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Skegness Drunk Mobility Scooter Rider Charge Dropped *BBC News*

A man accused of being drunk on a mobility scooter while staging a sit-in at a McDonald's drive-through has had the case against him dropped. Michael Green, 62, began his 40-minute protest after staff refused to serve him in the drive-through lane of a Skegness branch on 1 August. At Skegness Magistrates' Court, he denied being drunk in charge of a carriage under the 1872 Licensing Act. Prosecutors said there was no public interest in continuing the case. The court heard staff at the fast food chain had refused to serve him "for insurance, and health and safety reasons". A security guard photographed the former HGV driver, who is registered disabled after a head injury in 1997, talking to a police officer who attended the scene with a breathalyser. Mr Green, of Clifford Road, Skegness, refused to give a breath specimen. He insisted he was not drunk and that his vehicle was roadworthy, the court heard.

The Crown Prosecution Service (CPS) said: "We do not believe it is in the public interest to prosecute Mr Green. "It may be he was part of some form of disturbance at McDonald's on the day in question, but we do not believe it amounted to any criminal offence." In a statement, McDonald's said it "supported the decision taken by our colleagues based on the risks deemed to be present. It was felt in this instance that it was not safe for the operator of the mobility scooter to be in the drive-through area," the company said. The 1872 licensing act was originally brought in to crack down on anyone caught drunk in charge of a carriage, steam engine, bicycle, a horse or a cow. Mobility scooters are classed as invalid carriages.

Met Police Officer Guilty of Sex Offences With Child *GetWestLondon News*

A serving police officer attached to Ealing Borough will face four years behind bars for sexual activity with a child. PC James Evans was arrested in January following a report made to police, before he was charged with six counts of sexual activity with a child in July. The victim was a girl under the age of 16 and the offences were said to have taken place between December 31, 2015, and January 28, 2016 while the officer was off duty. PC Evans pleaded guilty to all six charges at Isleworth Crown Court before he was sentenced to four years in prison at the same court on Tuesday (August 30). The 26-year-old has also been added to the sex offender's register for life.

Rt Hon Judge Robin Johnson said: "Before any sexual activity, you knew she was a vulnerable young girl. Nevertheless you allowed your own desire to overcome your better judgement. The reason why parliament and the public take this kind of offending so seriously is because the harm caused in these cases is incalculable. Her victim impact statement makes for sad reading, and I have no doubt this episode has caused her serious psychological harm."

Police said that now criminal proceedings have concluded, a misconduct review will take place.Detective Chief Superintendent Matt Gardner, Commander of the Directorate of Professional Standards, said: "It is the duty of police to protect from harm, not to seek to cause it and this duty is especially important for the most vulnerable in our society including children. "PC Evans' behaviour has fallen well short of the high standards that we expect. He has abused the trust placed in him by society and will now have to pay the penalty for his appalling actions in prison."

Mexico Federal Police Chief Galindo Fired Over Michoacan Ranch Killings

BBC News: Mexico's federal police chief, Enrique Galindo, has been sacked following allegations police killed at least 22 suspected members of a drugs cartel. The killings are thought to have taken place last year on a ranch in the western state of Michoacan last year. President Enrique Pena Nieto said he had dismissed Mr Galindo to allow for a transparent investigation. Earlier this month Mexico's National Human Rights Commission accused police of tampering with evidence. One police officer and 42 suspects were killed in the raid on a ranch in Tanhuato in May last year. Officers said they had returned fire in self-defence but the high death toll aroused suspicions. The human rights commission report accused police of planting guns on some suspects and moving bodies to bolster the official version that all the deaths occurred during a gun battle. Mr Galindo and National Security Commissioner Renato Sales have denied anyone was summarily killed and insisted officers used necessary force against highly armed criminals. Police used a Black Hawk helicopter during the operation, reportedly firing some 4,000 rounds into the ranch, known as the Rancho del Sol, during the initial assault.

HMP Maghaberry Prisoner Confined to Cell 'Without Regard For Due Process'

Madden & Finucane Solicitors has complained that one of its clients in Maghaberry Prison was confined to his cell without regard for due process. Nathan Hastings, a prisoner in Roe House - which houses Maghaberry's republican prisoners - was convicted and sentenced to seven days cellular confinement by the prison governor. Mr Hastings' alleged offence is said to have occurred in the wake of the reported disturbances on 10 August. In a statement, the firm said: "It is alleged that Mr Hastings refused a direct order to lock up in his cell.

"The Governor, in conducting the adjudication, saw fit to depart from the Prison Service's own written manual on the conduct of adjudications in a number of material respects and proceeded to convict Mr Hastings without considering all of the available evidence, and without permitting him to obtain legal advice or affording him an opportunity to contest the evidence against him or call witnesses in his own defence. The Governor received extensive written representations from our office on Mr Hastings' behalf yesterday and refused to comply with a deadline of 3pm to return our client to his cell in Roe House. His actions represent the manifestation of an intention by prison authorities to secure a conviction against a Republican prisoner at any cost, irrespective of the weaknesses in their case, and with casual indifference to its own written guidelines or indeed due process.

"As proceedings were lodged in Court late yesterday afternoon and the High Court requested to convene to consider an emergency application for leave to apply for judicial review on Friday evening, those representing the Prison Service confirmed that the Prison Service were reviewing their own decision next Tuesday and promptly returned Mr Hastings to the Republican wing in Roe House in the interim." Irish Legal News 29/08/2016

Northern Ireland: Concerns Raised Over Political Vetting of FOI Requests

Irish News: Freedom of Information (FOI) campaigners have expressed concern over responses to requests being vetted at Stormont by ministers' special advisers. In some executive departments responses to Freedom of Information (FOI) requests are only released after being approved by the special adviser (Spad). FOI legislation was introduced in 2000 and gives people a right of access to an array of information held by public authorities. Often used by campaigners and journalists, it has been used to expose issues including the MPs' expenses scandal and Prince Charles's lobbying letters to ministers.

Maurice Frankel, director of Campaign for Freedom of Information, warned Stormont against putting FOIs through an "explicitly political process. They run the risk of overstepping the line and being seen to be withholding information which ought to be disclosed," he said. "They may be taking a risk by putting it through an explicitly political process, and the question is how are they using this process." He added: "It shouldn't be necessary for ministers or special advisers to be examining responses before they are going out." Almost 3,000 FOIs were sent to the executive in 2015. More than a quarter did not receive a response within the 20 working day deadline or had not been processed. In June last year the Information Commissioner's Office (ICO) issued an enforcement notice to the finance department ordering it to answer all outstanding FOIs over six months old. However, the ICO said the internal FOI process is a matter for individual public bodies. "Freedom of Information law doesn't specify a sign-off process for FOI requests. It is up to individual organisations how they deal the internal process," a spokeswoman said. "Organisations should be responding to requests within 20 days and using the correct exemptions, if any information is withheld."

Spads can each earn annual salaries stretching to more than £90,000. Politically appointed but paid from the public purse like civil servants, Spads have been a source of controversy in the past over wages and accountability. Stormont departments can have varying approaches, but it's understood some send all FOI responses to their private office for approval, with many being checked by Spads. Each of the eight executive departments run by the DUP and Sinn Féin did not respond to requests for a comment. Only the Department of Justice, headed by independent MLA Claire Sugden, outlined its FOI response process. A spokesman said: "Responses are only forwarded to the ministerial/press office or Spad for their approval where it is felt they would be affected in some way by the public release of the information requested." He added that FOI responses using the exemption 'prejudice to the effective conduct of public affairs' must be forwarded to the minister for approval.

Wales: 'Raise Age of Criminal Responsibility if Powers are Devolved'

The age of criminal responsibility should be raised from 10 to 12 to help prevent reoffending, a Plaid Cymru assembly member has said. Steffan Lewis said such a move could be a benefit of devolving justice powers - which are currently run in Westminster - to Wales. David Davies, Tory MP for Monmouth, criticised the idea. He said serious offences committed by 10 and 11-year-olds should be dealt with by the criminal justice system. Mr Lewis, a South Wales East AM and Plaid's criminal justice spokesman, said: "Serious offences committed by children are extremely rare, but can, of course, be devastating for the victims. "The focus should always be on the safety and security of our communities, but the answer is not criminalising children at a young age. Through early intervention and rehabilitation we can stop children being drawn into a lifetime of reoffending." He said the UN Committee on the Rights of the Child had "made it clear that a minimum age of criminal responsibility below the age of 12 years is not acceptable". "The law must be changed to be in line with international guidelines as soon as possible," he said, saying he would back a consultation on increasing the age beyond 12. A public debate is needed, drawing on all available evidence, on what age it is appropriate to hold children fully criminally responsible for their actions," Mr Lewis said. Calling for a focus on children's wellbeing, he said: "With justice devolved we could do so and meet international standards."

Proposals for the devolution of youth justice were made by the Silk Commission, which looked at the future of the devolution settlement in Wales in 2014. But the idea was not supported

by the UK government and did not make it to the Wales Bill on further devolution, currently making its way through Parliament. Conservative MP Mr Davies said: "First of all I wouldn't want to see youth justice being devolved, as we have already got problems with cross border services where we have got different policies in place in England and Wales. "If people commit offences in one jurisdiction and live in another it is likely to cause all sorts of legal problems." He also said he would "not want to raise the age of criminal responsibility" and serious offences carried out by children aged 10 and 11 "need to go through the criminal justice system". "The boys that killed James Bulger wouldn't have been prosecuted if the age of criminal responsibility had been 12," he added. Robert Thompson and Jon Venables were aged 10 at the time of the murder in 1993. It is understood the UK government has no current plans to alter the age of criminal responsibility. The Ministry of Justice declined a request for comment.

Human Rights Defenders' Work Vital For Redress to Victims of Enforced Disappearance

Last March I published an Issue Paper on Missing persons and victims of enforced disappearance in Europe, aiming to help Council of Europe member states improve their law and practice. Much remains to be done, considering that thousands of cases of missing persons and enforced disappearance remain unresolved in Europe, perpetuating the suffering of their loved ones, which is passed on from one generation to another. Addressing these questions is often dependent on governments' political agendas, which explains the slow progress made so far. As I learned last June at a roundtable I organised in Strasbourg with a group of human rights defenders active on these issues, they face a number of serious obstacles to their work.

Persisting obstacles in addressing cases of missing persons and enforced disappearance. Cases of missing persons and enforced disappearances where the victims remain unaccounted for are not an issue of the past, irrespective of when they occurred. Indeed, besides continuous grief, families face various problems years after their loved ones have gone missing. In many countries, relatives are compelled to declare the death of missing or disappeared persons whose fate is not yet clarified in order to enjoy their rights, such as those related to inheritance and social welfare. This is often very traumatizing for the relatives, as they sometimes feel they are being forced “to kill” their loved ones.

Usually impunity for crimes of enforced disappearance goes hand in hand with impunity for other serious human rights violations and results in the recurrence of violations. Impunity sometimes has old roots, notably when past violations have not been acknowledged by the states concerned. Often it appears that investigations into cases of enforced disappearances are not effective, for a variety of reasons: the qualification of crimes is not adequate (e.g. often investigated as kidnapping or a crime against humanity); the case may be closed due to statutes of limitations after lengthy investigations; there may be a reluctance to punish members of the state executive; the protection of witnesses and victims is inadequate. As a result, perpetrators are not held to account while some of them even continue to serve in law enforcement, security or military structures.

Another concern relates to the lack of or very slow implementation by respondent states of the judgments of the European Court of Human Rights in cases of missing persons and enforced disappearance, thus failing to fulfill their obligations under the European Convention on Human Rights. Even in cases where mass graves have been located and bodies of missing and forcibly disappeared persons have been identified and handed over to their relatives, investigations have not taken place and perpetrators have not been punished. In several European countries, there are no adequate legal provisions regulating the situation and status of missing or forcibly disappeared

persons and their relatives. Even when specific laws are adopted, they do not always serve the purpose and are not adequately implemented, as, for example, in Bosnia and Herzegovina.

Situation of human rights defenders working on transitional justice issues. Civil society actors and other human rights defenders are crucial to human rights, democracy and the rule of law. If they are not able to operate, then these values and standards are under threat. These actors perform essential tasks in: making the human rights systems function by bringing complaints before domestic and international mechanisms; helping victims of human rights violations to access remedies and obtain other forms of support and reparation; advocating for changes in policy and legislative frameworks and their implementation; and raising public awareness on human rights. In some cases, NGOs and individual human rights defenders are the only recourse for victims and vulnerable persons.

However, the situation and the work environment of human rights defenders are negatively affected by various trends in Europe. Depending on the country, I have noted that obstacles to their work may take the form of: legal and administrative restrictions impeding the registration of human rights organisations and their access to funding; burdensome financial and reporting requirements; judicial harassment; smear campaigns; threats and intimidation; abusive control and surveillance; confiscation and destruction of working materials; unlawful arrest or detention; ill-treatment; disappearance and death. The absence of effective investigations into violations committed by state and non-state actors against human rights defenders targeted because of their human rights work remains a major problem in a number of European states. I have noted with concern that in certain countries, such as in Azerbaijan, Russia and Turkey, increased restrictions in the field of freedoms of association, peaceful assembly and expression have resulted in a sharp deterioration of the working environment for human rights defenders.

Human rights defenders and organisations working on transitional justice issues, including in conflict and post-conflict contexts, face intimidation, pressure, threats and attacks as they challenge the mainstream national narrative in their community or country. Associations of relatives of missing persons or victims of enforced disappearance as well as human rights NGOs play a vital role in establishing the facts and pursuing justice, including by advocating for the adoption of adequate legislation, contributing to the search for and identification of remains, providing legal and psychological aid to victims, and engaging in peace-building processes.

However, they often do so at great personal risk, having been subjected to reprisals, harassment and even enforced disappearance in some cases. For example, the Committee Against Torture and the Joint Mobile Group which are active in combating impunity and in following cases of missing persons and enforced disappearance in the North Caucasus in Russia, in particular in Chechnya, were subjected to numerous physical attacks in recent years. In situations of armed conflict or acute crisis, human rights defenders play an essential role in documenting human rights violations and in helping victims. They also however face difficulties in accessing areas affected by on-going violence, such as South-Eastern Turkey, or by an armed conflict as is currently the case in the east of Ukraine.

The way forward. Further to the recommendations that I made in the Issue Paper on Missing persons and victims of enforced disappearance in Europe, I would like to underline some important points drawn from the round-table with human rights defenders on this topic in order to address some of the outstanding issues. Given the gravity of the human rights violations, clarifying the fate of missing persons and victims of enforced disappearance should be a matter of priority for the governments concerned, especially considering that this task is increasingly difficult with the passing

of time. The involvement of international and European actors, including the European Union and the Council of Europe, is crucial for transitional justice issues and for providing assistance to the states concerned. In addition, National Human Rights Institutions need to be more active on issues related to cases of missing persons and enforced disappearances, notably with regard to the execution of judgments of the European Court of Human Rights.

States should improve judicial mechanisms, notably by defining enforced disappearance as a continuous crime in national law and by ratifying the UN Convention for the Protection of All Persons from Enforced Disappearance. In addition, law enforcement officials, judges and lawyers should be trained on the importance of combating impunity, as well as standards, legal obligations and good practices related to cases of enforced disappearances. The application of the universal jurisdiction principle to international crimes could be considered in relation to cases of enforced disappearance, as it may contribute to identifying and punishing perpetrators, and to recovering remains.

There is also a range of non-judicial mechanisms that could be put into place. For example, a system of reporting cases of missing persons and enforced disappearance and of verification of such reports could usefully be established at national level. The mapping of mass graves and exhumation of remains necessitates close co-operation between various actors, including families of the victims, local communities, judicial and law enforcement authorities as well as civil society organisations. Instead of having to declare the death of their relatives, the families of missing persons and forcibly disappeared persons should be issued a certificate of absence. Last but not least, the international community needs to engage more in building the capacity and expertise of human rights NGOs active in this area. At the same time, human rights defenders should continue interacting and exchanging experiences in this respect and help each other to work on cases of missing persons and enforced disappearances.

Nils Muižnieks, EU Commisioner for Human Rights

Denis Donaldson Inquest Adjourned For Two Years *BBC News*

An inquest into the death of a Sinn Féin official and republican informer has been adjourned for two years. Denis Donaldson was murdered in County Donegal in April 2006, months after being exposed as an agent who worked for the police and MI5 for 20 years. He was once a key figure in Sinn Féin's rise in Northern Ireland politics. The coroner adjourned the inquest until a separate criminal investigation is concluded. The inquest has previously been adjourned at least 19 times. Gardai Superintendent (Supt) Michael Finan told the coroner on Wednesday that a "continuing, active, significant investigation" was ongoing. He said an individual who had already appeared before the courts was due back in the Special Criminal Court in October and three arrests had been made in the last four months. Supt Finan said there was a "continuing fruitful liaison" with an external police force.

Never so many adjournments: The coroner said he believed there had never been so many adjournments in a coroner's court. "Hopefully, the investigation will have a result and we will get justice for the family", he added. A barrister said he echoed the coroner's sentiments and added that the family's quest for justice had never been forgotten. No one from the Donaldson family was present, nor was the family's legal representation there. Last month a 74-year-old man appeared in court in Dublin accused of withholding information about Mr Donaldson's murder. Mr Donaldson, 55, was shot dead at an isolated cottage near Glenties. Three years after he was killed, the dissident republican Real IRA said they were responsible. Mr Donaldson's family have alleged that police officers who knew about his secret role may have exposed him as an agent and contributed to his death.

John Lennon's Killer Mark Chapman Denied Parole Again *BBC News*

Mark Chapman has been denied parole for a ninth time. Chapman, 61, shot the former Beatles star in New York in 1980. He told the parole board he now accepted his crime was "premeditated, selfish and evil". But they told him: "In spite of many favourable factors, we find all to be outweighed by the premeditated and celebrity seeking nature of the crime." His release would "be incompatible with the welfare of society" and "undermine respect for the law", they concluded. Chapman was sentenced to 20 years to life in jail in 1981 after pleading guilty to second-degree murder. Lennon was aged 40 when he was shot four times outside a Manhattan apartment block. According to the ruling released by the New York Department of Corrections and Community Supervision, the board considered factors including Chapman's "personal efforts to study and educate yourself", the "network of support and release plans" and "official opposition". They said: "From our interview and review of your records, we find that your release would be incompatible with the welfare of society and would so deprecate that seriousness of the crime as to undermine respect for the law." Chapman will next be eligible for parole in August 2018.

Aswad Browne v The Parole Board of England and Wales

The Claimant, a determinate sentence prisoner, recalled to prison following his release on licence, seeks Judicial Review of the decision of the Parole Board of England and Wales ("The Defendant") by letter dated 11 August 2015 ("The DL") not to direct his re-release following an oral hearing convened on 25 July 2015. The Claimant was sentenced on 15 June 2011 to six years and three months' imprisonment for burglary and assault occasioning actual bodily harm ("ABH"). He was initially released on licence on 25 March 2014 but recalled on 12 January 2015 following his arrest for two breaches of a non-molestation order imposed upon him in November 2014. The Claimant was convicted by his plea on both counts at Basildon Magistrates Court on 12 January 2015 and sentenced to 56 days in prison (28 days for each count). Permission to seek judicial review was granted on the papers by Mr. David Elvin QC sitting as a deputy High Court Judge who, when granting permission, made the following observations: "While the Court generally leave matters of judgement on release to the Parole Board, the claim is on balance arguable."

The Claimant's grounds of challenge are three-fold as follows: i) Failure to apply a presumption in favour of release; ii) Unfair assumptions against the Claimant made by the Defendant in the absence of a fair procedure for the determination of disputed matters or proper enquiry and investigation contrary to Common Law and / or Article 5(4) of the European Convention of Human Rights – that is to say procedural unfairness; iii) Irrational or wrongful assessment of a high risk of serious harm to the Claimant's ex-partner rendering it necessary to detain and / or failure to have regard to material evidence and considerations.

In summary, the Defendant's response to these three grounds is as follows: i) There was no necessity as a matter of law for the Defendant expressly to refer to the presumption in favour of release. Moreover, it is clear from the reasoning contained in the DL that the Defendant did in fact apply such a presumption, but having assessed the Claimant's risk, it concluded, based on all the available evidence, that that risk was "not manageable in the community" thus necessitating detention. ii) The Defendant made no assumptions and drew no inferences concerning the veracity of the assault allegation, nor was it obliged so to do. In any event the decision was not based on the disputed allegation alone but on a number of relevant considerations. iii) The assessment of risk was within the boundaries of rationality and took into account all relevant considerations.

Ground 1: What is said on behalf of the Claimant is that there is nothing in the Defendant's reasoning in the DL that demonstrates that consideration was given to the presumption in favour of release or that the Defendant even recognised that that applied in this case. In this regard it is to be noted that the Defendant was not reminded of the presumption during the course of the oral hearing. Moreover, such a consideration cannot simply be assumed in the absence of such a reminder, particularly as in many cases before the Defendant, concerning the release of indeterminate sentence prisoners, there is no such presumption. Thus, it is argued, the failure to apply the presumption constitutes a breach of the Defendant's own duty and is a clear legal error.

However, to my mind, the absence of an express reference to the presumption in favour of release does not necessarily mean that the Defendant failed to have regard to it. Moreover it was submitted on the Defendant's behalf that having regard to the Defendant's status as an expert tribunal with a reservoir of expertise and knowledge, this court should be slow to conclude that the Defendant's panel were not well aware of the presumption in favour of release and had it in mind and, absent a clear positive indication that it misapplied the presumption or did not apply it at all, rather than merely did not expressly refer to it, this Court should be equally slow to assume that the Defendant has got it wrong. There is considerable force, as it seems to me, in that submission.

Moreover, a similar argument was made and rejected in R (Gary Coney) v Parole Board and Secretary of State for Justice [2009] EWHC 2698 (Admin), a case which, like the present, concerned a challenge to a decision of the Defendant to refuse to recommend the release of a prisoner who had been recalled as a result of breaching his licence conditions. The condition in particular prohibited the individual from contacting a particular associate without the prior approval of his supervising officer. One of the grounds of challenge was that the Defendant failed to appreciate, when considering recalled prisoners who have passed the custodial period, that there is a presumption in favour of release unless it was positively satisfied that it was necessary for the protection of the public that a prisoner be confined, as in the incident case.

Counsel for Mr Coney submitted that the Defendant did not in terms in its reasons use the formula set out by the Court of Appeal in Sim but Burnett J (as he then was) dismissed the argument at paragraph 28 of his judgment as follows:- "… Miss Gallagher had a second submission on this point, namely that the parole Board did not in terms in its reasons use the formula of the Court of Appeal in Sims. The reasons concluded with the observation that 'the risks were not currently manageable in the community'. The risks referred to were the risk of harm to children and the risk of re-offending. There is no suggestion in the reasons of the Parole Board that they failed to recommend his release because he had failed to discharge any burden of proof. On the contrary, the Parole Board noted all the information before them and reached a conclusion, which although not identical in language to the formulation of the Court of Appeal in Sims, is to the same effect".

Whilst it is true that that was a permission hearing, albeit in the context of a rolled up hearing, and the facts were plainly different, it is significant that the Judge rejected the argument pursued before me on the basis that "there is no suggestion in the reasons of the parole board that they failed to recommend his release because he'd failed to discharge any burden of proof". It is also significant that, as in the present case, the Defendant in Coney concluded its observations by stating that the Claimant's risk was not manageable in the community, a formulation which the Judge regarded as to the same effect as the language used in Sim.

To my mind when the DL is considered in the round, it is plain that the Defendant reached a conclusion having considered all the available material, both favourable and adverse to the Claimant, including the dossier, the Offender Supervisor's report and the oral evidence of

the Claimant's Offender Supervisor at HMP Mount and the Claimant's Offender Manager and the Claimant himself. Moreover the Claimant has not identified any words in the DL that suggest the Defendant was applying anything other than a presumption in favour of release. It follows in my judgement that ground 1 is not made out.

Ground 2: What is said under this ground is that had there been a proper investigation, there would have been a fair assessment as to i) whether or not there was any assault, which was disputed and ii) whether in fact, if there was an assault, this lead to an evaluation of a high risk of serious harm towards the complainant. Instead, the Defendant's panel inferred, it is said, that there was a genuine assault and then relied on that inference to inform its assessment as to risk and to permit that assessment of risk to overcome the risk management plan and to set aside the 10 months spent on licence without reoffending, relying upon the interpretation of the passages in the DL relating to the assessment of current risk to which I have already referred.

Moreover it was submitted that the Defendant's panel failed to have regard to the nature of a 'without notice' non-molestation order, which would have been granted without any determination of the truth or otherwise of the allegation (s). Given that the Claimant had no convictions for domestic violence and there was no evidence of police call-outs, and in the absence of any reliance on the allegation of assault, it was submitted on behalf of the Claimant that there was no material on which the Defendant could properly conclude that there was a high risk of causing serious harm to an intimate partner through domestic violence. Furthermore, even if there had been an assault, it was irrational to suggest that that led to a risk of serious harm given that there were no injuries and no serious psychological harm. There had been no general offending behaviour during the 10 month licence period and the only concern could be of domestic violence of which there was no record.

For my part, I do not accept the submission that the Defendant inferred that there was a genuine assault. That is to mischaracterise the Defendant's reasoning. On a fair reading of the DL, it is clear that the Defendant was careful not to make any assumptions about the truthfulness or otherwise of the allegation of assault. Thus, the DL expressly notes that it was an allegation of assault, that the Claimant denied the allegation and that there were few facts available relating to the incident. Moreover, the DL fairly made it clear that the Claimant had no previous convictions for domestic violence and that there was no evidence to suggest that the police had ever attended in respect of any previous domestic incidents between the Claimant and his ex-partner. Although the Claimant suggests that the words "although" and "nonetheless" are indicative that the Defendant proceeded upon the assumption that the allegations were true, for my part I do not read the DL in that way. The words provide no basis for the suggestion that the Defendant assumed the allegation was true. Rather, they indicate a recognition on the Defendant's part that a non-molestation order did not amount to a confirmation of the accuracy of the allegation. Moreover, it is clear that the Defendant deliberately avoided making any findings concerning the truth of the allegation which was treated throughout as merely that, an allegation. This was a proper approach where the context is an assessment of risk and not a finding of guilt. Given that finding, there is no need to go on to consider the Claimant's alternative submission that even if the allegation of assault was made out, that could not give rise to a risk of serious harm.

In my judgment there was no obligation on the Defendant, as a matter of law, to determine the factual veracity of the allegation of assault. Indeed, in many cases as here, this would in all likelihood have been impractical. That is not to say, however, that unconfirmed allegations, although of themselves insufficient to prove a risk of reoffending, cannot be a significant consideration when assessing risk.

It is plain from a fair reading of the DL as a whole that the basis of the Defendant's decision on risk, rather than being an inference of guilt in respect of the allegation of assault, was grounded in a large number of elements namely, the violent and premeditated nature of the index offences of burglary and ABH; an escalation in the seriousness of the Claimant's convictions over time; his failure to attend a supervision appointment; the fact of the granting of a non-molestation order and of his pleading guilty to two offences of breaching that non-molestation order; the Claimant's ignoring of the advice of his Offender Manager to have no contact with his ex-partner (notwithstanding the acknowledgement of the explanation given by the Claimant that the contact was for the purposes of arranging payment of money for their daughter); the Claimant's mixed behaviour since returning to custody, including refusing a transfer; the offender assessment system ("OASys") assessment of the Claimant as presenting a high risk of causing serious harm to a known adult and a medium risk of serious harm to children, members of the public and staff members; his presentation at the hearing including his continued demonstration of hostility to his ex-partner, accusing her of having drugs in the house, of fabricating the complaint and threatening him for money and his "limited insights into the effects of his own behaviour"; and a lack of any accredited thinking skills, work or intervention to address his involvement in the use of violence during the index offences of burglary and ABH and the fact that the low risk of violent reoffending assessed by the OASys violence predictor ("OVP") didn't take into account the violence used in the burglary and therefore underestimated that risk.

Taking all those factors into account the Defendant determined that the Claimant continued to present at least a medium risk of violent reoffending with a high risk of causing serious harm to an intimate partner through domestic violence. In evaluating the effectiveness of plans to manage risk the Defendant concluded in the DL as follows:- "The panel also had significant concerns about (the Claimant) motivation and ability to comply with your licence conditions, particularly if they interfere with your ability to see your daughter. Your behaviour in committing further offences on licence suggest that you may comply superficially with supervision but continue to behave in maladaptive ways to achieve your own objectives". To my mind, this second ground of challenge is also based on a mischaracterisation of the DL and it too fails.

For the sake of completeness, I should add that counsel for the Claimant has emphasised that the Defendant has an important and necessary duty to consider the decision on recall, and that the final paragraph of the guidance cited above at paragraph 24 must be read subject to the judgment in R (Calder) v SSJ [2015] EWCA Civ 1050 at [44]. Thus it was argued the panel by analogy ought to properly evaluate the circumstances of disputed events or allegations for itself. It is plain on a fair reading of the DL that the Defendant did consider the circumstances leading to recall which was plainly based on the two admitted breaches of the non-molestation order resulting in breaches of the licence conditions. In those circumstances, to my mind, the Defendant has discharged its duty in that regard.

Ground 3: I can deal with this ground shortly since this ground is linked to the second ground in that it relates to the assessment of risk of serious harm and where it is said that it was irrational for the Defendant, on the basis of the evidence before it, to conclude that the Claimant posed a high risk of serious harm to his ex-partner since there was no evidence that enabled the Defendant properly so to conclude. It was also suggested that the assessment of suitability for release ought to have been based on risk management immediately following release and not on what might happen further down the line.

The first point to make about this ground is that, being a rationality challenge, the Claimant faces a high hurdle given the expert nature of the Defendant tribunal and essentially for

the reasons set out in respect of ground 2 the Claimant gets nowhere near reaching the requisite threshold. The decision on assessment of risk was based on a significant number of elements which taken together plainly constituted a rational decision.

So far as the alternative submission is concerned, this ignores the Defendant's significant concern about the Claimant's motivation and ability to comply with his licence conditions. That concern is not limited to residence outside of Approved Premises and to my mind therefore there is nothing in that alternative submission either.

Again for the sake of completeness, I should deal with the Claimant's alternative submission put forward for the first time in his skeleton argument that the test to be met in respect of this rationality challenge is in fact lower than Wednesbury unreasonableness. Rather it is a question as to whether the conclusion is seen to be wrong on the evidence with the court conducting a sufficiently rigorous assessment of its own to ascertain the correct conclusion on the basis of that evidence. This submission is based on dicta in recent decisions of the Supreme Court and in particular R (Yousef) v Secretary of State for Foreign and Commonwealth Affairs [2016] 2 WLR 509 and in particular in extracts from the judgment of Lord Carnwath JSC at paragraphs 55 and following: "55 In R (Keyu) v Secretary of State for Foreign and Commonwealth Affairs [2015] 3 WLR 1665 (decided since the hearing in this appeal) this court had occasion to consider arguments, in the light of Kennedy and Pham , that this court should authorise a general move from the traditional judicial review tests to one of proportionality. Lord Neuberger of Abbotsbury PSC (with the agreement of Lord Hughes JSC) thought that the implications could be wide ranging and "profound in constitutional terms", and for that reason would require consideration by an enlarged court. There was no dissent from that view in the other judgments. This is a subject which continues to attract intense academic debate: see, for example, the illuminating collection of essays in The Scope and Intensity of Substantive Review: Traversing Taggart's Rainbow (eds) Wilberg and Elliott, 2015. It is to be hoped that an opportunity can be found in the near future for an authoritative review in this court of the judicial and academic learning on the issue, including relevant comparative material from other common law jurisdictions. Such a review might aim for rather more structured guidance for the lower courts than such imprecise concepts as "anxious scrutiny" and "sliding scales".

56 Even in advance of such a comprehensive review of the tests to be applied to administrative decisions generally, there is a measure of support for the use of proportionality as a test in relation to interference with "fundamental" rights: Keyu , paras 280–282, per Lord Kerr of Tonaghmore JSC, para 304, per Baroness Hale of Richmond DPSC. Lord Kerr referred to the judgment of Lord Reed JSC in Pham (paras 113, 118–119) where he found support in the authorities for the proposition that: "…where Parliament authorises significant interferences with important legal rights, the courts may interpret the legislation as requiring that any such interference should be no greater than is objectively established to be necessary to achieve the legitimate aim of the interference: in substance, a requirement of proportionality." (Para 119.) See also my own judgment in the same case (para 60), and those of Lord Mance JSC (paras 95–98) and Lord Sumption JSC (paras 105–109), discussing the merits of a more flexible approach in judging executive interference with important individual rights, in that case the right to British citizenship.

57 On the other hand, in many cases, perhaps most, application of a proportionality test is unlikely to lead to a different result from traditional grounds of judicial review. This is particularly true of cases involving issues of national security. In Bank Mellat v HM Treasury (No 2)

[2014] AC 700 (which concerned another security council regime, relating to nuclear weapons), there was not only majority and minority agreement as to the steps involved in an assessment of "proportionality" (demanded in that case by the relevant statute), but also, within that context, general recognition that on issues of national security a large margin of judgment was accorded to the Executive: paras 20–21 per Lord Sumption JSC, para 98 per Lord Reed JSC. The difference turned on contrasting views as to the allegedly discriminatory nature of the restrictions in that case. Similar considerations apply in the present case.

58 Mr Otty asks us to go further and to hold that the Divisional Court should have conducted a full "merits review" of the Secretary of State's decision. He finds support in the judgments of the Court of Appeal in Ahmed in which such a submission appeared to find favour with Sir Anthony Clarke MR and Wilson LJ [2010] 2 AC 534, 578, 587. I agree with the Court of Appeal (para 38) that those observations were made in the context of an Order made under a domestic statute, and were overtaken by the decision of this court that the Order was ultra vires. In my view, they can have no application in the present context, which concerns the Secretary of State's functions as a member of a UN committee. Even accepting that his decision is judicially reviewable, it is to the member states, as members of the committee, that the Security Council has entrusted the task of determining whether the criteria for listing are fulfilled. It would be quite inconsistent with that regime for a national court to substitute its own assessment of those matters."

The difficulty for the Claimant with this submission as it seems to me is that the Supreme Court itself has yet to undertake the necessary comprehensive review of the approach to challenging decisions engaging fundamental rights and to my mind, in advance of such a review, it would be premature for this court to proceed down that particular path.

Conclusion: It follows in my judgment that this claim for judicial review should fail.

Police Failing to Use New Law Against Coercive Domestic Abuse

Amelia Hill, Guardian: A law protecting victims of domestic violence from controlling and coercive behaviour has been used just 62 times in the first six months since it was introduced. Eight out of 22 police forces in England and Wales have not charged a single person with the offence, according to a Freedom of Information request. Nine forces have made two or fewer charges since the new law came into effect in December 2015, including Lincolnshire, Northamptonshire, Warwickshire and Wiltshire.

Emma Pearmaine, head of family services at the law firm Simpson Millar, which made the FoI request, called for increased awareness and understanding of the new laws and said more specialist training for police officers could be necessary. “Coercive control can be many things but essentially it comes down to people exerting control via a pattern of behaviours, and these can sometimes be difficult to spot from the outside if you don’t know where to look or which questions to ask,” she said. “More dedicated training on the new legislation and how coercion can impact on a victim’s life might help push up the number of people who are identified as offenders and prosecuted. One of the biggest concerns when it comes to coercive control is that victims are not aware that being isolated from friends or family, having access to money and bank accounts restricted, or even having personal medical conditions revealed, is domestic abuse and, now, a criminal offence. With less than three coercive controls on average per police authority, more needs to be done so that people can involve the police at an early stage before coercion turns into physical abuse.”

Three forces – Kent, Hertfordshire and Norfolk – all reported prosecutions of 10 or more, but most forces launched fewer than two coercive control actions between December 2015 and June 2016. Nine forces are yet to charge a single person under the law. On 29 December, under the Serious Crime Act 2015, controlling or coercive behaviour in intimate or familial relationships became a new offence, punishable with a maximum prison sentence of five years. But although Citizens Advice stepped in to help 3,000 victims of emotional abuse and 900 victims of financial abuse in 2014, take-up of the new powers to prosecute offenders has so far been low.

Lucy Hastings, a director at the independent charity Victim Support, said: "These findings demonstrate that there is still some way to go in improving the support provided to victims and witnesses, before they will be getting the information they need and the respect they deserve. Our research tells us that proper communication between the police and victims of crime is vital. Without it, victims may feel isolated and come to believe that their case is being neglected or not taken seriously. This makes them less likely to report crime in the future and ultimately undermines public confidence in the wider justice system. All police staff should be fully aware of their obligations under the Victims' Code and measures put in place to ensure that those obligations are being met."

The FoI data reveals little improvement has been made since May when Theresa May, then home secretary, lambasted officers at the Police Federation's annual conference for not protecting victims of domestic violence. She said new powers to tackle domestic abuse, including controlling or coercive behaviour, were effective but were "not being used anywhere near as systematically as they could be". At the time of her speech, the first conviction for coercive control had taken place and many more cases were pending. Since then, however, use of the new law seems to have stalled. In the same six-month period there were more than 20,000 prosecutions for domestic violence. The coercive or controlling behaviour offence aims to close a gap in the law around patterns of coercive and controlling behaviour during a relationship between intimate partners, former partners who still live together, or family members. It was intended to help victims experiencing the type of behaviour that stops short of serious physical violence but amounts to extreme psychological and emotional abuse.

The law states that coercive or controlling behaviour does not relate to a single incident. Instead it is a "purposeful pattern of incidents that occur over time enabling someone to exert power and control, or coerce another". On the day the law was introduced, Karen Bradley, the minister for preventing abuse and exploitation, said: "Our new coercive or controlling behaviour offence will protect victims who would otherwise be subjected to sustained patterns of abuse that can lead to total control of their lives by the perpetrator. Victims who would otherwise be subjected to sustained patterns of domestic abuse will be better protected under [this] new offence."

Victims Should be Able to Confront Criminals, Say MPs

Owen Bowcott, Independent: Victims of crime in England and Wales should be given the right to restorative justice – where they can confront the criminal who harmed them – once the criminal justice system develops sufficient capacity, a parliamentary committee is to recommend. But the report by the justice select committee warns that availability of the service is presently subject to a postcode lottery and cautions that it may not be appropriate for certain offences – such as sexual assaults, domestic violence and hate crimes. Expanding the role of restorative justice should feature in the government's delayed victims' law and involve public consultation on the means of enforcing entitlement, the cross-party report proposes. It suggests a "commencement order" should be

brought into effect by a minister "only once he or she has demonstrated to parliament that the system has sufficient capacity" to provide restorative justice services to all victims.

"While capacity issues mean that it is still too soon to introduce a legislative right to restorative justice for victims, we urge the government to work towards this goal," Bob Neill, the Conservative chair of the committee, said. "We heard extensive evidence of the tangible benefits to victims and the role of restorative justice in reducing reoffending, so it clearly benefits wider society as well." Neill added: "The priority must be to ensure that victims of crime are properly informed. The Ministry of Justice should focus its resources on ensuring restorative justice is well understood by bodies within the criminal justice system who can then convey this information to victims. A rigorous system should be introduced to improve compliance with the police's requirement to inform victims – perhaps something as straightforward as a box at the end of the victim impact statement form."

Restorative justice usually involves bringing together a victim and the offender in a face-to-face meeting or via video-conferencing. In some cases, trained facilitators pass messages back and forth between them and there is no direct contact. The aim is to make offenders understand the impact of their actions and to help victims repair the emotional damage they have endured. Both victim and perpetrator must be willing participants. Restorative justice is chiefly funded through local police and crime commissioners. In 2013, the coalition government made £29m available over three years but the restorative justice element was not ringfenced. The justice select committee does not support ringfencing finance in future because "it is difficult to predict with certainty how much should be allocated to it". Public awareness of restorative justice remains relatively low, at 28%. The same poll, however, found that 80% of people questioned thought that victims should have the right to meet their offender.

Although restorative justice should, in principle, be available in all cases, the report says, there should be more training for facilitators who are working with sex, domestic violence and hate crimes. The committee notes that "the then home secretary, Rt Hon Theresa May MP, recently criticised the use of restorative justice by police in cases of domestic violence, saying that it does not follow 'common sense' to 'sit vulnerable victims' in the same room as the perpetrator". It should never be used in what is known as level one restorative justice, the MPs say, where police officers attend a domestic violence incident and attempt to arrange a discussion between the victim and assailant. "It is a matter of great concern to us that level one restorative justice is being used by police forces in cases of domestic abuse," the report notes. "This risks bringing restorative justice into disrepute. It is crucial that frontline police officers are fully informed of the risks for vulnerable victims in such cases."

Responding to the report, Jon Collins, chief executive of the Restorative Justice Council, said: "Restorative justice helps victims recover from crime and move on and it should be available to every victim of crime. Embedding a right to restorative justice in legislation would help to achieve this. Urgent steps must also be taken by police and crime commissioners to make sure that restorative justice services are in place in every area in order to make this entitlement a reality. "While some types of crime, and particularly domestic abuse, require robust risk management, wherever possible victims themselves should be able to decide whether restorative justice can help them to move on. Restorative justice works – it cuts crime while helping victims to move on."

In a separate statement Polly Neate, chief executive of Women's Aid, and Collins said: "Women's Aid and the Restorative Justice Council are clear that restorative justice can,

in certain circumstances, be useful in domestic abuse cases – but only if the survivor's safety remains paramount. "The survivor must feel in control of the process, and it must have no impact on the perpetrator's criminal sanctions. Restorative justice being used must never be taken as an opportunity to minimise the perpetrator's crimes or be used as an alternative to a more serious criminal justice sanction. "Specialist training on domestic abuse – and especially coercive control – must be undertaken by all restorative justice practitioners. Women's Aid and the Restorative Justice Council can deliver this training. It is essential that this is done, in order for restorative justice to be used safely and effectively in domestic abuse cases." A Ministry of Justice spokesperson said: "We welcome the committee's report and will consider the recommendations carefully. It is vital that victims see swift and certain justice delivered to offenders. Under the Victims' Code, which was introduced last year, all victims can now receive information on how they can take part in restorative justice. "In addition we have protected the victims' budget and given police and crime commissioners greater flexibility over the services offered to victims in their areas."

A victim's experience: Emma Riggs, 33, who has waived her right to anonymity, was repeatedly raped by a former partner. She wanted to meet him after he was released from prison so that he would understand the harm he had inflicted. Their meeting took place in his probation office where two other people sat in on the confrontation. It lasted two hours. Steve (not his real name) had been controlling during their relationship. "He had stalked me [after we broke up]," Riggs explained. "The sexual assault, I felt, took a lot of the power I had away from me. I needed to meet him face to face to get that power back. I felt in control throughout the restorative justice process. It was a chance for me to put my side of the story which he had never heard. There was a facilitator, who was also my victim's services officer. She prompted me if there were questions I had forgotten to ask. Another woman sat at the back of the room, out of line of sight, making sure everything was safe. We had a lot to talk about. I explained to him the effect he had had on me, my family and friends. He admitted that it was a 'million times worse' than he had ever thought. He said he had prepared something to say but realised he wouldn't because he understood the impact [the rapes] had had on me. He did apologise. I needed to have that meeting, for me. I didn't realise the burden I was carrying until it was lifted, until I said out loud how much it had hurt. I felt 10ft tall. I felt a lot lighter in every aspect. I could always talk to other people about it but they had not been not there. He was the person I needed to tell what he had done. It helped me. Sexual crimes are so much about the control of the perpetrator. That meeting allowed me to redress the power balance."

Huzuneanu v. Italy - Convictin in Absentia Violation of Article 6

The applicant, Luciano Valentin Huzuneanu, is a Romanian national who was born in 1973 and lives in Romania. The case concerned Mr Huzuneanu's inability to obtain the reopening of criminal proceedings against him, which had led to his conviction in absentia. Following his prosecution on a charge of murder, Mr Huzuneanu was sentenced by the Rome Assize Court to 28 years' imprisonment on 15 March 2004. The authorities, taking the view that he had absconded from justice, assigned him a lawyer, who took part in the proceedings. The lawyer appealed against the first-instance judgment before the Rome Assize Court of Appeal, which dismissed the appeal on 17 January 2005. He also lodged an appeal on points of law but it was declared inadmissible. An international arrest warrant was issued against Mr Huzuneanu on 19 December 2005 and he was arrested in Romania in 2006, then extradited to Italy at an unknown date.

Mr Huzuneanu, relying on Article 175 of the Code of Criminal Procedure, submitted that his appeal against his conviction should not be time-barred. He argued that he had not absconded from justice and had not waived his right to appear, stating that because he had not been notified of the procedural developments at his place of residence in Romania, he had not been duly informed of the criminal proceedings against him. In a decision of 12 April 2007, the Rome Assize Court of Appeal took the view that Mr Huzuneanu was entitled to be exempted from the time-bar but to appeal only against the second-instance judgment. Mr Huzuneanu appealed on points of law, alleging that he should have a fresh trial on the merits, not only a decision on points of law. That claim was dismissed by the Court of Cassation on 13 January 2008, on the ground that a person convicted in absentia forfeited his right to the re-opening of the period for appeal if the assigned counsel had, independently and without the client's knowledge, appealed against the decision in question and if the court of competent jurisdiction had then ruled on that appeal.

In another set of proceedings concerning a different person convicted in absentia, the Constitutional Court declared Article 175 § 2 to be in breach of the Constitution, on the ground that the provision did not allow a defendant not having effective knowledge of the proceedings to reopen the period for an appeal against a decision given in absentia where the same appeal had previously been lodged by counsel. In December 2009, based on that decision, Mr Huzuneanu lodged a request for a new time-limit for appeal, but without success.

Relying on Article 6 (right to a fair hearing) of the Convention, Mr Huzuneanu complained of his inability to reopen criminal proceedings and thus to present his defence before the Italian courts. Violation of Article 6 Just satisfaction: Mr Huzuneanu did not submit any claim in respect of just satisfaction.

Caught With his Pants Up

A bungling burglar was busted after his burger boxers made a strong impression on his victim. Darren Machon, 39, was jailed for two years and 10 months after breaking into a woman's home in South Wales. She caught sight of his Topman boxers - with a pattern of cartoon hot dogs, chips, doughnuts and hamburgers - as he was rummaging through her cupboards in the early hours of the morning. Though Machon escaped, her identification of his underwear eventually led to his arrest and conviction. The boxers were brought into court and held up at his sentencing in Cardiff Crown Court for Judge Recorder Lucy Crowther to see. Detective Constable Darren Bowen said: "The witness in this case and also the officer who recognised the underpants also deserve credit as it was their vigilance and attention to detail which no doubt ensured that that Darren Machon was linked to the burglary."

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.