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MOJUK: Newsletter 'Inside Out' No 698 (18/07/2018) - Cost £1

CCRC Refers Joint Enterprise Murder Conviction of Jordan Towers Court of Appeal

Criminal Cases Review Commission has referred the joint enterprise murder conviction of Jordan Towers to the Court of Appeal. Mr Towers was 16 years old when he was tried in October 2007 at Newcastle-Upon-Tyne Crown Court for murder and for wounding with intent to cause grievous bodily harm. He and two co-defendants were tried on the basis of joint enterprise He pleaded not guilty but was convicted of both charges and sentenced to be detained at Her Majesty's Pleasure with a minimum custodial term of 13 years. The sentence reflected Mr Towers' age at the time.

The offences for which Mr Towers and his co-defendants were convicted arose out of incidents on 19 May 2007 when Mr Kevin Johnson was fatally stabbed during an altercation outside his home in Sunderland. A few minutes later another man, Mr Jamie Thompson, was also stabbed during an altercation but his injuries were not life-threatening Mr Towers and two co-defendants stood trial together and were all convicted on the basis of joint enterprise for the murder of Mr Johnson and for the wounding with intent of Mr Thompson Mr Towers tried to appeal against his conviction but his application for leave to appeal was refused by the full court in July 2008.

Mr Towers applied to the CCRC in 2009 and 2013 but in spite of extensive consideration of the case, the Commission was unable to identify grounds on which it could refer the convictions for appeal. Mr Towers applied again in 2015. In February 2016, while the case was under review at the Commission, the Supreme Court made its decision in the cases of R-v-Jogee; Ruddock v The Queen [2016] UKSC 8 (Jogee) which changed the law in relation to joint enterprise convictions involving the liability of secondary parties. Following this change in the law, Mr Towers' representatives made new submissions to the Commission.

Having considered the case in light of Jogee, and of the subsequent Court of Appeal decision in the cases of R-v-Johnson & others [2016] EWCA Crim 1613 (Johnson) the Commission has decided to refer Mr Towers' murder[1]conviction to the Court of Appeal because it considers there is real possibility that Court will quash the conviction.

The Commission's referral is based on the change in the law in relation to the liability of secondary parties brought about by the judgment in Jogee and elaborated in Johnson, and on the basis that the Court of Appeal could conclude that to uphold Mr Towers' conviction for murder would amount to a 'substantial injustice'. Mr Towers was represented in his application to the CCRC by Birnberg Pierce, 14 Inverness Place, London, NW1 7HJ.

Government Forced to Pay Millions In Compensation to Mistakenly Detained Immigrants

Gherson Immigration: It has recently been reported that between 2012 and 2017 the Home Office mistakenly detained over 850 people, some of whom had valid leave to reside in the UK at the time. It is claimed that as a result of this astonishing administrative error the Government had to pay out more than £21 million in compensation. The above figures were disclosed in a Home Affairs Select Committee paper published this week, which provided a detailed breakdown of the exact number of people wrongfully detained for particular periods and the total sum paid to them in compensation. For example, there were 143 cases of wrongful detention registered between 2016-2017, triggering a £3.3 million compensation payout.

It is also revealed that at least 10 individuals were each paid in excess of £100,000 in compensation, whilst the majority of individuals wrongfully detained received in the region of £20,000 or less. Some only received nominal payments of £1.

The level of compensation was based on the circumstances of each individual case, and was determined by way of an assessment of the "initial shock" caused to the person wrongfully detained. The level of compensation also took into account whether the individual had any previous criminal convictions. Payouts were also made to people who were detained legally, because they had no right to remain in the UK, but whose detention was considered to have been too long. Although the figures published by the Home Affairs Select Committee do not give details of names or nationalities of the people who were mistakenly detained in immigration detention centers ahead of deportation, it is claimed that it is likely that some of them were Windrush individuals.

The Home Office tried to play down the significance of the numbers of mistakenly detained immigrants claiming that by comparison, this was just a small proportion of the total number of immigrants detained in the UK. The Home Office also stated that "Ninety-five per cent of people who are liable to removal are managed in the community, rather than in detention". However, Stephen Doughty MP (Labour) who sits on the Home Affairs Committee, said "These figures expose what many of us have warned for months: that the government has been wrongfully locking up individuals as well as wrongfully deporting others. The immigration system needs root and branch reform. How are millions of EU nationals to have any confidence in a system that wrongly deports and locks up people?"

Intriguingly, the same document also disclosed that the Home Office operated targets and bonus schemes for enforced removals from the UK, which applied to senior and junior caseworkers. Some employees even had to meet personal targets on which bonus payments were made. The Home Office admitted that civil servants working within immigration enforcement received performance bonuses for good work, some of which was related to removals. Only relatively recently, in April this year, confusion over removals targets led to the resignation of the previous Home Secretary, Amber Rudd, when she claimed "that's not how we operate" but later admitted that she "wasn't aware of specific removal targets". The new Home Secretary, Sajid Javid, has said that he intended to stop the operation of targets, stating that he did "not believe in quantifying targets for removals".

Belhaj and Anor (Appellants) v Director of Public Prosecutions and Anor (Respondents)

Justices: Lady Hale, Lord Mance, Lord Wilson, Lord Sumption, Lord Lloyd-Jones

Background To The Appeals: The appellants allege that they were abducted and mistreated by agents of foreign governments and then "rendered" to the Libyan authorities, by whom they were imprisoned and tortured. They allege that this occurred with the involvement of Sir Mark Allen, who is said to have been a senior officer of the British Secret Intelligence Service. After an investigation by the Metropolitan Police, the Director of Public Prosecutions ("DPP") declined to bring any prosecutions. The DPP based her decision on a senior prosecutor's decision and on legal advice that there was insufficient evidence to prosecute for any offence subject to the criminal jurisdiction of the United Kingdom. After an internal review by the Crown Prosecution Service ("CPS") at the appellants' request, another senior prosecutor reached the same decision. The CPS declined to disclose the potential evidence to the appellants, citing its security marking. In separate proceedings, the appellants have sued the British government for damages.

On 20 October 2016, the appellants issued the present proceedings in the High Court, seeking judicial review of the failure to prosecute Sir Mark Allen, who is alleged to have been the

primary suspect in the investigation. They argue, amongst other things, that the DPP's decision was inconsistent with the evidence. The DPP argues that her decision was based on a review of documents which cannot be released to the appellants. The Foreign Secretary applied to the court under section 6 of the Justice and Security Act 2013 for a declaration that the judicial review proceedings were "proceedings in which a closed material application may be made to the court." A section 6 declaration is a prerequisite for an application to the Court for the use of "closed material procedure" under Part 82 of the Civil Procedure Rules, whereby the court may sit in private and without a party and his or her legal representative in order to prevent disclosures damaging to the interests of national security.

A section 6 application may be made only to a court seized of "relevant civil proceedings", which are defined as not including "proceedings in a criminal cause or matter." The appellants resisted the section 6 application on the basis that these judicial review proceedings were in "a criminal cause or matter." The Divisional Court rejected that argument but certified the issue as one of public importance, suitable for consideration by the Supreme Court.

Judgment: The proceedings were settled after argument before the Supreme Court, but the Court gives judgment in view of the importance of the legal issue. The Supreme Court allows the appeal by a majority of three to two. Lord Sumption gives the lead judgment, with which Lady Hale agrees. Lord Mance gives a concurring judgment. Lord Lloyd-Jones gives a dissenting judgment, with which Lord Wilson agrees.

Reasons For The Judgment: The adoption of closed material procedure requires specific statutory authority. The Justice and Security Act 2013 gave the High Court a general statutory power, in certain circumstances, to receive "closed material" which is disclosed only to the court and to a special advocate. As explained in the 2011 Justice and Security Green Paper, the Act was a response to a growing number of civil claims for damages against which the government was unable to defend at trial except through the unacceptably damaging disclosure of secret material. Those claims instead had to be settled [6-7].

The ordinary and natural meaning of "proceedings in a criminal cause or matter" includes proceedings by way of judicial review of a decision made in a criminal cause, and nothing in the context or purpose of the legislation suggests a different meaning. In English criminal procedure many decisions made in ongoing or prospective criminal proceedings are subject to judicial review in the High Court. Judicial review therefore cannot be regarded as an inherently civil proceeding. It is an integral part of the criminal justice system [15-16]. Judicial interpretations of the phrase "criminal cause or matter" in the Judicature Acts primarily reflected the natural meaning of the words, rather than any special feature of the Acts. A "cause" is a proceeding, civil or criminal, actual or prospective, before a court. A "matter" is something wider, namely a particular legal subject-matter, although arising in a different proceeding. The appellants' application is an attempt to require the DPP to prosecute Sir Mark Allen. That is just as much a criminal matter as the original decision not to bring a prosecution. Parliament is unlikely to have intended to distinguish between different procedures having the same criminal subject-matter and being part of the same criminal process; but the draftsman could have done so easily, for example by omitting the reference to a "matter" [17-20].

The Green Paper indicates that the distinction between criminal and civil proceedings in section 6 reflected the greater degree of control exercisable by the government in criminal cases, in which the prosecution can: (i) chose the material on which it relies, (ii) seek to limit the disclosure of unused material on the grounds of public interest immunity; and (iii) withdraw the prosecution. That rationale does not require closed material procedure to be available in an ancillary judicial review of a decision made as an integral part of the criminal justice process, when it would not be available for an actual criminal trial [22-24].

Lord Mance agrees that the appeal should be allowed, essentially for the same reasons as Lord Sumption [25-37]. Lord Lloyd-Jones, with whom Lord Wilson agrees, would have dismissed the appeal. He concludes that the natural meaning and use of the word "cause" is appropriate to cover criminal proceedings which will result in a criminal conviction or acquittal, and that the word "matter" may extend beyond that to ancillary applications in such criminal proceedings (such as disclosure applications and extradition proceedings). They do not, however, naturally include this judicial review, which is a public law challenge extraneous to the criminal process. It is permissible to refer to the Green Paper in order to discern the purpose of the exclusion of "proceedings in a criminal cause or matter" from closed material procedure. The core concern behind the exclusion is to ensure that closed material procedure is unavailable where criminal guilt is being decided. These proceedings do not fall within the purpose of the exclusion [52-57].

Independent Barristers "Better Quality" Than Other Criminal Advocates, Say Judges

Legal Futures: The standard of criminal advocacy is "generally competent", but that of solicitor-advocates and in-house barristers is inferior to the self-employed Bar, research among judges has found. Meanwhile, a linked thematic review of criminal advocacy by the Solicitors Regulation Authority (SRA) found that most firms demonstrated good practice in most areas of their work, but there were areas for improvement for some, such as in the quality of training.

The report, which involved interviews with 46 circuit judges and four High Court judges, was jointly commissioned by the SRA and Bar Standards Board (BSB) and produced by the Institute for Criminal Policy Research of Birkbeck, University of London. Most of the judges deemed advocacy to be generally competent, but "solicitor-advocates and in-house barristers were less well reviewed than members of the independent Bar", the report said. "Judges explained this disparity with reference to differences in the training received by barristers and solicitor-advocates and the narrower professional experience of in-house advocates."

The judges tended to think that the quality of advocacy had declined over time, "with a large proportion of interviewees perceiving standards to be poorer than when they had practised as advocates themselves". Standards of case preparation and advocates' ability to ask focused questions of witnesses and defendants were the main areas of concern, while advocates' skills in dealing with young and vulnerable witnesses were seen as improving. Many said that the best advocates were those with experience of both prosecution and defence work.

The report said the most commonly cited barrier to high-quality advocacy was advocates taking on cases beyond their level of experience. "This was said to arise particularly in relation to solicitors' firms which, for financial reasons, opt to keep cases 'in house' rather than to instruct independent counsel with the necessary level of experience. "The judges said that junior advocates, especially solicitor-advocates, are not afforded sufficient opportunities to learn via shadowing and by being mentored by their more v experienced peers; this also affects barristers since it is now less common to instruct both junior and senior counsel to a single case."

Almost half of the judges argued for more mandatory continuing professional development for advocates, with a "sizeable minority" supporting formalised assessment of advocates, to be undertaken by an external body, by peers and senior colleagues, or by the regulators. "Some felt that such a system should entail determining advocates' capacity to take on cer-

tain levels or types of work. “Most of the judges, however, were resistant – and sometimes strongly resistant – to the idea of judicial involvement in formalised assessment of advocates.”

This was one of the contentious elements of the now-ditched Quality Assurance Scheme for Advocates. The judges also called on the regulators to be “more robust” in responding to poor advocacy when alerted to problems by judges, but there was also some uncertainty about whether, or how, they should report poor advocacy. The SRA’s thematic review was informed by data gathering and interviews with 40 solicitors’ firms.

Cocaine ‘flooding’ into the UK Leads to a Crime Epidemic

An epidemic of violent crimes across the UK was believed to have been caused by cocaine flooding into the county, a leaked Home Office document warned. After a rise in crimes including murders, stabbings, robberies and attacks from moped gangs, an ‘excess supply’ of cocaine into the UK has been blamed as the cause of these violent acts. The gangs of criminals have now began to form in more remote areas such as villages and seaside towns – away from city centres where their supply of illegal drugs and illegal activity are more likely to be discovered.

The leaked Home Office report stating these findings marked as ‘sensitive’ suggested other criminal activity was on the rise such as a supply of firearms. Additionally, the leaked document suggested that there has been almost double the amount of automatic weapons seized in the last two years. The report suggested that there was a 42% hike in positive tests for cocaine as well as a rise of 28% of those who had been using crack cocaine. The report concluded: “We are now certain that drugs are playing an important role in driving up homicide, and it is highly likely to be affecting other serious violence too.”

This comes after a rise of violent crime by 10% last year especially crime occurring whilst the perpetrator is riding a motorcycle or scooter. Scotland Yard has received up to 22,025 crime reports linked to mopeds in the previous year; a 50% rise from the last year. In the previous month alone, a number of incidents had occurred, one notably including a woman in critical condition after she was punched by the pillion passenger of a moped as two men had approached her to steal her belongings.

The Home Office stated: “A major factor behind the increase in serious violence are changes in the drugs market...This includes an increased supply of cocaine from overseas, an increase in the use of crack cocaine, the spread of county lines drugs dealing, and use of social media.” Louise Haigh, the shadow minister for crime has said: “A toxic cocktail of a more aggressive and profitable drug market in the context of eight years of austerity have created the conditions for violent crime to thrive...The Government must invest in the police immediately to begin to undo some of the damage that taking 21,000 officers off our streets has done.”

Thousands Misusing Abuse Orders to Get Legal Aid, Says Parenting Charity

BBC News: Thousands of parents falsely claim domestic abuse in order to access legal aid and stop estranged partners from seeing their children, a shared parenting charity claims. Families Need Fathers says parents are being encouraged by some solicitors to file for non-molestation orders - injunctions used in urgent abuse cases. New figures show a 30% rise in orders made after legal aid was axed in everything but abuse cases in family courts in 2012. Some 25,700 were made in England and Wales in 2017, and 6,699 in the first quarter of 2018.

The changes to legal aid qualification in England and Wales were designed to reduce the number of cases in family courts, with separating couples being encouraged to attend mediation sessions

instead, and to cut the legal aid bill. But charity case workers say they are seeing "thousands" of parents, mainly fathers, who have been made subject to these orders for things that they do not consider to be domestic abuse. These could be angry comments thrown in the midst of the break-up or dealing with child access arrangements or unpleasant text messages, they say.

'False allegations' The charity suspects that solicitors' firms are talking parents into seeking such orders because it enables them to qualify for legal aid, from which both the legal profession and the complainant could benefit. A spokesman for the charity said: "We're getting a lot of people coming to us talking about false allegations, whether it's grossly exaggerating events or even completely fabricating them. "And yet the impact of the order can take a parent down a path that can be very difficult to return from." Jerry Karlin, chairman of Families Need Fathers, said the result of the government's "well-intended but ill-conceived changes" to the family courts system was a 30% increase in non-molestation orders (NMOs) to 25,000 a year. There had also a been 20% rise in private family court applications over the last two years, he added. "These (NMOs) are used in allegations of abuse and they don't have to be true to obtain access to legal aid."

"Non-molestation orders have gone up by several hundred per cent since the legal aid changes in some districts," he added. NMOs work like injunctions and are designed to protect domestic abuse victims from further harm in emergency situations. The charity stresses that they are useful in genuine cases of abuse, but is concerned that the way they are administered leaves them open to exploitation. For example • They are often granted in the absence of the person being accused of abuse (the respondent) and without accusations of domestic abuse being proven • The making of an order then also enables the complainant to draw on thousands of pounds in legal aid which can also be used in any subsequent family law cases • The respondent would not be automatically entitled to legal aid, however, and often has to represent themselves • The level of evidence required is fairly low and can relate to claims about verbal abuse, unwanted text messages or emails In some regions of England and Wales the increase has been as much as 900%. In others there has been a 150% rise, according to information obtained by Families Need Fathers.

'Gross exaggerations' Once an order is made, there is a brief "return" hearing two weeks later but the case is then usually adjourned for about six months. During this time every agency related to the the respondent and his family, such as the police, school and local council, is notified. This can lead not only to the parent being physically separated from their children but being ostracised by the agencies involved with them. After about six months, usually, a fact-finding hearing is held at which the evidence of the applicant's claim is meant to be heard. But quite often, just as the initial order is made in the absence of the respondent, the fact-finding hearing is held in their absence as well. A judgement is then made on whether the order should continue. At this point it can be used to restrict a parent from spending time with his or her child and to delay the process of arranging contact.

The outgoing president of the High Court's family division, Sir James Munby, described false allegations as a "vice in the system". He also said that the judiciary had recently realised that "a wrongly granted without notice order sets the tone of proceedings thereafter". He tried to crack down on the use of such orders, reminding courts that it was for the applicant to prove their claims rather than for the respondent to disprove them. His successor, Sir Andrew McFarlane, who is taking over the role in July, appeared to back some of the charity's claims on the harmful effects of such orders in a recent speech. He called for the facts of a case to be established much more quickly than happens at present.

Whether there are serious domestic abuse allegations or not, it does not help either par-

ent or the children for the hearing of the contested factual issues to be adjourned again and again, he said. And Sir Andrew cited a case in which a father was subject to a continuing non-molestation injunction preventing him from having any contact with his children for a period of years. "That injunction had been based upon the untested and contested factual allegations which were never tried," he said. Until the factual context is clarified and determined by the court, the arrangements for the children cannot move on and develop in a way which reflects the risk or lack of risk, arising from the facts as they are found to be," he added.

'Greater awareness' A spokesman for the Ministry of Justice said there may be various reasons for an increase in the issuing of such orders - including greater awareness of domestic abuse and of how it can be addressed. He added: "Non-molestation orders are an important means of protecting individuals in abusive situations. "When deciding whether to grant a non-molestation order, the judge will consider all the circumstances, including the need to secure the health, safety and wellbeing of the applicant and any children." The court has the power to discharge an order if the respondent makes an application and this is found to be justified.

Domestic abuse charity Women's Aid said the rise in NMOs needed to be put in the context of statistics showing record numbers of domestic-abuse related incidents. The number rose from 796,935 in 2011-12 to 1.1 million in 2016-17 in England and Wales. Their spokeswoman said: "We know that the police often recommend to victims that they seek civil orders to keep them safe while their case may be going to the CPS [Crown Prosecution Service] "Or if the victim does not want to proceed with a criminal justice case, you would expect to see more of an increase if the police are seeing an increase in domestic abuse-related incidents."

People Risk Unjust Prison Sentences Due to Lack of Court Healthcare

Amelia Hill, Guardian: Innocent people are at risk of being given unjust prison sentences and suffering physical harm because of a lack of healthcare in courthouses, according to the outgoing head of the independent body charged with monitoring the care and welfare of those brought to court in England and Wales. Tony FitzSimons, the outgoing chair of the Lay Observers' National Council, has told the Guardian that there is a risk that at least 6% of those who come to trial go on to be imprisoned unfairly or kept in prison for too long, because a lack of medical attention while waiting for their case to be heard means they are not able to present their case effectively in court. He also said that the "failing system" of court custody treats children accused of crimes so badly that he fears it could increase their likelihood of committing future crimes. The Council's third annual report, published on Wednesday 03/07/2018, is scathing in the failings it records in the care of people held in custody at courts and transported between police stations, prisons and courts by escort contractors.

Lay Observers are appointed by David Gauke, the justice secretary, to provide independent oversight of how people detained in court cells are cared for and their access to justice. Unpaid, they make 18,000 visits to courts every year. The report reveals that on average, each of those visits result in Lay Observers reporting four concerns about the conditions that detained people are kept in, one concern being "serious" or "unacceptable". FitzSimons said that, despite having written to ministers to warn that "the system is bound to fail" and an ongoing review of healthcare in the court custody environment initiated jointly by the NHS and Ministry of Justice, he is frustrated there have been no improvements. "The way we're treating people is not the way that, if you or I were accused of a crime, we would want to be treated," he said. "What is happening to these people is not fair. Not by anyone's definition. The system is failing and it's bound to fail in the future in more obvious ways, like a death or

serious accident. The risks are real. One of the many issues for us is the frequency with which our observers see people lying on the hard, wooden bench in a court cell, shivering, shaking, frothing at the mouth [from alcohol or methadone withdrawal] and complaining of the cold -–and then seeing that person helped to their feet by court custody officers, wiped down and taken straight into court to face charges," said FitzSimons.

There is no embedded medical support for detainees in court custody, as there is for those in prison and police custody. The standard medical operating procedures for those in police custody, for example, is 137 pages long. The "main dangers" of the current system, said FitzSimons, is the "very real" risk of "prejudice and impairment of a person's fitness for trial". "In our view, that's a very serious yet routine issue in courts," he said. "About 25% of the people we see in courts have a medical impairment and of those, about 25% don't have adequate medication. "That means 6% of all detainees are having their access to justice impaired, which could mean being sent to prison or staying in prison longer than they should, because of erroneous judgements made against them by the judge as a result of them not being able to present their case effectively in court."

FitzSimons said that the problem of police and prisons failing to accurately fill in detainees' healthcare records is "very significant". He estimates that 30% of detainees arrive at court with inaccurate records, about 20% of which create a serious problem for detainees: another 6% of all those who come to court. "There is an increased risk of miscarriage of justice because someone's ability to access justice is seriously impaired as their condition deteriorates to the point that they cannot impart satisfactory information to the judge,' said FitzSimons. "This is not an acceptable state of affairs but it is allowed to exist because there aren't any deaths, so – the erroneous logic goes – why worry?" said FitzSimons. "I hope I've given you reasons why we, the independent observers, are worried. In short, the treatment of people should not be conditional on the likelihood of whether they will die or have died or have been beaten up. There are other more subtle nuances of poor treatment and access to justice is an important one." The Ministry of Justice said: "The report recognises that significant improvements have been made in the past year and we continue to work with our contractors to ensure safe and decent conditions are provided at all times. "We carry out regular inspections to ensure all our contractors meet the high standards we expect."

Prisoners: Females:Parliamentry Written Question - HL8800

How many incidents of self-harm occurred in the women's prison estate in the two most recent years for which information is available. The Government publishes statistics on safety in custody quarterly, and updated detailed tables annually. The most recent tables were published on 26 April 2018 and cover the period to the end of December 2017. In 2017 there were 8,317 incidents of self-harm in the women's prison estate. In 2016 there were 7,670 such incidents. The total number of times ambulances have been required to take women prisoners to hospital could be obtained only at disproportionate cost. However, the published figures reveal that there were 183 self-harm incidents that required hospital attendance in the women's prison estate in 2017, and 138 such incidents in 2016.

The support available to prisoners when they return from hospital depends on the cause of their injury or illness. Continuing medical treatment or observation is provided where necessary. The Assessment, Care in Custody and Teamwork (ACCT) case management process is used to provide support for prisoners who have self-harmed, and where the prisoner was subject to the ACCT process prior to the incident, there is a review by the multi-disciplinary team to identify any changes that need to be made to the support that is being provided.

The Government takes very seriously its responsibility to keep prisoners safe, and the recent increase in the number of self-harm incidents shows that we can and must do more. We have established a prison safety programme through which we are taking forward a comprehensive set of actions to improve safety in custody, including: rolling out revised and improved training for staff in assessing and managing the risk of suicide and self-harm amongst prisoners (which has already reached more than 15,500 staff); improving support for prisoners in their early days in custody; revising the ACCT case management process for those identified as being at risk; and renewing our partnership with the Samaritans by confirming a further three years' grant funding for their valuable Listeners Scheme.

How many times ambulances have been required to take women prisoners to hospital in the two most recent years for which information is available; and what support is provided to women prisoners after any return from hospital. The Government publishes statistics on safety in custody quarterly, and updated detailed tables annually. The most recent tables were published on 26 April 2018 and cover the period to the end of December 2017. In 2017 there were 8,317 incidents of self-harm in the women's prison estate. In 2016 there were 7,670 such incidents. The total number of times ambulances have been required to take women prisoners to hospital could be obtained only at disproportionate cost. However, the published figures reveal that there were 183 self-harm incidents that required hospital attendance in the women's prison estate in 2017, and 138 such incidents in 2016.

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Practice In Russia of Incarcerating Prisoners Thousands of Miles From Their Families

In Chamber judgment! in the case of Voynov v. Russia (application no. 39747/10) the European Court of Human Rights held, unanimously, that there had been: a violation of Article 8 (right to respect for private and family life) of the European Convention on Human Rights, and a violation of Article 13 (right to an effective remedy) of the European Convention.

The case concerned a complaint brought by a prisoner that he had been sent to serve his sentence in a prison 4,200 kilometres from his home town. He has not seen his partner since 2014 and has never seen his four-year-old daughter. The Court found that there was nothing in the Government's submissions in the case to convince it to depart from its findings in a judgment of 2017 on the same issue. In that judgment the Court held that the Russian legal

system did not provide sufficient safeguards against abuse as concerned decisions on the location of incarceration, in breach of prisoners' right to respect for their family life. Moreover, it was not satisfied that a procedure suggested by the Government would have provided an avenue for the applicant in the present case to adequately complain about the breach of his right to respect for family life. Nor was there any other remedy available to him at national level to complain about being sent so far away from his family to serve his sentence.

Principal facts:The applicant, Timur Voynov, is a Russian national who was born in 1985. He was convicted in 2009 of drug-related crimes and sentenced to 12 years' imprisonment. He has been serving his sentence since April 2010 in the village of Areyskoye, Krasnoyarsk Region, which is 4,200 km from Oryol where his mother and partner live. His transfer was ordered by the Oryol penal authorities because of overcrowding in the post-conviction detention facilities in the region. Mr Voynov's repeated requests to the authorities to be transferred to a prison closer to Oryol to maintain family ties while serving his sentence have all been rejected. He also brought civil proceedings claiming compensation for the decision to transfer him, but his claim was dismissed in 2012. The courts, not addressing his argument concerning the difficulties in maintaining family ties at such a distance, held that the penal authorities' decision had been lawful because there had been overcrowding in the Oryol prisons. His partner visited him six times between 2011 and 2013, but she has no longer been able to visit him since the birth of their daughter in 2014. He has never seen his daughter.

Article 8 (right to respect for private and family life):The case is a follow-up to the lead judgment in Polvakova and Others v. Russia of 2017, in which the Court found a breach of Article 8 because the Russian legal system did not provide sufficient safeguards against abuse as concerned decisions on the location of prisoners' incarceration. There was nothing in the Government's submissions in the present case to convince the Court to depart from the findings in that judgment. Moreover, a recent ruling by the Constitutional Court of Russia showed that the national authorities' approach to the interpretation of domestic law on the matter had not evolved. In that ruling an application lodged by a convicted prisoner alleging that certain legal provisions (Articles 73 § 4 and 81 § 2) of the Code of Execution of Criminal sentences violated the rights of prisoners and their families was dismissed. The Constitutional Court found that those provisions were not arbitrary and corresponded to international legal norms under which prisoners should, where possible, serve their sentence near their home, but that those norms were only a recommendation and were subject to economic and social realities. There had therefore been a violation of Article 8 of the Convention. Article 13 (right to an effective remedy).

The Government suggested that Chapter 25 of the Code of Criminal Procedure, which set out a procedure for challenging State agencies' acts and omissions, was an effective remedy for Mr Voynov's complaint. It therefore argued that the application should be declared inadmissible for non-exhaustion of domestic remedies. However, for a remedy to be effective, it must be clearly set out and confirmed by practice or case¬law and the Government had not provided any details or concrete examples of judicial practice for their suggested remedy. Moreover, in other cases, including Polyakova and Others, brought before the Court, it had each time refused to accept a complaint under Chapter 25 of the CCP as an effective domestic remedy. The Court was not therefore satisfied that such proceedings, had they been instituted by Mr Voynov, would have provided an avenue for him to adequately vindicate his right to respect for family life.

Furthermore, the proceedings claiming compensation had not provided an effective remedy for Mr Voynov either. In those proceedings the domestic courts had not addressed his

argument regarding the difficulties in maintaining contact with his family while imprisoned so far away from them. Therefore, dismissing the Government's argument as to non-exhaustion of domestic remedies, the Court found that Mr Voynov had not had at his disposal an effective remedy for his complaints under Article 8, in breach of Article 13. Article 41 (just satisfaction). The Court held that Russia was to pay Mr Voynov 6,000 euros (EUR) in respect of non-pecuniary damage and EUR 850 in respect of costs and expenses.

Concurring Opinion of Judge Elósegui

1. I agree with the whole judgment in the case of Voynov v. Russia and the Court has decided it unanimously. My concurring opinion seeks to analyse, in greater depth, paragraph 42 of the judgment in order to show what the Russian Government have failed to demonstrate. As the Court says in paragraph 42: "No attempts at balancing the claimants' interests against those of the State had been made". For the Court, the proportionality test is a tool to secure the protection of Convention rights. It is not an end in itself, but a method for weighing Convention rights in the balance where there are conflicting interests between the parties, to ascertain whether or not there has been a violation of a right, or if an interference by the State with an individual's rights has been justified.

2. I suggest that in order to be more prescriptive, as regards our balancing test to establish proportionality, we could expect the Russian authorities and domestic Russian courts to perform a balancing exercise respecting the following steps[1]: suitability or adequacy, necessity, and proportionality stricto sensu (on the tripartite proportionality test, see the separate opinion of Judge Pinto de Albuquerque in Mouvement raëlien suisse v. Switzerland [GC], no. 16354/06, ECHR 2012 (extracts)).

3. The first step means that the authority has to carry out a balancing exercise as regards the justification for the interference with the applicant's rights, namely the suitability of the measure in pursuit of a legitimate aim. The second step of the proportionality test is to examine the necessity of the measure. In the present case, the Government had to justify the existence of a specific reason to choose a faraway prison. For instance, in some circumstances this could be justified because of the dangerousness of the prisoner or for security reasons.

4. Going to the third step, proportionality stricto sensu, this part of the test can further be divided into three stages. In the first stage, it would be necessary to examine the weight and gravity of the goal of avoiding prison overcrowding. We could attribute to this goal of the State a moderate degree of weight because it is an organisational aim, although it may be important for the purpose of protecting order and security in prisons. In the second stage, we could analyse the right of the prisoner to have a family life under Article 8 of the Convention. The intensity of the interference will be serious if the Government do not allow the fulfilment of this right (on the protection of family life of prisoners in Russia, see the joint concurring opinion of Judges Pinto de Albuquerque and Turković in Khoroshenko v. Russia [GC], no. 41418/04, ECHR 2015). In the third stage, we have to weigh up the results of the first two stages to see whether or not the overcrowding in some prisons justifies the decision to send the applicant to IK-7 prison 4,200 kilometres from his home.

5. Also it has to be examined whether the State could attain the same goal with an alternative measure, namely choosing a prison that is closer to the applicant's home, taking into account the applicant's right to family life. The fact is that this great distance is a serious interference with his right to maintain family and social ties. Consequently, it is possible to conclude, after an analysis of the proportionality, that the legitimate aim of the Government to ensure better organisation of prisons could be fulfilled through a less severe interference with a fundamental right of the applicant. Here the overcrowding in some prisons does not justify the decision to send the applicant 4,200 kilometres away from his home. In this concrete

case, the Government have not adequately weighed in the balance the applicant's right to a family life, the limitation of which is not proportionate and is not justified in this case.

6. Moreover, taking into account the empirical and normative assumptions, the empirical fact is that the IK-7 prison had also been overcrowded; and in relation to the norms, as the Court has said at the end of paragraph 42: "The Court found that Russian domestic law governing the geographical distribution of prisoners as interpreted by the domestic courts did not enable an individual to obtain a judicial review of the proportionality of the FSIN's decision to his or her vested interests in maintaining family and social ties."

7. In conclusion, a different measure could have been taken, namely to find a prison that was closer to the applicant's home while fulfilling the same goal; this would have been less injurious to his right to family life.

Murder Convictions Quashed - Judge Wrongly Removed Culpable Homicide Verdict From Jury

Scottish Legal News: Two men found guilty of murder had their convictions quashed after appeal judges ruled that the trial judge had misdirected the jury by removing the option of a verdict of culpable homicide. The Appeal Court of the High Court of the Justiciary allowed the appeal by Ryan Gibb and Cameron Laurie, who were convicted of the murder of James Chadwick following a trial at the High Court in Aberdeen in 2016, after ruling that there had been a "miscarriage of justice". The judgment has been published after the two accused were convicted of murder last week following a retrial. The Lord Justice Clerk, Lady Dorrian, sitting with Lord Drummond Young and Lord Turnbull, heard that the appellants had appeared together on a charge of murdering James Chadwick on 31 August 2015 at Chadwick's home address in Aberdeen. At trial it was accepted that both appellants, and no-one else, were at Chadwick's house together during the incident in which he met his death, but each advanced a special defence incriminating the other, although neither gave evidence. The court was told that the deceased had previously been in a relationship with Gibb's mother, Tracey Gibb, and had told witnesses that he was afraid to leave his house and was afraid of violence at the hands of the accused Gibb and his friends.

The cause of death was a subdural haemorrhage resulting from a blow to the head, but the deceased had sustained a significant number of other injuries, all caused by blunt force trauma, including injuries to the head, neck, chest and abdomen, as well as other minor injuries. There was evidence from a pathologist that the patterned nature of these injuries were "highly suggestive" of them having been caused by footwear in the context of an assault involving kicking and/or stamping, and the pattern on two of the injuries on the deceased's head and body was consistent with the tread on Gibb's trainers. Gibb was convicted unanimously, and Laurie by a majority, while both were also unanimously convicted of a further charge of attempting to defeat the ends of justice. In his speech to the jury, the advocate depute raised the possibility that a verdict of culpable homicide might be returned in respect of the second appellant, Laurie, but neither defence counsel made reference to the issue.

Judge's Charge: However, in the course of his charge to the jury, the trial judge withdrew the possibility of a verdict of culpable homicide in respect of either accused, saying that the litany of injuries was such that there was no scope for a conviction for culpable homicide. The trial judge gave the jury directions about concert, and told them that although they could convict the first appellant as actor, they could convict the second appellant only on an art and part basis. Both appellants appealed against conviction, arguing that the judge "erred" in removing the option of culpable homicide from the jury's consideration. It was also submitted that his directions in respect of concert were "inadequate"; on the basis that in a case of this kind, alleging spon-

taneous concert, and where there are no clear and undisputed facts about the circumstances of the attack, and no weapons it was incumbent upon the trial judge to give directions about the nature and scope of any common criminal purpose, and that it extended to the degree of violence which resulted in death.For Gibb, it was further submitted that the direction that Laurie could be convicted only on an art and part basis was a misdirection, unfairly undermining Gibb's defence of incrimination. And for Laurie, it was said that there was a misdirection in relation to the treatment of certain statements made by a witness.

The Crown's response was that the nature of the attack was such that there was "no room" for a verdict of culpable homicide. In these circumstances it was not necessary for the trial judge to direct the jury that they required to be satisfied that the scope of any concert extended to the degree of violence which caused death. The sustained and violent nature of the attack was such that it obviously encompassed the use of "lethal force".

'Miscarriage of justice': Allowing the appeal, the court held that the trial judge's misdirection was a "material" one. Delivering the opinion of the court, the Lord Justice Clerk said: "It is beyond doubt that in certain circumstances a trial judge in a case of murder would be entitled to withdraw culpable homicide from the jury, might even have a duty to do so. It is equally beyond doubt that great circumspection must be exercised in taking such a course, and it would only be justified if it could be said that on the evidence there was no basis upon which such a verdict could be returned. "The assessment of whether the actions of any particular accused should be characterised as displaying the wicked recklessness required for a conviction of murder is typically one for the jury. It is only if any evidence which might bear on that question would be incapable of being given weight by any reasonable jury properly directed that the judge would be justified in withholding the option of culpable homicide. "In a case where there is no intent to kill, no antecedent plan, no weapons (apart from the dog lead, in this case), where there is uncertainty as to the circumstances of the attack and where there is no clear picture of the respective part played by each of two accused, the factual conclusions which might lead to the determination of the appropriate verdict, as between murder and culpable homicide, are very much issues which fall into the territory of the jury. In such cases it is a question of fact and degree whether the actions should be classed as murder." Lady Dorrian added: "This is not a case in which picture was so clear cut – as regards either accused – that culpable homicide should have been withdrawn from the jury. We consider that in doing so the trial judge misdirected the jury, and that the misdirection was a material one which has resulted in a miscarriage of justice. On that basis we will allow the appeal. That being so, we do not require to address the remaining grounds of appeal."

British Airways Sponsors Pride. So Why Help To Deport LGBT Asylum Seekers?

Michael Segalov, Guardian, Virgin took a stand against forced deportations in defiance of the law. Britain's national airline should follow suit The fact that the 1971 Immigration Act made not co-operating with the Home Office a criminal offence for Virgin is immaterial. Putting people's lives in danger, LGBTQ+ or otherwise, can never be excused. LGBTQ+ rights in the United Kingdom weren't won by asking nicely: activists struggled for decades, and continue to do so – often engaging in acts of civil disobedience in order to ensure our right to live freely and safely is, as far as possible, enshrined in law. Airlines who facilitate, and profit from, the forced deportation of refugees and asylum seekers from the United Kingdom don't get to pass the blame. It's the responsibility of us all to stand up to grave injustices when we witness them first hand. Let's not forget that Jimmy Mubenga, an Angolan man, died after being restrained by guards while being deported on a BA flight.

If British Airways is truly committed to supporting LGBTQ+ people, it's not too much to ask that it takes this stand. Deporting members of our community to possible death can't be mitigated simply with its meaningless slogan of "Flying Proud". If British Airways doesn't follow in Virgin's footsteps, it will prove that it's only lip-service and good PR that the airline considers worthwhile – co-optation at its worst. When I approached the company for comment I got no response. "We take great pride in transporting our modern British values to the world," reads British Airways' page on the Brighton Pride website. It's now up to the company to decide which values it wishes to uphold – those of a progressive society committed to equality, or one that continues to place LGBTQ+ lives at risk.

Pittance Awards for Wrongful Imprisonment so Low They Breached Article 5 § 5

In Chamber judgment in the case of Vasilevskiy and Bogdanov v. Russia (applications no. 52241/14 and no. 74222/14) the European Court of Human Rights held, unanimously, that there had been: a violation of Article 5 § 5 (right to compensation for wrongful imprisonment) of the European Convention on Human Rights. The case concerned the applicants' complaint about the negligible amount of compensation they had been awarded for wrongful imprisonment. The Court found in particular that the domestic awards were the equivalent of 7 euros and 2.70 euros per day of wrongful imprisonment, which was so low as to impair the essence of their right to compensation under the European Convention. By a majority decision of six to one, it awarded each applicant 5,000 euros in respect of non-pecuniary damage.

The applicants, Aleksandr Vasilevskiy and Yan Bogdanov, are Russian nationals who were born in 1973 and 1981 respectively and live in Blagoveshchensk and the Novgorod Region (both in Russia). Mr Vasilevskiy, released from prison in June 2007, was awarded the equivalent of 3,320 euros for being held in jail for 472 days longer than he should have been after the sentencing courts had failed to take account of the time he had spent in pre-trial detention. He appealed unsuccessfully against the initial award, arguing that the figure was below the level of Strasbourg Court orders in similar cases. Mr Bogdanov was sentenced to 12 years in prison in 2006 for supplying drugs, but the sentence was reduced in 2013 to six years and he was released after the courts found the police had incited some of the offences. He sought compensation for 119 days in custody beyond his adjusted release date. In March 2014 he was awarded the equivalent of 1,576 euros, which was further reduced to 324 euros by a higher court in July of the same year.

'Damning' Findings of Prison Watchdogs 'Routinely Ignored'

According to the Howard League, IMB reports often fail to flag major problems. The group cites annual reports from Peterborough prison for the last four years which do not mention strip-searching at all. Nor do the annual IMB reports from Bronzefield, a prison operated by the same company.There are major recruitment problems with IMBs with, as of May, one-third of positions were empty. The Howard League identifies two key weaknesses in HMIP monitoring regime. 'The watchdog visits prisons infrequently, which means that problems can go unchecked for years at a time; and there is no obligation on the State to implement its recommendations,' it said. In a witness statement, Crook looks at the adequacy of the monitoring of private prisons by Independent Monitoring Boards (IMBs) and the official watchdog, Her Majesty's Inspectorate of Prisons (HMIP). IMBs are made up of unpaid members of the public who might give up two to three days a month of their time to assess life in prisons and immigration detention centres. All public and private prisons are audited in a three-year cycle by Her Majesty's Prisons and Probation Service. Crook argued that, without a clear idea of the

criteria prisons were being measured against, it was 'difficult to have faith in the audit's positive conclusions'. According to Crook, controllers largely responsible for contractual compliance in private prisons worked alongside the employees of the private contractors, and might be 'best placed to hold their colleagues and the management of the prison to account in a meaningful way'.

'In my experience, when effective, these mechanisms can shine a light in dark corners,' Crook said. 'However, in my view, they are less effective in leading to meaningful and urgent change than is required to safeguard the fundamental rights of prisoners, and ensure that prisons comply with the United Kingdom's human rights obligations. In fact, I can think of no other field where damning findings made by inspectorates are routinely ignored; where the same problems are reported year after year, are still not addressed, and have no repercussions for the prisons. It would be unthinkable in the context of health services for the Care Quality Commission to make serious and recurrent findings that go unrectified. However, countless bodies have raised serious and grave concerns about prisons for years that have not resulted in adequate change.'

Neither Confirm or Deny = Neither Truth Nor Justice

Rob Evans, Guardian: Victims of undercover police officers have started legal action against the home secretary over the troubled public inquiry into the conduct of police spies. They say they have initiated the legal challenge in an attempt to prevent the public inquiry becoming a whitewash. There has been sustained criticism of the inquiry that has been given the task of examining how undercover police infiltrated political groups since 1968. It is chaired by a retired judge, Sir John Mitting, who has been accused of being naive and old-fashioned. A barrister for the victims of the undercover police has branded him "the usual white, upper middle-class, elderly gentleman whose life experiences are a million miles away from those who were spied upon". Three victims of the police spies, with the support of others, are seeking to overturn Sajid Javid's refusal so far to appoint a panel to sit with Mitting. They say a diverse panel with an expert understanding of racism, sexism and class discrimination would be a more effective way of uncovering the truth.

One of them is a woman who has described how an undercover officer, Andy Coles, groomed and manipulated her into an intimate sexual relationship. This has been denied by Coles. The woman, known as "Jessica", said : "One of the central tasks of the inquiry must be to assess whether there has been institutional racism and institutional sexism in the context of undercover policing. The chair sitting alone does not have our confidence or public confidence on these vitally important issues that go to the heart of the inquiry." Mitting intends to set up a panel for the final third of the inquiry, when it is formulating recommendations for the future of undercover policing, but not for the first two-thirds, when it is examining the conduct of the police spies and their superiors. He has argued that a panel for the whole inquiry would be "a heavy cost in both time and money".

The inquiry was set up in 2014 by the then home secretary, Theresa May, following revelations that police had planted "a spy in the camp" of the parents of murdered teenager Stephen Lawrence. The inquiry is also due to scrutinise how undercover police deceived women into intimate sexual relationships, gathered information on black justice campaigns, and stole the identities of dead children. It was due to conclude this year but has yet to hold any substantive hearings in public and will now end in 2023 at the earliest. The delay has been caused by the police who have attempted to keep secret the identities of many of their undercover officers who were sent to spy on political groups.

The victims have accused Mitting of allowing too much of the inquiry to be held in private, ignoring their desire to hold the police to account in public. The trio mounting the legal challenge have been made core participants by the inquiry. Also taking legal action is John Burke-Monerville whose son, Trevor, was held in 1987 at a police station during which, it was alleged, he was beaten and suffered brain damage. A campaign to hold police to account was set up. His father became part of the inquiry after he was shown a photograph of a police spy whom he recalls attending the justice campaign meetings. The third person is Patricia Armani da Silva, the cousin of Jean Charles de Menezes who was shot dead by police in 2005. Police have admitted that police covertly collected information on the campaign to get justice for him. In recent weeks, the inquiry has disclosed that among the groups infiltrated by the undercover officers were the Greenham Common women's peace camp and local campaigns in Hackney, east London, to expose police misconduct and oppose the granting of more powers to the police.The Home Office has been contacted for comment.

Tweeting Jailbirds: Social Media Use by Prisoners Triples

Sarah Marsh and Jim Waterson, Guardian: Hundreds of social media accounts were shut down in 2017 after it was discovered they were being run by prisoners using illegally obtained mobile phones in jail, data obtained by the Guardian shows. The number of social media accounts deleted or deactivated because they were being updated from behind bars tripled from 152 in 2015 to 527 in 2017, according to a freedom of information request. Prisoners were found to have profiles on most major social networks, including Facebook, Instagram and YouTube, making it almost impossible for prison governors to control their interactions with the outside world, with experts warning the situation fuels criminal activity, harms victims and threatens national security.

"News that some prisoners have had access to social media accounts while serving their sentences – and that this number is growing – will be shocking for many and potentially very distressing for victims," said Diana Fawcett, the chief officer at Victim Support. She added: "Victims could be left feeling extremely unsafe knowing that the perpetrator may have access to personal information about them, be able to see photos of them or that they could potentially contact them or their family and friends."

Experts warn that social media use is growing in prisons because the Prison Service doesn't have the staff, technology or the will to address the issue. "It's a problem because uncontrolled access to mobile phones and other technology assists criminality inside prisons, particularly organised crime and the drugs market," said Ian Acheson, a former prison governor who led the independent government review of prison extremism in 2016. "This drives the misery, violence and despair we are seeing broadcast almost nightly on our TV screens." He added that the technology exists to detect mobile signals and defeat them, with Scottish prisons testing ways to track and block individual handsets.

Hostages: Sally Challen, 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, Robert Knapp, 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.