continued good behaviour and help support a turn away from violence and disorder in our prisons. We will develop a new operational policy framework that will allow prison governors to better tailor their ROTL regime to the circumstances of each offender and the opportunities available. The strategy also sets a range of commitments to boost employment for prisoners once they are released. These include: The New Futures Network (NFN) will engage and persuade employers to take on ex-prisoners, with experts placed in every geographical prison group in a phased roll-out across England and Wales. The civil service will recruit ex-prisoners, providing jobs and acting as a role model for other employers. The DWP and Ministry of Justice will work together to explore new ways to deliver enhancements to the current benefit claim service, so that prison leavers have immediate easier access to financial support on the day of release.

Comment on Prisoner Education and Employment Strategy

Richard Garside: The visitor lockers at HMP Isis, where the Justice Secretary David Gauke gave his speech on prisoner employment, only take the old one pound coins. It's a small thing, though one symptomatic of the host of dysfunctions that bedevil our prison system. David Gauke is the former Secretary of State for Work and Pensions, and his speech, given to launch the Ministry of Justice's new Education and Employment Strategy, was littered with references to the redemptive power of labour. 'I believe in the power of work to change people's lives', he said early on in the speech. It is not just the pay packet, he said. Work offers 'purpose, structure, networks, having a stake in something'. Prison, he added, should provide prisoners 'with the impetus and incentives to set them on the path to a better life. The foundation for creating that better life is work'. As one person pointed out in the Q and A that followed, the real foundation for a better life for prisoners on release is a place to call home. Gauke did not demur from this and acknowledged that no amount of activity aimed at getting prisoners into work would count for much if released prisoners did not have a roof over their head. Smoothing the path from imprisonment into employment on release, including through the greater use of temporary release arrangements, known as 'Release on Temporary Licence' (ROTL), has been a preoccupation of a number of governments over the years. As another person present pointed out, boosting the use of ROTL had been a key pledge of the November 2016 Prison safety and reform White Paper. The lack of discernible progress since then makes one wonder whether the current Ministry of Justice team will have any greater success this time round. Gauke's emphasis was on the expansion of the work-related ROTL scheme. It is important not to lose sight of the fact that ROTL can serve a number of other, important purposes. These can include keeping in touch with family members, attending education courses, or making arrangements for release. I hope that the push to encourage more use of work-related ROTL is not made at the expense of temporary release arrangements for other purposes. It is important to ensure that work is not seen as the only legitimate grounds for temporary release. Of course a prisoner only needs to have his or her path (back) into employment smoothed because he or she has been imprisoned in the first place. Gauke and the Prisons Minister, Rory Stewart, have publicly acknowledged that too many people are being needlessly imprisoned. At a roundtable discussion with Gauke I attended last week, there was also some discussion about how the prison population might be reduced. But these are currently private discussions. In public, the focus is very much on how prisons might be made to work better, rather than on how they might be used more sparingly. Reducing our reliance on prison will be a far more effective employment strategy than trying to repair the damage of imprisonment.

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

MOJUK: Newsletter 'Inside Out' No 692 (06/06/2018) - Cost £1

Daniel Morgan Murder: New Delays Hit Inquiry Into 31-Year-Old Case

Vikram Dodd, Guardian: Family accuse Met of stalling inquiry into killing of private detective who may have been about to expose police corruption. The official inquiry into the murder of Daniel Morgan has hit new delays and will now not report until next year – 31 years after the private detective was murdered, allegedly as he was about to expose police corruption, the Guardian has learned. Morgan, 37, was a private detective who co-owned a small south London agency, Southern Investigations. He was found with an axe embedded in his head in a south London pub car park on 10 March 1987. No one has ever been convicted of the murder, although the Morgan family and police are sure who the prime suspects are.

The inquiry was announced in May 2013 by the then home secretary Theresa May. May said she was appalled by the suffering of Morgan's family as they fought for justice and to expose former officers in the Metropolitan police, as well as journalists in Rupert Murdoch's media empire and their links with suspects. The Morgan family say the Met has been delaying the inquiry and has been too slow to hand over documents relating to the case. The Met says it has already handed over 1m documents. The murder has modern-day implications involving former employees of the now defunct News of the World newspaper. Some say the case shows the need for a new Leveson inquiry into police and media corruption.

The campaign for justice has been led by Daniel's brother, Alastair Morgan, who said: "This is Britain, this is the way things are here. If you ever confront corruption it takes a lifetime to deal with it, as we have seen before with the police. "There has been delay after delay, you become inured to it. We were told by the [then] home secretary the process would take a year." The first murder investigation was mired in corruption, with one detective replacing Morgan in his role at Southern Investigations, where he worked alongside one of the prime suspects.

That former detective went on to work with the News of the World on its stories and one of the prime suspects received hundreds of thousands of pounds from the Murdoch paper for information. After a fresh criminal investigation the Met announced in 2007 that the motive for the murder was probably that Morgan "was about to expose a south London drugs network possibly involving corrupt police officers". Morgan said he would fight on: "How can I give up at this point? I've got no choice, I'm not walking away."

An inquiry spokesperson said: "Providing no further relevant documentation or evidence is received in 2018, beyond what is currently expected, the panel hopes to complete drafting its report in 2018 before submitting it to the home secretary in 2019. "A number of events occurred during 2016-2017, including the hearing at the start of 2017 of a civil action by [former suspects for the murder] against the Metropolitan police service. A trial was held and findings made by the court and, as a consequence, additional documentation was received by the panel during 2017, which then had to be considered in depth. The panel is also now considering a large volume of material which is being incrementally provided to the panel during 2018."

The Met said it was cooperating with the inquiry: "The Metropolitan police service has worked closely with the Home Office and the Daniel Morgan independent panel to create a mechanism that allowed for the exceptional and full disclosure to the panel, to enable them to achieve

their aim of shining a light on the circumstances of this case and to introduce safeguards around disclosure of the material. “It has been an extremely complex process for many reasons, including the volume and nature of the material involved, and the fact there was no statutory framework to govern the disclosure process. “The MPS continues to provide its fullest possible support to the work of [the panel], who have had access to over one million pages of information.” The panel is believed to be investigating another death for potential links to the Morgan murder. Four months after Morgan’s killing, in July 1987, DC Alan Holmes was found shot dead in his garden in what was officially declared a suicide. Some in policing are no longer confident of that conclusion. One police source said they believe Holmes had told Morgan of the conspiracy involving corrupt officers and criminals to import drugs into the UK.

Damages Award to Prisoner For Attempted Murder by Fellow Inmate

Scottish Legal News: A prisoner who was found to be entitled to damages following a serious assault by another inmate after warning a prison officer that his attacker had previously threatened him has had the decision upheld by appeal judges. Keith Porter was convicted of attempted murder following the attack on Daniel Kaizer in December 2009 and a judge held that the Scottish Prison Service (SPS) was negligent by failing in its duty of care to protect the prisoner from a “reasonably foreseeable risk of harm” after the prison officer failed to report the threat. The Scottish Ministers, being responsible for the SPS, appealed against the decision of the Lord Ordinary to find the defenders liable to the pursuer for the loss, injury and damage he sustained, but the Inner House of the Court of Session refused the reclaiming motion.

Negligence: The Lord President, Lord Carloway, sitting with Lord Brodie and Lord Drummond Young, heard that heard that on 4 December 2009, while the pursuer was on remand at HMP Aberdeen, he was assaulted in the prison gym with a steel barbell by a fellow prisoner, Keith Porter, who was subsequently sentenced to an Order for Lifelong Restriction with a punishment part of five years after being convicted of attempted murder.

The pursuer, a Pole, raised an action for damages claiming that the attack was an implementation of a threat made to him by Porter around a week prior to the attempted murder, and that he reported it to a prison officer, Gary Lumsden, at that time. The pursuer’s case was in July that year Porter had attempted to murder another Pole, to which he pled guilty about a week before the assault on the pursuer, and that at about the time of the plea he had warned the pursuer that he would “smash his fucking Polish face in”. However Mr Lumsden, who had 18 years experience as a PE instructor with the Scottish Prison Service, failed to report the incident and the court was asked to determine the issue of liability. The court heard evidence from two expert witnesses: John McCaig, a consultant in prison management with 35 years’ experience as a prison officer in the SPS; and Philip Martin Wheatley, a former Director General of the Prison Service in England and Wales.

Causation: It was not disputed that Mr Lumsden did not report the incident and that no further action was taken, but the experts were in dispute as to what the consequences of such a report would have been, which went to the question of causation; whether it was more likely that not that the attempted murder would have taken place. The appeal concerned the issue of causation, namely, whether it was established that, but foMr Lumsden’s negligence, for which the defenders were vicariously liable, the assault upon the pursuer would not, as a matter of probability, have occurred. The defenders submitted that the Lord Ordinary ought not to have held that, had Mr Lumsden reported the incident, the attempted murder would have been avoided. It was argued that the onus

gency services to do their jobs and keep citizens safe. The department also faces huge challenges arising from the UK’s departure from the EU, not least potential threats to security at the border from day one of Brexit. On both DBS and ESN the Home Office appears either to have ignored or not fully understood the needs of the end user.”

The DBS was established in 2012 as the result of a merger between two quangos, one of which was the much-criticised Criminal Records Bureau. It was intended to simplify and lower the cost of background checks for employees, often in the public sector, working with children and vulnerable adults. In October 2012, the Home Office contracted Tata Consultancy Services to design, build and run a new IT system for DBS. The updated service was intended to allow employers to check whether there were any changes to the safeguarding information on a certificate since it was issued. But the updated service has not delivered expected savings and is behind schedule. The National Audit Office said in February that Tata continued to make a £5m-a-year profit despite spending more than expected on the modernisation programme. The Home Office said: “We recognise that there have been delays in some aspects of the delivery and implementation of the DBS modernisation programme. However the DBS has launched the first phase of its new IT system and will continue to work towards providing their customers with a faster and more efficient service. We will fully consider the PAC’s recommendations and respond formally in due course.”

Ministarial Statement: Prison Education and Employment

The Lord Chancellor and Secretary of State for Justice (Mr David Gauke). Today 24/05/2018, the Government are launching the Education and Employment Strategy for adult prisoners. It builds on the ambitions of the November 2016 White Paper “Prison Safety and Reform”. Work has the power to change people’s lives, especially those of ex-prisoners. A prison sentence rightly serves as a punishment, depriving someone of their liberty. However, for those offenders who want to turn their backs on crime, prison should also be a catalyst for change. The vision at the heart of this strategy is that when an offender enters prison they should be put, immediately, on the path to employment on release. We know that people with criminal convictions face significant barriers on release from prison, with access to employment and education being at the forefront. Not only are many ex-prisoners often unprepared for employment on release in terms of their skills and training, there remains a stigma among some employers about hiring people with a criminal conviction. With reoffending costing the UK billions each year, this strategy sets out to help break down the barriers and prejudices offenders often face in trying to secure employment. Our reforms to prison education will give governors the tools they need to tailor provision to the requirements of employers and the needs of their prisoner populations. This approach builds on the commitments we made in the White Paper “Prison Safety and Reform”, putting into practice the key principles of governor empowerment and accountability that underpinned the recommendations in Dame Sally Coates’ seminal review. Governors will control their education budget, will decide what curriculum is most appropriate for their learner population, how it is organised and, crucially, who delivers it. These are far-reaching changes that governors themselves demand. It is essential that prisoners develop their skills and gather experience through work during custodial sentences. Prison jobs are a key part of this, as is release on temporary licence (ROTL), which enables prisoners to undertake work in real workplaces. Evidence published today underlines the link between increased use of ROTL and reduced reoffending and we are also today consulting those who make ROTL decisions and those who provide ROTL placements on how to get more risk-assessed prisoners out of their cells and into real workplaces. For offenders who play by the rules, we want to use incentives like workplace ROTL to encourage

hood abuse. • Women who are pregnant or primary carers for children where the crimes committed were non-violent. Women's prisons are often located far from home, making it difficult for families to see each other. Barriers to maintaining family relationships lead to maternal distress and have devastating long-term impacts for children. • Women whose crimes were related to domestic violence, rape or abuse. Women are highly likely to be victims as well as offenders. • Women who are addicted to drugs or alcohol. Sentencing decisions are sometimes made with the expectation that treatment in prison will lead to sustained recovery. The government's own research shows that this is not the case. There is also still an alarmingly high risk of death from drug overdose immediately following release from prison. • Women with serious physical illnesses or complex disorders requiring ongoing specialist care. • Women with learning disabilities, especially where incarceration would be profoundly confusing and distressing and unlikely to address behavioural issues. • Women at the end of life. • Young women, where incarceration has been proven to disproportionately increase criminality. Diversion will aid early diagnosis of mental health problems that may be associated with risks of criminality. • Black and minority ethnic women especially where frank discrimination contributing to their incarceration will create mental distress.• Foreign national women committing minor crimes or where crimes are related to coercion or trafficking. This is especially important for women who are primary carers for children with few social networks of support. Sentencing to custodial units, including for remand, with little language or cultural support is isolating and creates mental distress.• Women remanded who are unlikely to be given a custodial sentence especially where this is likely to cause delays in health assessment.

After the Corston Report: Consensus achieved: What is encouraging about these recommendations is the consensus reached. Politicians drawn from all parties reviewing a broad range of evidence all call for a more effective, more human rights response. They conclude that prison is rarely appropriate for women's offending noting that costly management through criminal justice is ineffective and harmful. They recommend that prevention and early diagnosis through health and social care would substantially reduce the number of women in prison, keep women safe from harm, vastly reduce risks to children and cut the costs of crime to communities. What more can it possibly take to prompt the ministerial leadership to take decisive action?

Home Office Criticised For Failures In Reforms to Criminal Records Vetting

T Rajeev Syal, Guardian: The Home Office has been accused of running a "masterclass in incompetence" over its attempts to improve the criminal records checking scheme. Parliament's public spending watchdog said a programme to modernise the Disclosure and Barring Service (DBS) has been marred by poor planning, delays and spiralling costs. The programme is more than four years late and costs are expected to be £229m more than initially planned, a report by the public accounts committee (PAC) said. In an unusually damning assessment, MPs also said a new facility introduced to make it easier and faster to check for changes to safeguarding information has seen a fraction of the demand expected when it was set up.

Meg Hillier, the chair of the committee, said the Home Office, which is still reeling from allegations over the Windrush scandal, was struggling to implement two of its major modernisation projects. She said: "Government has a crucial role to play in safeguarding children and vulnerable adults but the handling of this project has been a masterclass in incompetence. These are testing times for the Home Office. We continue to have serious concerns about its largest project, the emergency service network, which is critical to the ability of our emer-

was on the pursuer to establish causation and it was not enough for the pursuer to prove a material domination in risk, as the pursuer still had to show that the reduction was such that it was more likely than not that the attack would not have taken place.

However, on behalf of the pursuer, it was argued that the findings in relation to causation were properly that, had the incident been reported, in the period before the attack the prison officer on duty in the gym, Kenneth Murray, would have been made aware of the threat and would have used "heightened vigilance and close supervision" of the prisoners, which would have had a "deterrent effect" on Mr Porter. It would have allowed Mr Murray to identify "early rumblings" or any other precursors to an assault, reducing the opportunity for Mr Porter to implement his threat which, on the balance of probabilities, would have prevented the attack.

Defenders' Position 'Unattractive': Delivering the opinion of the court, the Lord President said: "The Lord Ordinary has found, and the defenders now accept, that Mr Lumsden's failure to report the threat to the pursuer in the gym constituted negligence. That finding and acceptance carry with them an inference that the absence of a report amounted to a failure to take reasonable care for the pursuer's safety; ie that he was thereby exposed to the risk of injury. The Lord Ordinary said this in terms. The issue of causation is thus sharply raised. The defenders' position, stripped to its essentials, is that, notwithstanding the fact that a prisoner in their custody was exposed to the risk of injury as a result of the failure to report a threat of serious violence with racist overtones, nothing effective would have been done about this by the prison authorities and thus the attack would have happened in any event. The court is unable to accept this unattractive proposition. Where negligence is established, as it is here, and thus the existence of a risk of injury is demonstrated in the context of a prison setting, in which the prison authorities control the movements of all those involved, the court is entitled to make the reasonable assumption that the prison authorities will not only do something about that risk, but that the something will reduce the risk to such a level that it will, in all probability far less on a mere balance, not occur. If that is so, causation must be taken to be established in the absence of some extraordinary factor which made the incident otherwise inevitable despite the taking of reasonable precautions. This in itself is sufficient reason to refuse the reclaiming motion." Lord Carloway added that there was, in any event, a "sufficient evidential basis" for the Lord Ordinary's findings.

Criminal Cases Review Commission Not Fit For Purpose, Lawyers Say

Eric Allison, Simon Hattenstone and Owen Bowcott: A group of prominent lawyers claim the official body responsible for investigating alleged miscarriages of justice is not fit for purpose. The lawyers have accused the Criminal Cases Review Commission, which decides whether alleged miscarriages of justice should be referred to the court of appeal, of systemic failures. Amid concerns that the referral rate has dropped significantly since the CCRC was established, the Guardian has been given exclusive access to a survey of the lawyers' experience of the body's investigations into 33 alleged miscarriages of justice. The results suggest lawyers see a common pattern of failings such as not interviewing witnesses, not understanding the significance of non-disclosure, not visiting the scene, and a misunderstanding of key points of law.

"The CCRC has become an office-bound, moribund organisation," said Matt Foot, of Birnberg Peirce. "The people employed there are not qualified to do what they're doing, and often don't understand the law. It's become a different organisation to what it was set up as. The biggest problem is that it doesn't actually investigate." The CCRC, which began its work in 1997, has about 600 cases under review at any one time. It has the power to refer cases in England, Wales and Northern Ireland back to the court of appeal. It can only do so, however, if it concludes there is a real possibility that

the court would quash the conviction. The survey, which follows the launch of an all-party parliamentary group last November to highlight miscarriages of justice, has been submitted as part of a response document to the Ministry of Justice triennial review of the CCRC. Signatories to the response include Birnberg Peirce, the Cardiff University Innocence Project and the Centre for Criminal Appeals, a charity working with alleged miscarriage cases.

The body faced further pressure on Wednesday 30th May, when a BBC documentary disclosed internal board meeting minutes that its says show the organisation is struggling with its workload. The minutes, obtained by the Centre for Criminal Appeals, show that case review managers have to cope with "large, sometimes unworkable portfolios", typically managing 24 cases at any one time. The CCRC, which has an annual budget of about £5m, told the BBC's Panorama programme: "The board [minutes] show … we share our concerns within the organisation and take them seriously. Our workload has increased in recent years and budgets have not." Sir Anthony Hooper, who retired in 2012 after eight years on the court of appeal, told Panorama that the CCRC has been compelled to become more cautious because the court itself was increasingly resistant to legal challenges. "It's become much more difficult for an appellant to succeed … and therefore that will no doubt influence [the CCRC] on what cases that they send through," Hooper said. Asked if he was believed the bar currently set by the court of appeal was wrong, he said: "I'm saying that."

The lawyers' survey states that a record low of 0.77% of cases seen by the CCRC were referred back to the court of appeal in 2016-17. "Almost all the cases being prepared by professionals working in this field are being refused," said Foot. The CCRC was established after a royal commission on criminal justice report in 1993 examined a series of high-profile wrongful convictions, including those of the Guildford Four and Birmingham Six. The RCCJ report concluded that the Home Office was not sufficiently independent to investigate miscarriages of justice, so the new statutory body was set up. But the current rate of referrals is far lower than when the Home Office was responsible for miscarriages of justice. Dennis Eady, a case consultant for the Cardiff University Innocence Project, said so few cases were referred back to the appeal court because the CCRC's remit was too narrow. The CCRC will only refer cases on a legal technicality or when when there is significant new evidence. "That remit has been treated increasingly conservatively," Eady said. "Sometimes there are clear miscarriages of justice but it's very hard to get new evidence. Under the current system there is almost nothing you can do in those cases." The RCCJ report initially proposed that cases could be referred back to the court of appeal if there was any doubt over the safety of a conviction.

The lawyers' document calls for the threshold of new evidence to be changed. "The statutory test therefore must be changed in line with that suggested by [the Ministry of] Justice and the RCCJ in 1993 as a first step to reform, ie a test that requires the CCRC and the court of appeal to consider holistically whether a miscarriage of justice may have occurred for whatever reason." The document argues that the current referral rate of 0.77%, down from an average of 3.3%, is partly due to a shortage of funds and suitably qualified staff. "The CCRC is currently not fit for purpose, due to resourcing and skills limitations that lead to outright investigation failures, internal cultural problems and an inapposite legal test that it must apply," it states. The survey results suggest that in 81% of cases seen by the lawyers who responded, the CCRC failed to obtain the documentation it would need from the police or others to assess whether evidence had been hidden. In 69% of cases it failed to interview potentially significant witnesses, and in 48% of cases it failed to understand relevant law, the lawyers said. The CCRC declined to comment on the survey's findings.

Soldier B, stating that it may have been relevant to the application of the Evidential Test and reaching a conclusion as to whether there was a reasonable prospect of a conviction. The Court stated that this was "less than satisfactory", but accepted that the soldier's health was not taken into account when determining the Evidential Test – therefore there was no breach of the sequential nature of the Prosecution Test.

Consensus on Women in Prison, but Where's the Action?

Dr Alison Frater, Centre for Crime: Why continue imprisoning women when most agree that it can be the most harmful course of action, asks Alison Frater. There has been more inexplicable delay in the government's plans for women in criminal justice. It renders urgent the question of how to address women's health issues and the harmful impact of incarceration. Liaison and Diversion schemes are already in place for some cases in some parts of the country. They can and should be expanded. Women in criminal justice are at increased risk of poor mental and physical health often because of adverse events in childhood such as neglect and sexual abuse. Where it exists, a model of diversion provided by the NHS exists to facilitate health care from the point of arrest, from police custody and from the courts.

The Case for Diversion is Clear: For women, early intervention has the greatest chance of improving health and life chances for women, for children and for the wider community. For reducing the costs of crime to communities, diversion to community sentences is more likely to reduce reoffending. For children, ending the unimaginably life shattering impact of a mother's imprisonment makes the cost of continued inaction especially wicked. Select Committees have repeatedly pressed governments to address the conditions leading to women's offending. Successive ministers of justice accept these authoritative recommendations. Yet again and again, they miss opportunities to translate lifesaving, cost saving, crime reducing evidence into policy and practice. The population of women in prison has risen to levels double the rate of the early 90s for a number of reasons. Women continue to be criminalised for non-violent, low risk, drug related crime. At the same time, increases in sentence length and rising re-conviction rates mean the population continues to rise.

Despite being less than five per cent of the prison population, women's prisons account for over a quarter of the reported incidents of serious self-harm. Over half of all women in prison are said to have attempted suicide. Since the publication of the Corston Report in 2007, which called for alternatives to custody, almost 100 more women have taken their own lives in prison. Many women leave prison still beleaguered by the debt, mental and physical ill health, or substance abuse problems they entered with and facing the additional burden of having lost their homes and their children. The Prison Reform Trust estimates that some 18,000 children are separated from their mothers each year because of imprisonment, often permanently. By any measure, this level of inertia in government policy ignores a degree of human suffering and misuse of public resources that would be incomprehensible in other parts of public life.

Diversion services: Baroness Corston's report was the first to reveal the extent of the warehousing of women in prisons ill equipped to meet their needs, especially for recovery from drug and substance use. Hers and subsequent reports from Health and Justice Select Committees, Chief Inspectors of Prisons, the Prison and Probation Ombudsman and academics identify many women whose needs would be better met through diversion to health services such as: • Women with severe mental health problems. • Women whose incarceration would lead to worsening mental or physical ill health. This is especially likely for women who may be re-traumatised because of health harming behaviors related to early child-

Decision Taken by the DPP not to Prosecute Soldier For Murder "Irredeemably Flawed"

Seosamh Gráinséir for Irish Legal News: The sister of a 15-year-old boy who was killed by a soldier in 1972 has been granted an order quashing the decision of the Director of Public Prosecutions not to prosecute the soldier who shot him. Daniel Hegarty "posed no threat to anyone" when he was shot twice in the head without warning, and the question of whether to prosecute the soldier responsible was referred to the DPP for reconsideration in 2011. The Divisional Court accepted that the test for prosecution had not been misapplied by the DPP, but concluded that the four-year delay in issuing the decision not to prosecute in 2016 was "manifestly excessive, inexplicable, unjustified and unlawful", that application of the evidential test was "too stringent", and the decision was "irredeemably flawed".

Background: In July 1972, 15-year-old Daniel Hegarty was with his cousins, Christopher and Thomas Hegarty, when he died after being shot twice in the head by "Soldier B". In 2011, a fresh inquest into Daniel's death found that the Daniel and his cousins had been shot at without warning, and had "posed no threat to anyone". The ballistics expert, Leo Rossi, commissioned by the Coroner provided a report which contradicted the statements taken by Soldier A and Soldier B "regarding the positioning of the gun and the proximity of Daniel and Christopher to the discharged weapon".

Decision not to prosecute "irredeemably flawed" - In December 2011, the Coroner referred the matter to the DPP for reconsideration pursuant to Section 35(3) of the Justice (NI) Act 2002. Upon referral, the DPP had a duty to review the file and make a decision on whether to prosecute on the basis of the two-stage Prosecution Test: 1. The "Evidential Test" is met if the evidence which can be presented in court is sufficient to provide a reasonable prospect of conviction; 2. The "Public Interest Test" is considered if the Evidential Test is passed, and is met if prosecution is required in the public interest. In March 2016, over four years after the Coroner referred the matter, the DPP issued his decision not to prosecute.

In February 2018, the Divisional Court quashed the DPP's decision not to prosecute "Soldier B" for the 1973 killing of 15-year-old Daniel Hegarty, finding that: • The prolonged four year delay between the referral from the Coroner to the promulgation of the decision not to prosecute in March 2016 was manifestly excessive, inexplicable, unjustified and unlawful. • The DPP was in a position to take a prosecutorial decision promptly following the receipt of Mr Rossi's conclusions and failed to do so: "Had the decision been taken at that time it seems inevitable in light of the scientific evidence and the legal advice that the DPP must have concluded that the test for prosecution was then satisfied"; • There were good grounds for considering that the DPP misapplied the test for prosecution. • The DPP imposed too stringent a test when considering whether the evidential test was satisfied; and • The reasoning leading to the impugned decision not to prosecute was irredeemably flawed. In particular the DPP's decision was founded on an unreasonable and rationally unsustainable hypothesis which was inconsistent with the case made by Soldier B. The Court granted leave to amend the challenge to consider whether the DPP had misapplied the Prosecution Test.

Sequential Application of the Prosecution Test - It was submitted that, in considering the Soldier's health issues, the DPP had misapplied the Prosecution Test by giving consideration to the Public Interest Test prior to making a determination on the Evidential Test. However, the DPP averred that the validity of the defence of self-defence was the focus of the evidential test, and that "Soldier B's health issues played no part in the final determination".

Notably, the DPP offered an alternative reason for obtaining medical evidence on

CCRC Answers to Panorama Questions

Here are all of the questions that Panorama put to us and the answers we supplied. We publish them here because, having seen the Panorama programme on 30th May, we did not feel that they had been represented clearly or given sufficient weight. CCRC, Thursday 31st May 2018

1. The CCRC has been accused by certain stakeholders of being "moribund and desk bound" whilst failing to properly investigate some cases. What is your response to that?

There is no sense whatsoever in the idea that office based investigations are, in the context of the type of cases we work with, intrinsically less valuable than any other types of inquiry. Indeed, it is fatuous to suggest that somehow so called "boots on the ground" investigations are always to be preferred and that anything else is lazy or second best..

We consider a lot of cases where the offence in question occurred years earlier. The passage of time will often mean that activities such as visiting the scene of the crime years or decades later can serve little or no purpose. Where that is the case, we won't waste time on such visits for the sake of presentation or to satisfy some misconceived idea of what an investigation ought to look like.

We do whatever types of investigation we think a case requires. As we demonstrate week in week out in numerous cases, we will take whatever steps we think may be necessary in a case and conduct any kind of inquiries we believe we need from interviewing applicants and witnesses to instructing leading experts in whatever discipline is relevant.

Probably our greatest strength as an investigative body is our unfettered access to the paper trail, and increasingly the digital footprint, left by the investigation, prosecution and trial processes that take place in criminal cases.

The detailed analysis of all that material, and of the products of the various police databases, and sources of intelligence and other sensitive material that only we have access to, are intrinsically desk based activities; we make no apology for doing that skilled and careful work in an office environment.

The recent discussion of disclosure issues in the justice system highlights the importance of our legal powers of access to material whether disclosed or otherwise.

2.Internal board minutes passed to BBC Panorama suggest the commission suffers from poor staff morale, chronic under staffing, high sickness levels and problems with workload. Do you accept these issues affect overall CCRC performance?

It is the everyday work of a Board to be involved in discussions about morale, work load, staff sickness and so on. In fact it would be very odd if these things were not discussed by the Board; that they are should not be taken to indicate that there is any kind of crisis. Sickness absence is one of our KPIs. We report on this area each year in our Annual Report where we discuss the reasons if our KPI target is missed.

Regarding staff morale, we use the very well known independent company OCR to conduct a staff survey every two years. In recent years we have twice won OCR awards for our results in the area of employee engagement – which broadly equates to staff morale. Here are the results on morale for the last two surveys (2014 and 2016). The figures that they show are, by any standards, at the very top end of results in this area.

We would never claim that things are perfect, and we are far from complacent about our situation and the types of issues you've raised . We are a public sector body, our workload has increased in recent years and our budgets have not. That undoubtedly puts pressure on the organisation and its people – we are not alone being in that position.

We have taken all the steps we can to make sure that the quality of our investigations and the correctness of our decision making has not been adversely affected.

The situation is helped enormously by the fact that at the CCRC we are fortunate to have very able and committed staff.. Our staff surveys have repeatedly demonstrated that we enjoy very robust good morale. More generally on the points you have sought to extract from the board minutes, we would say it is part of the Board's job to scrutinise such matters. We certainly won't be dissuaded from having full and frank Board discussions about these and other issues because someone trawling through the minutes might misinterpret or overstate their meaning.

3. The minutes suggest that at least one commissioner, understood to be Alexandra Marks, expressed doubts about whether the work required to uncover certain miscarriages of justice was being done. According to the minutes of the September 2017 board meeting, she "doubted whether the enquiries that led to the discovery of the non-disclosure would be made if the applications had been today." How do you respond to this?

As the minutes of the Board meeting of September 2017 show, a Commissioner did question whether current CCRC practises would today uncover the important information that our inquiries had uncovered in earlier cases. The question was posed in relation to two specific cases. The same minute also clearly shows that the Director of Casework Operations undertook to assess the matter with a view to amending any process or policies if it was needed.

The Director of Casework carried that assessment. The process included undertaking a "blind screening" exercise in which a very experienced member of staff was asked to consider one of the cases afresh (without knowing why) in order to test our policy and processes relating to checks of the relevant kind. That and a number of other steps triggered by the question raised at the Board satisfied us that the necessary checks would also be made today as they were when the cases first came to us.

4. The board minutes also reveal a culture in which the CCRC is deeply worried about its reputation with the Court of Appeal. It is suggested that this factor has made the CCRC timid in the face of criticism from the Court, impacting on staff confidence and referral potential. How do you respond to this?

We do not accept that it is a fair characterisation of the minutes to say the Commission appears to be "deeply worried". Our relationship with the Court of Appeal is central to our role. What they have to say in the judgments they make in the cases we send them (and on other cases) is important. The real possibility test that we apply requires us to take note of what the Court does and says so we are bound to carefully consider the tone and content of its judgments.

5. Lawyers for Eddie Gilfoyle are preparing a fresh submission on the basis of fresh expert evidence commissioned by BBC Panorama. They say the CCRC has "completely misunderstood the evidence" in relation to previous submissions on perinatal mental health; for example, that it was wrong to describe the undisclosed Gilfoyle diaries as "arguably normal adolescent" diaries. How do you respond to this?

We referred Mr Gilfoyle's murder conviction to the Court of Appeal back in 2001 but his subsequent second appeal failed. We have since looked twice more at the case but we have not been able to identify any new evidence or legal argument on which we could refer the case again. Mr Gilfoyle can apply to us again and we will look again at his case and any new submissions he and his legal team wish to make.

They will receive full professional and unbiased consideration. It would be completely wrong of us to offer an opinion, or comment in any way on matters that might

come to us as a submission, From what you say, it seems that a new application is pending. We do however think, in light of the comments that Mr Gilfoyle and his representatives have repeatedly made about the Commission's investigation and decisions on this case, that it would be helpful if Mr Gilfoyle would make public the full CCRC decision documents in his case so that any one interested can judge for themselves the extent of the Commissions investigations and the detailed explanations of why, so far at least, we have been unable to refer his case a second time. We would argue that our investigations in this case have been painstaking and thorough. A judicial review of our recent decision not to refer the Mr Gilfoyle's murder conviction found no fault in our reasoning.

The only way that people will be able to judge the matter for themselves is for Mr Gilfoyle to agree to make public the lengthy and detailed document, the Statement of Reasons, where we explained what we have done in our review and why we have concluded that there are no grounds on which we can refer the case for a second time. It is not within our power to release that document. However, Mr Gilfoyle can do so; we hope that he will.

6. Gilfoyle's lawyers also claim the CCRC is conflicted, and unable to make a fair assessment of the important of the non-disclosed diaries because the commission may have had access to the diaries during its first assessment of the case in 1999, but did not assess them. How do you respond to this?

We are a professional investigative body and we will have no difficulty whatsoever in ensuring that any fresh review of the case is free from self-interest or any other kind of bias. Any reapplication will be considered by investigative staff and decision makers who have had no previous involvement in the case.

7. In one of the CCRC's dismissals of Kevin Lane's applications, and in subsequent correspondence with him, the CCRC states that there is no mechanism to transplant a fingerprint from one surface to another. Lane has maintained that could be an explanation for his print being found on the binbag. BBC Panorama has commissioned fingerprint experts to test this, and has established that, using the same technology available in the 90s, that it is possible to transfer a high quality fingerprint from one surface onto a binbag, meaning the CCRC was wrong in its conclusion. What is your response to this? and

8. The BBC has also commissioned a ballistics expert to analyse a key plank of evidence in this case: that a gun had been in the car linked to the shooting which Lane had previously used. A single particle of gunshot residue (GSR) was found in the boot of the car. The expert has told BBC Panorama that under today's standards, this would NOT be considered evidence that a gun or ammunition had been present. The Forensic Science Service issued guidance in 2006 in relation to this. Whilst various CCRC investigations of the Lane case have been underway, the CCRC has actually referred other cases to the Court of Appeal based on GSR evidence – famously, Barry George. Given the knowledge about GSR evidence within the CCRC, Can you explain why your investigators failed to spot this crucial piece of new evidence in the Lane case?

If Mr Lane and his representatives feel that they have some new information that has a bearing on the safety of his conviction, they will need to make a new application to the CCRC. They can rest assured that it will be given professional, impartial consideration. If in the overall evidential context of the conviction, new information is strong enough to raise a real possibility that the Court of Appeal would quash his conviction, we will have no hesitation whatsoever in referring the case for appeal.