some form of safety—a relative's home. Sadly, later that day or the following day, he hanged himself. At the inquest, the coroner had no hesitation in agreeing with Professor Keith Rix, who was called to give expert evidence, that Mr Middleton fell into a category of mentally disordered persons for whom there is no appropriate provision under the Act. Subsequent to raising this issue, I have heard from many front-line police officers and again from Professor Keith Rix, who is an academic psychiatrist and an expert in this area. I still have no doubt that the Act needs amending fully to protect the police and, of course, those suffering a mental illness crisis.

I am reliably informed that in the Republic of Ireland, the Garda Siochana have a clear operational advantage in that, under section 12 of Ireland's Mental Health Act, 2001, where there is "a serious likelihood of the person causing immediate and serious harm to himself or herself or to other persons", a garda can "enter…any dwelling or other premises or any place if he or she has reasonable grounds for believing that the person is to be found there." There are instances recorded in England where the police have had to act outside the boundaries of the law out of concern for the safety of the individual. There are also recognised incidences of the desperate police persuading the person out of their home, and therefore into a public place, to effect an arrest under section 136 and take the person for proper and appropriate care, thus preventing a suicide. Over the 10 years between 1997-98 and 2007-08, admissions to hospital as a place of safety increased from 2,237 to 7,035. The Minister is noted for his quick arithmetic, and he will recognise that that is a threefold increase.

It was calculated that 17,417 people were detained under section 136 in 2005-06. By 2011-12, the overall number of incidences of its use was recorded as 23,500. As I have indicated, although the powers under section 136 are limited to persons who are found by the police in a public place, there is evidence that the powers are sometimes used to remove an affected person from their home. In fact, one London-based social services authority's audited figures indicated that some 30% of section 136 arrests were recorded as having been made at or, just outside, the detainee's home. In other words, in desperation, the police have had to manoeuvre the individual outside their private residence. This is an indication of the desperation of the police to obtain care for disturbed individuals, and hence it supports my desire for a change in the legislation.

Put bluntly, on a strict interpretation of section 136, the admission to hospital of hundreds, if not thousands, of potential suicides is delayed or denied, thus risking their suicide or self-harm, merely because the police, who sometimes have to just observe the situation, cannot act because it is happening in the person's home or someone else's home. In many instances,

as I found in Wandsworth, the police have to spend considerable time waiting until they can obtain a medical practitioner or a health official to give them the nod to transport the patient to care.

One argument against the amendment that I am suggesting is that the police already have sufficient powers. It is quite clear, from my own observation, that that is basically incorrect. The second argument is that it would extend the right of the police to enter people's private properties. Clearly, in those circumstances, that is appropriate because somebody is in need of mental health care, and that is the whole point of the change I am seeking. It is already possible for the police to enter an individual's private home to investigate a possible breach of the peace, assuming that the police would be utilising that eventuality to enter the property. Often, they have to help someone who is clearly suffering mental disorder. In many cases, other residents in the property can allow the police in, but having done so, as in the first case I cited, they are then still unable to act.

In my belief, and in my experience, the police are acting only in the very best interests of the individuals concerned and of the safety of the public, and we should give them the legal mechanism to do so. Doing nothing is not an option. I suggest that a simple solution would be to amend section 136 by simply removing the words "in a place to which the public have access".

I am hopeful of a positive answer from the Minister; I know that he is extremely flexible. I would be happy to work with him to seek a ten-minute rule Bill, or take a different direction through a tiny change to the Policing and Crime Bill in another place. If he has a problem with my suggestion, I would be grateful if he met me and Professor Rix to discuss a solution to help the police to save lives and injuries, and not, as the Department appear to be doing, produce exactly the opposite effect.

New Law to Recoup Crime Money Needed, Say MPs

BBC News: It should be a separate criminal offence to refuse to hand over money and assets derived from crime, a group of MPs has said. The system for enforcing confiscation orders imposed by the courts is not working, a report by the Home Affairs Select Committee added. Only a "paltry" 26p in every £100 is being recouped, the MPs said. The Home Office said it was "making progress" and £1.2bn had been seized between April 2010 and March 2016. But the committee concluded that the system for monitoring suspicious financial activity was overloaded and there were not enough skilled investigators.

Among its recommendations the MPs called for specialist "confiscation courts", with judges able to compel offenders to attend hearings. Non-payment of a confiscation order would be a crime in itself, and prisoners would have to remain incarcerated until all debts were paid. The MPs also called for offenders to have their passport taken away until debts were settled. "To enforce this, we recommend that no criminal be allowed to leave prison without either paying their confiscation order in full, or engaging with the courts to convince a judge that their debt to society is squared," the committee added.

Confiscation orders are issued by courts against convicted offenders and can be applied to any offence resulting in financial gain. But even after an order has been made, there are very few incentives for criminals to either engage with the courts or pay the money back with many choosing instead to extend their prison sentences and avoid paying, the report added. "It appears that some criminals view paying back their proceeds of crime as an option rather than a requirement - essentially a choice between payment and prison," it said.

The report also said: Money laundering was "undoubtedly a problem" in the UK - Poor supervision of the London property market had allowed it to become a safe haven for money-laundering criminals - A database used to log suspicious financial activity was "heavily overloaded and therefore rendered completely ineffective" - A new formula for allocating recovered assets needs to be brought in which ensures that at least 10% of the wealth is returned or donated to the communities which have suffered at the hands of criminals

Committee chairman Keith Vaz said: "At least £100bn, equivalent to the GDP of Ukraine, is being laundered through the UK every year. The proceeds of crime legislation has failed to achieve its purpose." He said the National Crime Agency's main system for reporting suspicious transactions, known as Elmer, was "not fit for purpose", adding that it was capable of managing 20,000 reports a year, but it was currently burdened with 381,882. As of September 2015, the total debt outstanding from confiscation orders was calculated at £1.61bn, although the committee admitted that this figure was "problematic". A Home Office spokesman said: "We are committed to attacking criminal finances, making it harder to move, hide and use the proceeds of crime, as set out in the Serious and Organised Crime Strategy. "And there is clear evidence we are making progress in this effort; the government seized a total of £1.2bn from criminals between April 2010 and March 2016, with more assets recovered in 2015-16 than ever before." The spokesman also said it would consider the recommendations in the report.

Carl Dukes & Lavell Jones Have Their Lives Back And Murder Convictions Tossed

The men — who spent most of the last 20 years in prison after being found guilty of coldly murdering a 23-year-old University at Albany student in 1997 — tasted freedom for the first time in two decades Thursday 14/07/2016 after state Supreme Court Justice Thomas Breslin vacated their convictions in court. New evidence emerged after a man confessed to the slaying of Erik Mitchell, who was shot in the head at point-blank range on Feb. 18, 1997. Their cases now serve as another frightening example of wrongful convictions highlighted by defense attorneys, judges and even prosecutors as a major problem in recent years in New York. "I'm overwhelmed. I'm excited. I'm nervous and a whole bunch of other things that I can't even say right now!" Dukes, 39, told the Times Union outside the Albany County Judicial Center, where he was surrounded by family members. When Breslin announced the convictions had been vacated, Jones, said he "felt like crying a little bit, but I didn't want to. It was unbelievable to hear it." Dukes, 39, and Jones, 38, who were serving sentences of 37 years to life in prison, walked out of an elevator to embraces and tears from Dukes' elated family members, who are based in Albany, and lawyers for Jones, who are from New York City. Dukes said he will be able to celebrate the 21st birthday of his daughter. Jones, fighting tears, said: "It's not a jump-for-joy moment. My son is a grown man now. He was born while I was here." "It's been too long for catching up," Jones added. "I just got to start from where I'm at and try to pick up the pieces now." When asked what the first thing was that he planned to do as a free man, Dukes pulled up his shirt, showed a skinny waist and said, "Eat!" Dukes' family members cheered the release but also expressed anger at police at the sequence of events that led to the men's convictions.

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.