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NI: Late Disclosure in Ballymurphy Inquest Sparks Anger From Families

Irish Legal News: A late disclosure by the Ministry of Defence to an inquest into the Ballymurphy massacre has prompted anger from the families of those killed, the Belfast Telegraph reports. Pádraig Ó Muirigh, solicitor for the families, said that the last minute discovery of a database with details of the soldiers serving at the time of the shootings, which occurred over two days in 1971, was "a disgraceful attempt by the MoD to derail the process". The families are angry at what they believe is a "dirty deed" to delay the inquest, due to start next week. In August 1971, 10 people were killed over three days when the army moved into Ballymurphy in West Belfast with the intention of arresting IRA suspects.

Mr O Muirigh said: "The coroner is duty-bound to interrogate this new database the MOD have suddenly found and that could take a considerable period of time. At this stage we have no idea how long that will be. These families have fought long and hard to get to this stage and were ready to finally have their day in court. Clearly this is another attempt by the MoD to delay the inquest. The current hearings started in 2011 and we've had preliminary hearing after preliminary hearing where the MoD gave no indication that this database existed. Suddenly we're expected to believe at this late stage that there are several thousand soldiers on a database that they weren't aware of when they were directed to do this a long, long time ago." He added that the coroner has asked the MoD to explain why it took until August 29 to reveal the information today. "She further wants to be informed of the name and rank of the person in the MOD, and the name and the rank of their superior officer, who made a decision to withhold this information from the Coroner's Service," he said.

An MoD spokesman said: "Following a request from the coroner, we have provided information which may help with the inquest's proceedings. "We continue to support the coroner's intention to start the inquest on September 10 and reject the suggestion that we're looking to delay proceedings."

Reviewing Previously Finalised Cases - Crown Prosecution Service (CPS)

This Code for Crown Prosecutors is a public document, issued by the Director of Public Prosecutions that sets out the general principles Crown Prosecutors should follow when they make decisions on cases. This guidance assists our prosecutors when they are making decisions about cases. It is regularly updated to reflect changes in law and practice.

1. This guidance has been prepared to assist the CPS in determining whether or not to conduct a review of past cases. A review may be required as a consequence of a subsequent trigger, which requires the reconsideration of the safety of convictions, or decisions not to proceed, and an assessment whether justice is served by allowing such convictions, or decisions, to stand. 2. Examples of scenarios where a review of past convictions may be required are set out in paragraph 6 below.

3. The re-visiting of sometimes long-concluded cases involves the balancing of competing considerations. Those convicted on the basis of an erroneous understanding or application of law or practice may well have suffered an injustice. At the same time, there is a continuing public imperative that, where possible, there should be finality and certainty in the administration of criminal justice. It is for this reason that the Court of Appeal has always adopted a strict approach to the granting of leave to appeal out of time where the grounds of appeal are based on subsequent changes in the law (see paragraph 12 below).

4. Occasionally, consideration needs to be given to the reviewing of past cases where decisions have been made not to bring a prosecution.

5. Decisions whether or not to carry out a review of past cases will depend on a number of factors, and will vary depending on the precise circumstances under consideration. This guidance sets out the principles that should be taken into account when making such decisions, and some of the questions which should be considered before reaching a conclusion. The Decision tree below illustrates the way in which a decision may be reached by applying this guidance.

Triggers for Potential Review of Past Convictions

6. The need to consider taking a fresh look at previous cases in which defendants were convicted may arise for a number of reasons. The following list does not cover all potential scenarios. It does however set out a range of broadly-defined triggers within which future situations that arise may fit either directly or by analogy. A. Where the competence and/or credibility of an expert witness or the methodology the expert witness has used is in doubt (see Chapter 37, Disclosure Manual for full guidance). B. Where a non-expert witness is discredited, for example a police officer or other witness who regularly gives prosecution evidence. C. Where a new scientific breakthrough raises questions over the safety of earlier convictions. D. Where the courts develop the common law and thus clarify the scope/elements of existing offences or defences. E. As above, but where the courts determine the ambit of a statute, the scope of its application, or clarify the elements of a statutory offence. F. Where procedural irregularities raise questions of the legality or enforceability of domestic legislation, for example, the EU has not approved or been notified of new legislation when required to do so. G. Where technical defects are discovered in the construction or application of investigative equipment. H. Where the law or the public interest is systemically mis-applied by prosecutors. I. Where systemic failings in the disclosure process are discovered. J. Where a flaw has occurred in the trial process, for example, proceedings based on defective indictments. K. Where the CPS Legal Guidance for prosecutors is found to have been relied upon despite being legally incorrect.

Deciding whether a review of past convictions or other action is required

7. It is not possible to provide definitive answers about when a review of past convictions, or other appropriate action, should take place (and if such a review does take place, the parameters of any such review).

8. However, it may be helpful to ask the following set of sequential questions to determine whether any action and, if so, what type of action, is appropriate. In many cases, you may not need to ask more than one or a few of these questions, as it may be readily apparent that no further action is required. Moreover, these questions will not cover all potential circumstances, nor will they necessarily reflect nuances in various scenarios. The questions are therefore for guidance purposes only and are not intended to replace or limit discretion in the decision-making process.

9. There may be occasions where, notwithstanding the conclusion that in principle it would be appropriate to carry out a full review, in practice there may be reasons why this will not be possible - for example, all the case papers relating to the affected cases, including those belonging to the police, have been destroyed.

10. Decisions, and the reasons for the decision, should be recorded in writing.

Questions to ask 11. The relevant issues to consider are set out below. A. Does the trigger potentially affect finalised or ongoing cases other than the case at hand? If so, it will be appropriate to ask the following questions in relation to all other potentially affected cases. B. Might

the trigger go to a key Issue in the case or raise a potential new issue or defence, and therefore have a potential significant impact on conviction? For instance, the evidence of an expert witness, which was contested at trial, is now brought into question by a scientific development; or a procedural irregularity is discovered, which raises a new issue. If the trigger does not have a potential significant impact on conviction, it is unlikely that any action on other cases would be required. C. Is it a change of law case? If so, since appellate decisions are well known in the legal profession, there will usually be no need to take any action, as those who represent defendants can decide whether it is appropriate to take any necessary action. See also paragraphs 12-18 below. D. Is the information only known internally at this stage? For instance, a disclosure failure is discovered that applies to a number of cases; or legal guidance is revealed to be incorrect or out of date. The defence and third parties would not necessarily have access to this information. If the information is only known internally, the question at E. below should be asked. However, where the information is in the public domain, it will be appropriate to ask the question at (a) below, under potential actions. E. Are the other cases that we are concerned with summary and non-custodial offences? If so, it will be appropriate to ask the question at (a) below, under potential actions. If not, the question at F. below should be asked. F. Is it likely that custodial sentences are still being served, or that ancillary orders, such as a Confiscation Order, a Sexual Offences Prevention Order, a Travel Restriction Order, or an Anti-Social Behaviour Order are still outstanding? If so, an urgent full review should be carried out, as set out at (d) below under potential actions. If not, then it will be appropriate to ask the question at (b) below under potential actions.

Potential actions: A). Is there likely to be any injustice or significant damage to public confidence if no action is taken? For instance, has there been media interest in these cases which in itself provides a compelling reason to take some action? or has there been any relevant correspondence, involving the defence, third parties or other government departments? If it is known that any of the relevant cases involved an unrepresented defendant, and the trigger may have a significant impact on conviction, the defendant should be informed. Where there is not likely to be significant damage to public confidence if action is not taken, action would not usually be required. However, where it is thought that such damage is likely, it will be appropriate to ask the question at b. below. B). Would disclosure of information/material to the defence, be sufficient and appropriate action? If so, such disclosure to the defence should be made in all relevant cases. In order to answer this question, it may sometimes be necessary to review cases in order to establish what, if any, information/material needs to be disclosed on a case-by-case basis. If such disclosure would not be sufficient, it will be necessary additionally to inform appropriate third parties from the list at c. below, together with any other relevant third parties. C). Where a decision is made to inform one or more third parties about a trigger, the following third parties should be considered: the Law Society; the Attorney General's Office; the Criminal Cases Review Commission (CCRC); and any other prosecutors and Government departments that may be affected by the trigger. D). Where it is likely that custodial sentences are still being served, or that ancillary orders, such as Confiscation Orders, are still outstanding, simply informing the defence and third parties will not be sufficient. In these circumstances, an urgent review should be set up in relation to all affected cases. It is likely that relevant disclosure to the defence will need to be made in some or all of the affected cases; and appropriate third parties from the list at c. above will need to be informed, together with any other relevant third parties. Consideration should be given to

whether to inform the defence/third parties at the outset of the review or to wait until the conclusion of the review. E). Where a trigger affects finalised or ongoing cases other than the case at hand, consideration should be given to notifying Areas and Casework Divisions, and issuing appropriate guidance about handling arrangements.

The approach of the Court of Appeal in "change of law" cases

12. Where there is a judicial development in the law subsequent to conviction, the Court of Appeal will not usually grant an extension of time for permission to appeal. This practice was affirmed in the cases of R v Cottrell and R v Fletcher [2008] 1 Cr. App. R. 7, where the Court of Appeal examined this line of authority through a number of past cases.

13. The only exception to this practice is where the appellant is able to demonstrate that he or she has suffered a substantial injury or injustice.

14. Most change of law cases are therefore unlikely to lead to permission to appeal. Moreover, any legal developments are likely to be known to defence solicitors and counsel, who will be in a better position than the prosecutor to assess whether the defendant has suffered a substantial injury or injustice. For these reasons, it will not usually be necessary to take any action in relation to past convictions that may be affected by a change of law: see paragraph 11C above.

Referrals of change of law cases by the Criminal Cases Review Commission

15. Under section 9 of the Criminal Appeal Act 1995, the CCRC may refer cases of convicted persons to the Court of Appeal. Such a referral is treated as an appeal against conviction, so by-passing the courts usual process of filtering out unmeritorious appeals by way of applications for leave to appeal.

16. In R v Cottrell and R v Fletcher, the Court of Appeal indicated that the CCRC should have regard to the practice of the court when dealing with such cases, indicating that a conviction should not normally be referred on the basis of a change of law.

17. Subsequently, Parliament inserted section 16C into the Criminal Appeal Act 1968, which provides the Court of Appeal with a power to dismiss an appeal following a reference by the CCRC, where the appeal is based on a change of law, and the Court would not have thought it appropriate to grant permission to appeal out of time if the appellant had made an application to the Court.

18. As a result, even where the CCRC refers a change of law case to the Court of Appeal, it may now be dismissed without consideration of the full grounds of appeal. It will therefore not usually be necessary to inform the CCRC about past convictions affected by a change of law.

Scenarios involving previous decisions not to prosecute

19. Although less likely to occur in practice, there may be occasions where decisions not to prosecute require further consideration.

20. Such scenarios are likely to arise where an irregularity is discovered in either the decision-making process or in the prosecution process overall.

21. Examples include: Where a misunderstanding of the law or an incorrect application of the public interest stage of the Full Code Test by an individual or group of prosecutors leads to an inappropriate decision not to prosecute. Where Legal Guidance incorrectly sets out either legal or policy requirements. Where decisions not to prosecute result from mala fides within the prosecution team.

22. In deciding whether to review cases where decisions were made not to prosecute, the same considerations set out in paragraph 11 above will broadly apply.

Level of Decision Making

23. Owing to the resource implications and the issues of public confidence involved, decisions

on whether to embark on a review of past cases should be made at a senior level. When deciding on who should take the decision, and who should be notified of the decision, a staged approach will be appropriate: Units should notify the Chief Crown Prosecutor (CCP) or Deputy Chief Crown Prosecutor (DCCP) as soon as they are aware of any trigger for a potential review. The CCP or DCCP will consider whether the trigger only affects cases within the Area or whether cases may be affected on a wider level. For instance, where the trigger relates to the credibility of a police officer, if the officer has only given evidence in cases that are prosecuted within the Area, only cases within the Area will be affected. In such circumstances, the decision can be taken at Area level: the CCP/DCCP should decide what action to take or, in appropriate cases, the decision may be delegated to a manager at level E grade. The proposed decision should be notified to the CCP (if not already involved) and to the Director of Strategy and Policy (DSP), who will cause a record to be made of the decision. Where a trigger has a potential for impact beyond Area level, the CCP/DCCP should notify the DSP of the trigger. In those situations where a review of finalised cases is considered appropriate, or the proposed decision is to inform a third party, the DSP will inform the Principal Legal Advisor (PLA) to confirm the decision. In some situations, where the trigger or decision may have a significant impact on public confidence, attract substantial media interest, or relate to a number of serious or high profile cases, the proposed decision may be referred to the DPP.

Decision Tree: The triggers for potential reviews are: Tainted expert evidence; Trainted on-expert witness; Scientific development; Common law change; Statutory interpretation; Procedural Irregularities; Law or Public Interest wrongly applied; Technical defects; Systematic disclosure failure; Flawed trial process; Legal Guidance incorrect.

1. Question: Does the trigger potentially affect finalised or ongoing cases other than the case at hand? Answer is Yes. Go to 2. Answer is No. Then no action is required, unless the circumstances of a particular case notice to the defendant and / or third parties. 2. Question: May the trigger go to: A key issue in the affected cases; or Raise a potential new issue; or Raise a potential new defence; and therefore have a significant impact on convictions? Answer is Yes. Go to 3. Answer is No. Then no action is required, unless the circumstances of a particular case notice to the defendant and / or third parties. 3. Question: Are these changes of law cases? Answer is Yes. Then no action is required, unless the circumstances of a particular case notice to the defendant and / or third parties. Answer is No. Go to 4. - 4. Question: Is the information only known internally at this stage? Answer is Yes. Go to 5. Answer is No. Go to 6. - 5. Question: Are these summary or non-custodial offences? Answer is Yes. Go to 6. Answer is No. Go to 7. - 6. Question: Is there likely to be significant damage to public confidence if no action is taken? Answer is Yes. Go to 8. Answer is No. Then no action is required, unless the circumstances of a particular case notice to the defendant and / or third parties.

7. Question: Is it likely that custodial sentences are still being served, or that any ancillary orders, such as confiscation Orders, are still outstanding? Answer is Yes. Then carry out an urgent review of all affect cases. And, inform the appropriate third parties: Law Society; Attorney General's Office; Criminal Cases Review Commission; other prosecutors and Government departments; the rest of the CPS. And, disclose the information / material to the defence. Answer is No. Go to 8. - 8. Question: Would it be sufficient to disclose the information / material to the defence? Answer is Yes. Disclose the information / material to the defence. Answer is No. Inform the appropriate third parties: Law Society; Attorney General's Office; Criminal Cases Review Commission; other prosecutors and Government departments; the rest of the CPS. And, disclose the information / material to the defence.

Informers: Children

Baroness Kennedy of Cradley to ask Her Majesty's Government how many children under the age of 18 are used as covert human intelligence sources (CHIS) in England and Wales, broken down by police force; and what was the total number of children used as CHIS in year since 2010. How many successful convictions in the last five years have been based on the evidence of children under the age of 18 acting as covert human intelligence sources. How many applications for authorisation for children under the age of 18 to act as covert human intelligence sources were rejected in each year since 2010, broken down by police force. What advice, training and guidance is issued to police and intelligence officers to ensure that children under the age of 18 who are used as covert human intelligence sources are protected and treated in line with the requirements of the Protection of Children Act 1999 and the requirements of the UN Convention on the Rights of the Child. How they intend to improve the independent inspections of the use of children under the age of 18 as covert human intelligence sources (CHIS); and whether they have any plans to ensure that these inspections are carried out before these children are deployed as CHIS. [HL9746]

Baroness Williams of Trafford: The Regulation of Investigatory Powers Act 2000 (RIPA) is the legislation which governs the use of covert human intelligence sources (‚CHIS '). RIP A provides that restrictions on certain groups of CHIS can be imposed in secondary legislation. In 2000 the then Government put in place the Regulation of Investigatory Powers (Juveniles) Order 2000 which established an enhanced set of safeguards in relation to the use of juveniles as CHIS.

While investigators may wish to avoid the use of young people as CHIS, we must recognise that some juveniles are involved in serious crimes, as perpetrators and victims. Consequently, young persons may have unique access to information that is important in preventing and prosecuting gang violence and terrorism. This includes the troubling 'county lines' phenomenon which, along with the associated violence, drug dealing and exploitation, has a devastating impact on young people, vulnerable adults and local communities.

Those operating these powers have access to extensive guidance to ensure that the powers are used appropriately and that juveniles are suitably safeguarded. This includes the codes of practice and internal guidance. By way of example the CHIS guidelines issued by the National Police Chiefs Council runs to some 380 pages, which includes a chapter dedicated to Juvenile CHIS.

The welfare of the CHIS is taken very seriously in any deployment and the code of practice provides clear guidance on this issue saying at paragraph 6.13: "Any public authority deploying a CHIS should take into account the safety and welfare of that CHIS when carrying out actions in relation to an authorisation or tasking, and the foreseeable consequences to others of that tasking. Before authorising the use or conduct of a CHIS, the authorising officer should ensure that a risk assessment is carried out to determine the risk to the CHIS of any tasking and the likely consequences should the role of the CHIS become known. This should consider the risks relating to the specific tasking and circumstances of each authorisation separately, and should be updated to reflect developments during the course of the deployment, as well as after the deployment if contact is maintained. The ongoing security and welfare of the CHIS, after the cancellation of the authorisation, should also be considered at the outset and reviewed throughout the period of authorised activity by that CHIS."

Welfare is even more important in cases involving young persons and the legislation requires that any decision to authorise the use of a juvenile as a CHIS must be accompanied by an enhanced risk assessment that takes into account the physical and psychological welfare of the young person.

Additionally, in 2015 the National Police Chiefs Council endorsed and published the National Strategy for the Policing of Children and Young people. This strategy says "It is crucial that in all encounters with the police those below the age of 18 should be treated as children first. All officers must have regard to their safety, welfare and well-being as required under S10 and SII of the Children Act 2004 and the United Nations Convention on the Rights of the Child."

Since 2000 the police and other public authorities have been applying those safeguards on the rare occasions where juveniles have been deployed as CHIS. Their use has been subject to the oversight of the Surveillance Commissioner and more recently the Investigatory Powers Commissioner. The Commissioner, like his predecessors, provides the guarantee of impartial and independent scrutiny of the use of these tactics. In relation to Juvenile CHIS there is enhanced oversight with the former Chief Surveillance Commissioner, Lord Judge, making clear during a debate on this issue in Parliament on 18 July 2018 that " .. .in relation to any CHIS activity involving juveniles, the inspectors pay particular attention to see that the issues of welfare and so on have been properly addressed".

The Investigatory Powers Commissioner, and previously the Surveillance Commissioner, is responsible for deciding what statistics to collect and publish. Statistics on the number of juvenile CHIS authorisations or the outcomes of cases in which they are used are not collected centrally or published but we know, from discussions with investigators, that juvenile CHIS are authorised in very small numbers as young people will not normally be deployed in this role unless there is no other way to achieve the same result. Going forward, Lord Justice Fulford will collect statistics on the number of juvenile CHIS in place and will consider how this information and his oversight in this area can appropriately be included in his annual reports in the future.

How many children under the age of 18 were recruited as covert human intelligence sources in each year since 2010, broken down by police force.

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HMP & YOI Styal – Inspectors Report at Odds With Reality!

HMP & YOI Styal women's resettlement prison in Cheshire continued to provide a safe and decent environment which emphasised aspiration and hope for those it held, inspectors found. Styal's population from across the North West of England and Wales – 441 when inspected in April and May 2018 – was complex, ranging from those remanded by the courts and serving short custodial sentences through to women serving life. Nearly all the women arrived with significant needs, many with a history of suicide attempts and self-harm, mental health issues and substance misuse and experience of trauma and abuse. Two-thirds had experienced domestic violence and 16% had been involved in sex work.

Peter Clarke, HM Chief Inspector of Prisons, said: "Managing women with these problems and experiences, alongside addressing their offending behaviour, is challenging. It was, therefore, heartening that, as at our previous inspection of Styal in 2014, we were struck by the professionalism and competence of staff and their commitment to providing a safe, decent and productive environment."

Most women reported feeling safe at the time of the inspection but more than half had

felt unsafe at some time and the prison was urged to maintain a focus on problems involving relationships, drugs and bullying. Care and support for those who self-harmed was good. There was a strong focus on decency and the amount of time women spent out of cells was better than inspectors often see. Women could access a wide range of formal and recreational activities and learning, skills and work provision had been enhanced, though English and maths provision could be improved. “The focus on raising aspirations was excellent, as was the use of peer mentors,” Mr Clarke said.

Resettlement work was among the best inspectors have seen, with strong relationships between Styal and resettlement partners. There was much excellent work to prepare women for release. However, there was also a significant shortage of stable accommodation in the community for released women. Some women in a “revolving door” returned to the prison repeatedly. Mr Clarke said: “They received good care while at Styal, and were often stabilised, supported, and helped to address poor behaviour and other problems in their lives, only for this to fall apart once they were released, often leading to another custodial sentence.” Inspectors noted that the governor and her team had proposed refurbishing disused houses in the prison grounds to provide supported accommodation and some partners had expressed interest in investing in the project. However, Ministry of Justice (MoJ) estates rules had prevented this. The MoJ was urged to reconsider this issue.

Overall, Mr Clarke said: “The prison is very well led, and achieves a good balance between providing care and support and challenging problematic behaviour. We were particularly pleased to see the emphasis on building aspiration and hope for the future among the women held.” 15 recommendations from the last inspection were not achieved. Inspectors made 43 recommendations.

INQUEST’s Response to Inspection Report on Styal Women's Prison

The report recognises the complex needs of women in Styal prison, many with histories of serious self-harm, mental ill health, substance misuse and experiences of trauma, abuse and domestic violence. The inspectorate was positive about the outcomes achieved at Styal prison in each area of safety, respect, purposeful activity and resettlement. The report also noted that: • 72% of women reported having a mental health problem. • There had been 735 incidents of self-harm in the six months to March 2018, at an average of 125 incidents a month, which was more than twice the number at the previous inspection. • Four women were transferred under the Mental Health Act in the six months to March 2018. • 65% of women released who were not on home detention curfew did not have sustainable accommodation. • Some women had been in and out of custody up to 11 times in 12 months. The inspection report refers to one self-inflicted death in the period from November 2014 to May 2018. There were two further deaths during this period, one non self-inflicted and the other awaiting classification. In June 2018, after the inspection period, there was another self-inflicted death.

Rebecca Roberts, Head of Policy at INQUEST said: "Despite the inspector’s assessment criteria determining that Styal is a ‘healthy’ prison, the reality of women’s experiences points to quite the opposite. The rates of self-harm have doubled since their previous inspection and distress remains endemic. Imprisonment is a disproportionate and inappropriate response for women, many of whom have experienced abuse, violence, poverty, drug misuse and mental ill-health. The government must act now to drastically reduce the number of women in prison and redirect resources to welfare, health, housing and social care. Diversion from prison towards treatment and support must be the priority.”

HMP High Down – Deterioration - Increase in Violence - Purposeful Activity Very Poor

HMP High Down, a local category B prison in Banstead, Surrey, held 1,130 men from 55 different countries when it was inspected in May 2018. Four hundred of those men were held in overcrowded cells designed for one and 536 of them were unemployed. 46 recommendations from the last inspection had not been achieved! Inspectors found the prison to have deteriorated in two ‘healthy prison’ tests – safety and purposeful activity, including training and education – since their last visit in January 2015. Violence had increased and was now at a similar level to other local prisons, and much of it was related to drugs.

However, inspectors were most concerned about purposeful activity, which declined to ‘poor’, the lowest assessment. Peter Clarke, HM Chief Inspector of Prisons, said this was directly related to the uncertainty over the prison’s future. “We were told that there had been some delayed plans to re-role the prison to become a category C training prison. So far as the senior management team were aware, the latest plan was that this should happen in the autumn of 2018, just a few months after the inspection. When I asked if this was definitely going to happen and what the plans were to enable it to do so, no-one could give me a clear answer. They simply did not know. This, I was told, was because they had not been given any more detail by Her Majesty’s Prison and Probation Service (HMPPS). This was extraordinary.”

Mr Clarke said: “Hardly surprisingly, I heard the expression ‘planning blight’ being used on several occasions.” To turn High Down into a fit-for-purpose training prison would involve a major change management programme “and yet nobody was able to give me any explanation of time frames, sequencing of actions, milestones, costings or accountabilities. Any ambition to achieve this by the autumn, as was expected by the prison leadership, would inevitably fail.”

At the time of the inspection there was a shortfall of around 550 activity places and only 55% – about 330 – of those men who were allocated to work or education attended at any one time. Forty-seven per cent of prisoners were locked in their cells during the working day. High Down was assessed as ‘reasonably good’ for respectful treatment of prisoners but inspectors identified “serious failings” in public protection work, including some high-risk men being able contacting victims or potential victims without detection. Inspectors made 60 recommendations.

Overall, Mr Clarke said: “The current leadership and staff of the prison are clearly committed to doing what they can for the men in their care. There were many new members of staff, and although this sometimes caused some frustration for prisoners, it was pleasing to see that the senior management of the prison unequivocally saw the new staff as an opportunity to make improvements, and were taking steps to guide and mentor them in their new careers. In turn, the prison itself needs and deserves practical support from HMPPS, and to be spared the uncertainty that was inhibiting progress when we inspected.”

Michael Spurr, Chief Executive of Her Majesty’s Prison & Probation Service, said: “As HMIP acknowledge, High Down has received a significant influx of new staff which will enable the Governor to achieve sustained performance improvement over the coming months. This includes increasing the time prisoners spend in purposeful activity and ensuring that all public protection work is done to a high standard. Plans to convert it to a Training Prison are part of the Government’s estate modernisation programme, but the change will not take place until we are satisfied that the prison has the resources required to effectively fulfil its new role. Since the inspection, the prison has conducted a review of available work spaces and is considering new resettlement activity to improve the prison’s rehabilitation work and ensure more prisoners are engaged in purposeful activity such as employment or education.”

Conviction for Smuggling Enriched Uranium Not Fair Key Witnesses Were Never Heard

In Chamber judgment! in the case of Oadayan v. Armenia (application no. 14078/12) the European Court of Human Rights held, unanimously, that there had been: a violation of Article 6 §§ 1 and 3 (d) (right to a fair trial and right to obtain attendance and examination of witnesses) of the European Convention on Human Rights. The case concerned criminal proceedings brought against an Armenian national, Garik Dadayan, for aiding and abetting the smuggling of enriched uranium into Georgia. The two smugglers were prosecuted and convicted in Georgia, while Mr Dadayan was prosecuted and convicted in Armenia, essentially on the basis of the smugglers' witness statements to the Georgian authorities. The Court found in particular that Mr Dadayan's defence rights had been substantially affected because the Armenian trial court had never heard the smugglers in person. The Georgian authorities had refused their transfer to Armenia pending the criminal proceedings against them in Georgia. This was despite the fact that those witness statements had been the sole basis on which the courts could decide whether or not Mr Dadayan had been involved in selling the radioactive substance.

The applicant, Garik Dadayan, is an Armenian national who was born in 1954 and lives in Yerevan (Armenia). On 11 March 2010 the Georgian law-enforcement authorities arrested two men, H.O. and S.T., when they tried to sell 15g of enriched uranium which they had just transported from Armenia by train. The Georgian authorities informed the Armenian security services that H.O. and S.T. had bought the radioactive substance from the applicant, Mr Dadayan. The two accused smugglers were questioned as witnesses in Georgia in April 2010. They both stated that they had paid Mr Dadayan to travel from Russia to Armenia and bring them the uranium to Yerevan railway station. H.O. and S.T. were then prosecuted in Georgia and convicted in March 2011, while Mr Dadayan was arrested and prosecuted in Armenia.

During his trial, he requested that H.O. and S.T. be brought before court for questioning. However, the Georgian authorities refused because the two men's convictions were still open to appeal on points of law. Mr Dadayan was found guilty in May 2011 and sentenced to seven years' imprisonment. The trial court relied on H.O. and S.T.'s witness statements; forensic examinations carried out in Georgia and Armenia confirming that the smuggled substance contained enriched uranium; records of telephone calls between Mr Dadayan and H.O.; and the exit and entry stamps in Mr Dadayan's passport proving that he had arrived in Yerevan from Moscow on 10 March 2010. The Court of Appeal subsequently upheld Mr Dadayan's conviction, without addressing his complaint about not being able to cross-examine S.T. and H.O. He also lodged an appeal on points of law, without success.

Decision of the Court: The Court noted that one of the requirements of a fair trial was the possibility for the accused to confront witnesses in the presence of the judge who ultimately had to decide the case. This was because a judge's observations on the demeanour and credibility of a witness could have consequences for the accused. In Mr Dadayan's case, the witnesses S.T. and H.O. had been absent from his trial because the Georgian authorities had refused to authorise their transfer to Armenia. However, there had been no good reason for the trial court to then admit the statements of those absent witnesses as evidence without them being examined in court. Indeed, the trial court had not made any further attempts to try to find out whether it would be possible to transfer the two witnesses to Armenia if and when their convictions became final. Nor had any other means of examining them been contemplated, for example via video link.

Moreover, their statements had been fundamental for the case because it was the sole basis on which the courts could decide whether Mr Dadayan had been involved in selling enriched uranium.

Not hearing those witnesses in person had therefore substantially affected his defence rights. Instead, the courts had based its conclusions on witness evidence which had never even been examined. Lastly, there had not been sufficient procedural safeguards in place to compensate for those handicaps to the defence. Although he had had the possibility to challenge the admissibility of S.T and H.O.'s testimony, he had not been able to challenge their statements during the investigation stage, which had taken place in Georgia, while his prosecution and conviction had been in Armenia. There was nothing to indicate that the trial court had approached the untested evidence with any specific caution. The Court therefore concluded that, overall, Mr Dadayan had not had a fair trial, in breach of Article 6 §§ 1 and 3 (d).

Government Plans to Jail Britons Entering 'Designated Areas' Abroad For 10 Years

A new law that could see people imprisoned for up to 10 years if they enter “designated areas” abroad is being proposed by the government. Without announcing the plan, it has introduced a completely new clause to the Counter-Terrorism and Border Security Bill, which MPs and peers have already expressed human rights concerns about. “Entering or remaining in an area” designated as a terror risk by the home secretary would become a criminal offence under the Terrorism Act 2000.Anyone found guilty of the proposed crime could be jailed for up to 10 years unless they had a “reasonable excuse” or were already there when it was designated. “In making such regulations the Secretary of State would need to be satisfied that it is necessary to restrict UK nationals and residents from entering or remaining in the area for the purpose of protecting the public from a risk of terrorism,” a government document says. The draft law, which could be applied to Isis strongholds in Syria and Iraq, says the government would review if and when designations should be lifted. The human rights group Liberty called the proposals “deeply concerning”. Gracie Bradley, its policy and campaigns manager, said: “Keeping the public safe from terrorism is an important and difficult task. But making travel a crime is the wrong approach. "People visiting family members, helping others through humanitarian relief or travelling for work could face up to 10 years in prison. Academic inquiry, investigative journalism, family relationships and acts of solidarity will all suffer. Sajid Javid said the proposed law has the "full support" of the security services and called on MPs to support amendments tot he Counter-Terrorism and Border Security Bill when they come before parliament. “Those who travel abroad to fight in terrorist conflicts pose a threat to us all and need to be stopped," the home secretary added. “This offence will help make our streets a safer place, with those travelling to a designated area facing up to ten years in prison." MPs, peers and the United Nations have already raised human rights concerns over pre-existing measures in the Counter-Terrorism and Border Security Bill, which also proposed to make accessing propaganda online “on three or more different occasions” a criminal offence.

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.