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Edwin Hopkins V Secretary Of State For Justice

1. On 30th January 1997 the Claimant was sentenced to life imprisonment with a minimum term of eighteen years subsequently reduced to sixteen years and 290 days (having taken into account the period spent in custody on remand) following his conviction for murder. He was 19 years old when he committed the unpleasant murder of a 15-year-old girl. She suffered severe stab wounds and her body was mutilated with sexual overtones. The Claimant has always denied responsibility for this offence, but he was convicted and there are no outstanding appeals. His minimum term expired on 16th November 2013.

2. On 12th February 2018 a panel of the Parole Board considered the Claimant's case at an oral hearing at HMP Full Sutton. In a written decision the panel members did not recommend the release of the Claimant but did recommend a transfer to open conditions. The Defendant did not act upon this recommendation but did agree to bring forward the Claimant's categorisation review. The Defendant obtained a dossier of further reports and the Local Category A Panel at HM Full Sutton met to consider the Claimant's case. It did not recommend any change in the Claimant's category which remained at category A as it had throughout his sentence. On 21st September 2018 the Defendant's Category A Team made a decision in which they refused to hold an oral hearing and decided to retain the Claimant's category A status. It is this decision which is challenged by the Claimant in these proceedings, in particular the decision to refuse to hold an oral hearing. Permission was granted by His Honour Judge Saffman sitting as a Deputy High Court Judge on 13th March 2019.

48. The decision whether to hold an oral hearing is one therefore which has to be taken with care taking into account all the relevant factors set out in the PSI and any additional considerations which are found to be relevant. Most of the factors set out in the PSI were present but two in particular should have carried particular weight – the significant dispute on the expert materials and existence of an impasse. Where there is evidence of an impasse which is not within the prisoner's power to resolve (save by admitting his guilt) fairness clearly calls for an oral hearing to explore the case and seek to understand the reasons for, and the potential solutions to the impasse as the guidance states. In this case there was actually no evidence that his risk assessment would change if he admitted his guilt or that he would qualify for any further courses to assist him in demonstrating a reduction in risk. To refuse to downgrade him and deny him the opportunity to try to demonstrate how his attitudes have changed to show a reduction in risk without a hearing seems to me to be unfair.

49. It is clear from the guidance that a difference of opinion between CART and either the Parole Board, the local advisory panel or an expert psychologist can all be considered a significant dispute on the expert materials where the dispute relates to the main issue of risk reduction. In the current case two expert psychologists had supported the downgrading from category A and reported a significant reduction in risk. This no doubt influenced the Parole Board as did the support of Offender Supervisor and Offender Manager. It is likely that the evidence of the Claimant himself also influenced the Parole Board as after hearing what he said Ms Wordie, having supported a transfer to open conditions went further and said it would not be a mistake to release the Claimant. This material, which appears to conflict with the views of the CART panel should have influenced them when deciding whether an oral hearing would be helpful. The submission made by counsel for the Defendant that there was no effective conflict with the contents of the various reports would only be persuasive if the panel had accepted the views of the authors.

50. In the passage from the judgment of Lord Justice Gross in Mackay quoted above in paragraph 14 he uses the situation where the " the Parole Board concluded that there had been a significant reduction in risk" as an example of an application where there was "a proper foundation for an oral hearing". Where the CART panel have evidence from expert psychologists and the Parole Board of a significant reduction of risk it seems to me to be unwise to disagree with or dismiss that evidence without taking considerable care to examine the evidence fully and reach conclusions which are logically supportable. To do so on the basis that the Claimant had not admitted his guilt when both the Parole Board and psychologists were aware of that issue and reached their conclusions notwithstanding it was perhaps unwise. In my judgment, if the panel had genuine doubt whether the risk assessments carried out by the psychologists and relied on by the Parole Board were reliable the safer course would have been to conduct an oral hearing and hear from one or both of them so that the appropriate questions could be asked and the views of the experts considered. It may also have been both helpful and fair to hear from the Claimant why he felt his risk of re-offending had reduced even though he still maintained his innocence. This would no doubt involve him explaining what he had learnt from the programmes he had undertaken and how he had put this learning into practice in his more recent attitudes and conduct.

51. In my judgment this is a case where the CART panel should have given considerable thought before going behind the expert evidence supplied and reaching a different conclusion without giving themselves the opportunity to hear from the experts and the Claimant. Had they done so it surely would have improved the quality of decision making based upon what they could have learnt from questioning the experts and hearing the Claimant. As Lord Justice Sales said in Hassett in the passage quoted in paragraph 17 above, this was surely a case where they should have been left in "significant doubt on a matter on which the prisoner's own attitude might make a critical difference, the impact upon him of a decision to maintain him in Category A would be so marked that fairness would be likely to require an oral hearing". The CART panel were obliged to take into account the fact that the Claimant was a post-tariff prisoner who had been in Category A for 22 years post-conviction and had never had an oral hearing before. He was subject to an impasse which had existed for some time and there was a significant dispute on the expert materials.

For the reasons I have outlined above in deciding not to hold and oral hearing the CART panel did not properly or fairly apply PSI 08/2013 and in doing so breached their duty at common law to act fairly. The decision not to hold an oral hearing I find is unlawful and accordingly the claim for judicial review succeeds.

Don't fall for Boris Johnson's Criminal Justice Con Tricks

On the morning of 13th August 2019, newly-appointed Justice Secretary Robert Buckland told Radio 4's Today programme of his pleasure that the Prime Minister is taking an interest in the criminal justice system. And certainly, after three years of wilful abandonment under Theresa May, I would in principle gladly welcome some Downing Street-level political attention on the ruinous state of our criminal courts.When this attention is coupled with more money for the criminal justice system, this sounds very much like the sort of thing those of us working within have been crying out for. So surely we should all join hands with Mr Buckland and celebrate that in Boris Johnson we finally have a leader taking criminal justice seriously?

Don't believe a word of it. The entire project is a con. Starting with the "new money". Mr

Johnson has announced that 20,000 new police officers will be recruited over the next three years. This is vital, certainly, but falls far short of what is required, given that that figure barely replaces the number of officers cut since 2010. Meanwhile, not only is crime increasing, but investigations are becoming ever-more complex, with digital evidence sucking resources and quadrupling the effort that would have been required a decade ago.

There's £85m for the Crown Prosecution Service, which sounds like a healthy sum, until you realise that it's a fixed payment over two years, and that the CPS budget for 2018/19 was a quarter of a billion pounds less in real terms than in 2009/10. The CPS has lost a quarter of its staff and a third of its lawyers since 2010. Two tranches of £42.5m will not begin to fix the problems that plague prosecutions up and down the country.

There's a promise of 10,000 new prison places, when the previous promise of 10,000 places in 2015 fell short by 6,000, and another 9,000 places alone are required simply to address the present, long-standing overcrowding. There is £100m for technology to aid prison security, but no mention at all of the extra prison staff needed to safely manage the new offenders, given that even after a recruitment drive in 2017, numbers are 15 per cent down since 2010. There has been a huge drain of experience since 2010, as the most experienced officers were among the first to go when the government decided to slash prison staff by over a quarter, at a time when the prison population has climbed.

But the problem extends far beyond inadequate promises to redress chronic underfunding. The propaganda accompanying these announcements betrays not only the Prime Minister's trademark opportunism and dearth of intellectual rigour but the sticky, putrid tar clogging the heart of the Johnson Crime Agenda. Announcing his plans in a series of weekend puffs in tame newspapers, Boris Johnson declared, "Left wingers will howl. But it's time to make criminals afraid – not the public." Declaring his mission to ensure that criminals "get the sentence they deserve," Johnson continued a theme begun in his Telegraph columns on the campaign trail, when he railed against "early release" from prison and inadequate prison sentences being passed. The solution to our criminal woes, the subtext screams, is to lock up more people for longer.

And let's make no mistake, punishment is a legitimate and important part of criminal sentencing. It is one of the five purposes of sentencing listed in statute, alongside the reduction of crime (including by deterrence), reform and rehabilitation, protection of the public and making reparations to victims. Few if anybody involved in criminal justice would disagree with the notion that people who commit crime should be punished in a way that reflects their culpability and the harm they have caused, and that for some people, notably the most serious violent offenders, lengthy prison sentences are inevitable.

However, the notion that longer prison sentences by themselves make any of us any safer is a fantasy. The notion in particular that knife crime will be solved if we simply lock up young men for years on end is a hoax. The public may well be protected from that particular individual for the duration of their incarceration, but the idea underpinning this rotten philosophy – that longer sentences have a deterrent effect on crime – has been shown to be bogus. What does act as a deterrent is not severity of sentence, but certainty. The likelihood of being caught and dealt with swiftly, in other words.

But crime reduction and prevention is not achieved solely by deterrence. Rehabilitation is a vital part of protecting the public. This is why, when dealing with complex, multi-causal offending intractably rooted in social and cultural problems, the courts may take the view that more can be done to protect the public by keeping a young man on the cusp of custody out of the prison warehouse estate, and offering focussed intervention in the community. Sending someone to prison usually means ripping them away from all and any stabilising factors they

may have. They lose their job, their social housing and their relationship, and exit prison with no support network other than the new friends they've made inside. This is why the evidence suggests that reoffending rates are lower when offenders are kept in the community.

But the evidence is of no concern to the Prime Minister. This is why he is forced into infantile ad hominems as a pre-emptive rebuttal against the people who have read and studied the evidence, and might be minded to offer some as a counter to his claims that our system is soft. We already have the highest incarceration rate in Western Europe. Prison sentences have on average got longer year-on-year. We have more prisoners detained on indefinite and life sentences than all the other countries in the Council of Europe. The notion that our courts routinely hand out "soft sentences" is simply not true. When we do see "soft justice" stories in the headlines, they will either be an aberration, usually corrected on appeal, or they will be the product of inaccurate or dishonest reporting, removing context or omitting facts.

Which brings us to Johnson's public statements. Because at the centre of his musings on criminal justice is a rich stuffing of bullshit. He has lied and lied and lied. He lied when he claimed that "a convicted rapist out on early release" had raped again (the man in question was neither a convicted rapist nor out on early release). He lied when he suggested that the notion of allowing some prisoners to be released on temporary licence was "criminally stupid" (the government's own evidence shows that reintegrating prisoners into the community in this way cuts reoffending). When he told the Mail this weekend that there are "thousands of "super prolifics" – criminals with more than 50 convictions to their name – who are being spared jail altogether", he did not tell you that one of the reasons they were spared jail might be that they were being sentenced for non-imprisonable offences. He is lying to you when he tells you that the solution to crime is More Police, More Prisons.

He is lying so that he can turn the volume up to 11 on his remix of "Prison Works" to ensure the oldies at the back of the conference hall can hear in the run-up to the inevitable autumn general election. And while Mr Johnson is lying to you, the rest of the criminal justice system rots. Courts are being closed down and sold off all over the country. Half of all magistrates' courts have been closed, meaning that defendants, victims and witnesses are forced to travel for hours on ineffective public transport to their "local" court. Of those courts remaining standing, many are unfit for purpose. Decaying, crumbling buildings with no working lifts, holes in the roofs, sewage leaking into public areas, no air conditioning in summer and no heating in winter. In some, the public cannot even get a glass of water. Of the courts that remain unsold, all are now run at artificially low capacity due to Ministry of Justice restrictions on "court sitting days". We have, in many large city Crown Courts, the farce of full-time, salaried judges being forced to sit at home taking "reading days" – their perfectly serviceable courtrooms sitting locked and empty – while trials are fixed for Summer 2020 due to an alleged "lack of court time".

We still have the abominable system of "floating trials" and "warned lists" – where defendants, witnesses and lawyers are expected to give up days or weeks of their lives just sitting around at court on the off-chance that a courtroom suddenly becomes free to take their trial. When, inevitably, no courtroom becomes free (because the MoJ won't pay for the sitting day, ibid), their case is adjourned for months, and the cycle begins again. The one thing that does act as a deterrent to criminals – certainty – is being eroded by ensuring that justice is doled out literally years after the event, because the government will not pay for the courts to process cases clogging the pipeline. Meanwhile legal aid is being stripped away from citizens, forcing them to self-represent in cases in which their liberty is on the line.

This is why I am angry. Not because I'm a "lefty" inherently resistant to Boris Johnson's white hot public service reforms. I'm angry because as a prosecutor I am still having to sit down with crying witnesses week after week and explain that their torment is being prolonged for another six months because the government refuses to pay to keep courtrooms open. I'm angry because the Innocence Tax – the policy that forces the wrongly accused to pay privately for their legal representation and then denies them their costs, bankrupting them, when they are acquitted – is not even in the political peripheral vision. I'm angry because our Prime Minister is a man who looks at the record rates of death, violence, suicide, overcrowding and self-harm in our prisons and whose first question is, "How do we get more people in there?". I'm angry because the notion that you "crack down on crime" by chucking a few more police officers onto the streets and shoving more and more people into our death-riven prisons is a con. It is a con to victims of crime, and it is a con to you, the public. I'm angry because we have the indignity of a dishonest, cowardly and exploitative Prime Minister fiddling with his Party's g-spot while the criminal justice system burns. Don't fall for his con trick.

Two-Thirds of Homeless Ex-Prisoners Reoffend Within a Year

Amy Walker, Guardian: Homeless ex-prisoners are significantly more likely to reoffend than those living in housing, in what charities have described as a "merry-go-round" in which people are "swept into prison and then dumped back on to the streets". Data obtained from the Ministry of Justice (MoJ) under a freedom of information request showed that out of all adult prisoners released in 2016, 67% of those who slept rough or were otherwise homeless went on to commit another crime within a year. For those living in "unsettled" or temporary accommodation, the rate of reoffending was also higher, at 54%, compared with 43% for those who had either a permanent home or short-term supported housing.

Andrew Neilson, the campaigns lead at the Howard League for Penal Reform charity, described accommodation as integral to "staying on the straight and narrow", alongside employment and support from family members or friends. "Prisons are being used for people who are too poor and too fragile to sort their lives out," he said. "But instead of us providing support, we're spending billions each year policing them, criminalising them and incarcerating them."

Phillip, a formerly prolific offender with a two-decade history of offences relating to burglary and drugs, was homeless on several occasions after being released from custody. "I'd have to sofa surf with people I knew, but that pushed me back into old habits being around the same people," he said. f I had come out and gone into a proper place to stay away from all that, I could've started fresh and done better." He said he was not "proud of" his past but insisted that after he began receiving support in 2017 from the Nacro substance misuse project, which provides residential recovery schemes for men with addictions to drugs and alcohol, he broke his addiction and rebuilt relationships with his family members.

Matt Downie, the director of policy at the homelessness charity Crisis, said: "It really is a predictable and cyclical problem where really the answer is just to make sure that people have accommodation and support. That would save the prison estate time and money, it would certainly save society the problems of criminal behaviour and for individuals caught up in that, we'd have a chance of resolving their issues and resolving their homelessness for good."

In 2016, 27, 209 adult offenders released from custody were recorded as having settled accommodation, while 4,632 were recorded as homeless and 2,815 recorded as having "unsettled" accommodation. The accommodation status of a further 24,967 ex-prisoners – of whom

51% reoffended within a year – was not known. This category is likely to be contentious and is thought to also mean sleeping rough or otherwise homeless.

Last August, concerns were raised over the number of ex-offenders likely to be sleeping rough after MoJ figures revealed that more than 100,000 prisoners left detention for unsettled or unknown accommodation over the previous three years. For people who were released from prison into bail accommodation, probation accommodation or accommodation provided by the Home Office Immigration Enforcement Service – totalling 1,972 – the reoffending rate was 43%.

The Homelessness Reduction Act, which came into force in October 2018, puts an obligation on prison and probation services to refer prison leavers to local authorities if they are at risk of homelessness. However, charities have pointed out that this is often just a transfer of information rather than a resolution – with many single homeless people deemed "intentionally" homeless because they had been in prison.

Lindsay Ryder, director of housing and wellbeing at Nacro, said urgent government investment was needed to ensure plans were in place before prisoners left custody "We cannot afford for them to be held back by homelessness, a lack of essential medication or health support, a lack of ID or access to sufficient money, as these are essential basics required for people to successfully reintegrate back into our local communities," she added.

A spokesperson for the MoJ said: "The first step to reducing reoffending is making sure everyone leaving prison has access to secure and stable accommodation. That is why we are spending an extra £22m a year helping offenders stay off the streets, and have placed a new duty on governors to alert councils if someone leaving their prison is at risk of homelessness.

We're also helping vulnerable former prisoners find stable accommodation through a £6m pilot scheme at Leeds, Pentonville and Bristol prisons."

Boris Johnson's Prison Policy: a Fantasy Built on an Invention

Guardian: When politicians make summer law and order announcements involving big round numbers, it is time to count your spoons and prepare for an autumn election. Boris Johnson is a serial offender. In July he announced 20,000 more police. Now he says he will provide 10,000 more prison places. These are bogus figures in every way. The fact that they are easily remembered numbers should have the public on their guard, especially in the light of Mr Johnson's shameless false claims about NHS spending during the EU referendum campaign.

The 10,000 prison places are a particularly fraudulent announcement. On Sunday, Mr Johnson framed this figure as "part of a wider crackdown on crime" that aims "to keep the public safe". The message is that his is a get-tough, crack-down, bang-'em-up government. Those extra police will be helping to send extra criminals to jails, which are being expanded to accommodate them.

Except that this is simply not going to happen. Mr Johnson's announcement is based on the sham claim that the figures are new. But they have been around for years, in a different context. Britain still houses many prisoners in overcrowded and dilapidated buildings. The prison service itself has already said that it would take 9,000 new places simply to eliminate overcrowding. The Prison Reform Trust, a lobbying organisation, says a further 3,000 new spaces are needed to absorb the longer sentences that today's prisoners are serving. In other words, the new 10,000 is nothing to do with cracking down and everything to do with managing what is already happening.

Expanding prisons is a bankrupt policy of which Labour has often been as guilty as the Conservatives. But it is the Tories who are in power. In 2016, Liz Truss, during her brief stopover as justice secretary, unveiled a white paper which made the same announcement

that Mr Johnson made this week. There would be, she said, 10,000 extra places by 2020. Later, this goal was quietly moved back to 2023. The Ministry of Justice now says it is on course to create 3,360 places by that year. So two-thirds of the promise has gone missing. The new figure is allegedly on top of the scaled-back 2023 goal. It cannot be taken seriously as a strategic policy conclusion. It is a fantasy built on an invention.

In any case, prison spending is not just about buildings. It is about training and employing people to work in them. Not long ago, these workers were in post. But in 2012 Chris Grayling began cutting 40% of the workforce. That did not merely slash the numbers, it meant experienced managers – people who knew how prisons work – went, too. They are not easily replaced. Prisons are tough places to work. The attrition rate is high. Wages, however, are low. The Howard League for Penal Reform argues, rightly, that recruitment will get harder, since prisons are competing with police and the Border Force – currently conducting a pre-Brexit recruitment drive – for new staff.

The opportunism of Mr Johnson's promise is underscored by his simultaneous announcement of a sentencing review. In a logical world, demand for prison resources would be set in the light of sentencing policy. Yet sentencing policy for violent and sexual offenders is now to be the subject of a review, along with a review of the rules governing their early release. This is not the sentencing review the criminal justice system needs. That review would start from a comparative approach. It would look at ways of reducing the prison population and providing alternatives to custody. Long-term spending requirements would then follow. This one starts from the spending and toughens the sentencing to fit.

These announcements are partisan, not policy-driven. They are part of a rupture caused by the hard-Brexit takeover of government. Justice ministers like Michael Gove and David Gauke did useful things on penal policy; their successor Robert Buckland will do his best, too. But penal policy is being made by Brexit fanatics now. The aim is not good penal policy. The aim is policy that fires up the hard-Brexit electorate on which Mr Johnson will concentrate his electoral message. The Conservative party is reverting to its worst traditions. Criminal justice is again the victim.

Investigatory Powers Tribunal

The Tribunal is a judicial body which operates independently of government to provide a right of redress for anyone who believes they have been a victim of unlawful action by a public authority using covert investigative techniques. The Tribunal is also the appropriate forum to consider complaints about any conduct by or on behalf of the UK Intelligence Community, MI5, SIS and GCHQ, as well as claims alleging the infringement of human rights by those agencies. The Tribunal has a UK wide jurisdiction and there are no costs associated with making a complaint to the Tribunal.

The Investigatory Powers Act 2016 strengthened the provisions governing the Tribunal by providing a new right of appeal from decisions and determinations of the Tribunal in circumstances where there is a point of law that raises an important point of principle or practice, or where there is some other compelling reason for allowing an appeal.

As the remit of the Tribunal is to deal with covert techniques and matters of national security, complainants are not required to provide evidence to support their complaint or Human Rights Act Claim. Instead they are asked to specify what activity they know or believe has taken place. The Tribunal is under a duty both to investigate and to determine valid complaints and public authorities are under a duty to provide the Tribunal with all documents and information the Tribunal may require to assist in that investigation. Nothing can be held back from the Tribunal for reasons of secrecy or national security. To counter this, and to protect sensitive information, the Tribunal may not disclose to the complainant anything which might

compromise national security or the prevention and detection of serious crime, the economic well-being of the United Kingdom or the continued discharge of the functions of any of the intelligence services. However, wherever possible, and subject to this limitation, the Tribunal will provide findings of fact or a summary of the determination.

On their website you can find further information about:

- How you can make a complaint to the Tribunal;
- The key legislation that governs how the Tribunal works as well as its rules of procedure;
- How you can appeal a decision or determination of the Tribunal;

If you need to contact them: Email info@ipt-uk.com By post at The Investigatory Powers Tribunal, PO Box 33220, London SW1H 9ZQ By telephone on 0207 035 3711.

Court of Appeal Rejects Government Appeal in Brook House Abuses Scandal

Deighton Pierce Glynn: The Court of Appeal has emphatically rejected the Government's application for permission to appeal against a judgment of Mrs Justice May of 14 June 2019 on the investigation into human rights abuses at Brook House Immigration Removal Centre. The judge had ordered that the investigation has to have power to compel the attendance of witnesses, hold hearings in public and provide funding for representation for the Claimants. The Court of Appeal's decision comes almost 2 years after the abuse of detained persons at Brook House was exposed by undercover reporting for BBC's Panorama documentary. No further appeal is allowed. An effective and proper investigation into the abuses should now go ahead.

Lord Justice Bean, providing reasons for refusing the appeal stated: "I do not consider that there is any realistic prospect of success in the proposed appeal against the carefully reasoned judgment of May J. The judge's reasons for rejecting the [Home Office's] "wait and see" approach were given briefly but in my judgment they are plainly correct. There is no other compelling reason for an appeal to be heard by this Court. The Special Investigation should be permitted to proceed without further delay."

The BBC's "Undercover: Britain's Immigration Secrets" broadcast in September 2017 exposed racism, physical assaults and shocking abuse of vulnerable detainees by officers. The footage showed one officer strangling a detainee and threatening to put him "to sleep" and detention and healthcare staff conspiring to cover it up. The detainee was a young asylum seeker with severe mental health problems whom officers were supposed to be watching over because of a high risk of suicide and self-harm. In other footage a control and restraint trainer is seen teaching officers to use racist language, to assault detainees and to "scrub the CCTV". Two ex-detainees, MA and BB, who featured on the documentary, brought this claim for judicial review arguing that an independent public enquiry with the power to compel and question witnesses is necessary to get to the truth so that lessons will be learnt as required for the UK to comply with its obligations under Article 3. Having resisted for over a year the Home Office in October 2018 performed a U-turn and agreed to appoint the Prisons and Probation Ombudsman (PPO) to undertake an independent bespoke investigation but then refused to provide the PPO with powers to compel witnesses to attend or the means to hold hearings in public and offered no funding for legal representation for victims to enable their participation.

In her judgment in June 2019 Mrs Justice May held that the investigation would need powers to compel witnesses, that a "significant public scrutiny of the PPO's Special Investigation will be required" and that MA and BB must be afforded funded representation.

On the need for compulsion of witnesses she said: "immigration detainees are a unique-

ly vulnerable group of people. They are not convicted persons serving a sentence, they are not being detained as punishment. Unlike most prisoners, they do not know for how long they are going to be confined. Detention under these conditions is diminishing and depersonalising enough, but it is unacceptably degrading and dehumanising where there is repeated and apparently casual abuse on the part of staff employed by the state to supervise and look after such detainees. It is right, in those circumstances, to afford the abused detainee an opportunity to see and confront their abuser on equal terms, as a means of restoring dignity and respect to the person from whom it has been so wholly stripped away."

On the requirement that some hearings be held in public she commented strongly: "A detention centre, with its population of vulnerable persons, is a place where erosion of the rule of law may be thought to be both particularly likely and (because of that) particularly dangerous…..detainees are frequently subject to hostile political and media rhetoric; the public at large do not in general care about welfare in detention. In those circumstances it may be thought to be of especial importance that detainees' rights should be publicly vindicated and the rule of law thus publicly upheld."

And on the need for MA and BB to have funding for legal representation she said: "When dignity and humanity has been stripped one purpose of an effective investigation must be to restore what has been taken away through identifying and confronting those responsible, so far as it is possibleif MA and BB are properly to identify and confront the abuse which they say was meted out to them…. they need representation, which must be funded."

Joanna Thomson representing BB commenting on the Court of Appeal's decision said, "The victims at Brook House suffered dreadful inhuman and degrading treatment. The Court of Appeal's ruling should now lead to an investigation that will uncover the truth so that there are no further abuse scandals in the UK's immigration removal centres. Let us hope that the Home Office will do as Lord Justice Bean in the Court of Appeal urges and allow the investigation to proceed without further delay."

Loughinisland Families Receive Damages and Apology

BBC News: Relatives and survivors of the Loughinisland killings are to receive damages as part of a settlement reached in their legal action against the office of the Police Ombudsman for NI. Six men were shot dead as they watched a football match in a pub in Loughinisland in 1994. The ombudsman's office has also issued an apology to those bereaved and injured. This was for "failings" in its first report into the sectarian murder of six Catholic men by the UVF in June 1994. Proceedings centred on conclusions by former ombudsman Al Hutchinson in a report in 2011 that there was insufficient evidence of collusion between RUC officers and the loyalist paramilitary killers.

Relatives of the Loughinisland victims sued the ombudsman's office over the hurt and upset caused by the findings. Their civil action was settled at the High Court in Belfast on Friday, with confirmation that undisclosed damages are to be paid out. Following the resolution, a spokesman for the ombudsman said: "The office apologises to victims and their families for its failings at that time."

The findings in the 2011 report by the then police ombudsman, Al Hutchinson, were later quashed by the High Court in Belfast, resulting in a new report and different findings reached by the Police Ombudman in 2016, Dr Michael Maguire. It said there was no evidence police had prior knowledge of the UVF attack in Loughinisland, County Down, in 1994. But it confirmed claims by the victims' families that there was collusion. The victims were watching the match between Ireland and Italy in the World Cup when loyalist gunmen burst into the Heights Bar in the County Down village and opened fire on 18 June 1994. The men who died were Adrian Rogan, 34; Malcolm Jenkinson, 53; Barney Green, 87; Daniel McCreanor, 59; Patrick O'Hare, 35; and Eamon Byrne, 39.

Seventy-Seven Attempted Suicides In Prison So Far In 2019, Compared To 31 In All Of 2018

Liam McArthur, Scottish Legal News: The number of self-harm incidents and attempted suicides recorded in prisons during the first seven months of 2019 has already far exceeded the figures for the whole of 2018. Figures acquired through freedom of information requests by the Evening Express and Scottish Liberal Democrats also show that 1,069 self-harm incidents have already been recorded in 2019, compared to 762 in the whole of 2018 and 532 in 2017.

Scottish Liberal Democrat justice spokesperson Liam McArthur said: "The fact there have been twice as many attempted suicides in the first few months of 2019 as there was in the whole of last year is devastating news. These figures are a cry for help. The SNP government need to wake up to the state of emergency in our prisons. Individual prisons are accommodating up to 500 more people than they were designed for. People are packed in like sardines and overworked staff are being overwhelmed by a mental health crisis. Scotland's prisons are not safe places to be at the moment. It's been over two years since the Scottish government accepted Scottish Liberal Democrat proposals to expand the mental health workforce in prisons. They were supposed to share in the roll-out of 800 extra staff but so far have received just 12. That's not even the equivalent of one per prison. Fatal Accident Inquiries are supposed to ensure that lessons are learned from these tragedies, but the Crown office are swamped and can't keep up. A broken system shouldn't get in the way of lessons that can save lives. We need a much larger, coordinated intervention to save lives. The Scottish Government needs to establish a new taskforce to address the self-harm epidemic that is occurring within their care. Staff, prisoners and the communities people return to have every right to demand better."

Police Sent Into Feltham Youth Prison to Tackle Gang Violence

Jamie Doward, Guardian: Police have been sent in to quell mounting levels of violence inside one of Britain's most notorious young offender institutions, triggering concerns that its staff cannot control the gangs operating within it. A five-strong team of officers has been dispatched to help bring order to the troubled Feltham site, the Observer has learned. Concerns about the west London institution were confirmed by a recent report from the chief inspector of prisons who warned that there had been an "extraordinary" decline in safety and care at Feltham, which is home to about 100 offenders.

Now, in a letter to the Labour peer Lord Ponsonby, justice minister Lord Keen has confirmed that police "have been reintroduced to London prisons (including Feltham YOI) by way of five police officers with a specific focus on addressing gang membership and violence". Keen added: "A significant proportion of the work of this team will be taking place at Feltham, which has included investigating a number of incidents, including acts of concerted indiscipline, that have happened at the establishment in recent months. This work is part of wider efforts to tackle and address gang issues and violence within London."

In his report last month Peter Clarke, the chief inspector of prisons, said the past six months had brought "what can only be described as a collapse in performance and outcomes for the children being held in Feltham A. The speed of this decline has been extraordinary." The report found that there were very high levels of violence, a high use of staff force, poor care, long periods of cell lock-up and escalating self-harm.

The situation is considered to be so serious that offenders are no longer being sent to Feltham, which is now subject to an "urgent notification" process, an obligation for the government to make rapid improvements. Peter Dawson, director of the Prison Reform Trust, said that it was essen-

tial for the police and the prison services to work closely together. But he questioned what the decision to send in police said about Feltham and the wider issue of tackling violence in jails.

Official reports have also highlighted gang problems at Pentonville, Thameside and Isis prisons. “Safety and order within a prison, is the day-to-day responsibility of the governor and prison staff, not the police,” Dawson said. “The recent distressing inspection report on Feltham stands in stark contrast to a very positive and equally recent report about a larger, but otherwise similar, young offender institution in the north of England. This huge discrepancy in the quality of care demands the urgent attention of a new justice secretary, and the chief inspector was right to insist upon that. He helpfully pointed to the core issue – a need to address the causes of violence and escape the cycle of reacting endlessly to it.”

Frances Crook, chief executive of the Howard League for Penal Reform, said there was an urgent need to rethink the problems presented by gangs. “The policing of gangs in the community has failed. Putting more police into jails is not going to solve a problem there that you have failed to solve in the community; you have to be a bit cleverer.”

A spokesman for the Ministry of Justice said: “Prisons in London are being supported by specialist police officers to help tackle gang-related violence. They work alongside our staff to identify those involved and help them turn their backs on crime.”

Firearms officer who killed Jermaine Baker, Gross Misconduct Findings, Quashed by High Court

1. In this judicial review, the claimant, who is a Specialist Firearms Officer in the Metropolitan Police, challenges the decision of the Independent Office for Police Conduct ("IOPC") of 1 May 2018 directing the Metropolitan Police Service ("MPS") to bring misconduct proceedings against him alleging a breach of the Standards of Professional Behaviour amounting to gross misconduct. The events which led to the decision occurred on 11 December 2015 when the claimant fired a fatal shot at Jermaine Baker during an intervention in Wood Green, North London.

2. The principal ground of judicial review contends that the decision of the IOPC was unlawful because, in determining that the claimant had a case to answer, it applied the wrong test in law as to whether the claimant acted in self-defence. It is accepted by the IOPC that the claimant honestly believed that his life was in danger. However, the IOPC sought to apply a civil law test applicable to the torts of assault or battery, that the officer's belief must not only be honest but also objectively reasonable for self-defence to be available and for the claimant to have a defence to the charge of misconduct. The claimant contends that this is the wrong test and that the correct test for self-defence in police misconduct proceedings is the test applicable under the criminal law, so that the claimant has no case to answer in circumstances where he had an honest, albeit mistaken, belief that his life was in danger.

3. Ground 2 contends that even if the IOPC is correct as to the legal test, the IOPC's assessment of the facts as giving rise to a case to answer was unreasonable and irrational. The criticism focuses on particular aspects of the assessment of the evidence. Permission to apply for judicial review on both grounds was granted by Swift J on 7 March 2019.

75. For all those reasons, I consider that it is the criminal law test which is to be applied in determining whether there is a case to answer, from which it follows that the IOPC applied the wrong test and its decision must be quashed.

76. Ground 2 would only arise if the claimant were wrong in relation to Ground 1 and the IOPC applied the correct test, being the objective civil law test. The claimant nonetheless contends that the determination by the IOPC that there was a case to answer and that misconduct proceedings should be pursued was irrational and Wednesbury unreasonable. As the cases in this area, most recently the decision of this Court in the City of London Police case, make clear, the threshold of establishing such irrationality and unreasonableness is a high one, given the broad evaluative role given to the IOPC in assessing the evidence. As Elias LJ said in R (IPCC Chief Executive) v IPCC [2016] EWHC 2993 (Admin) at [21] (cited with approval in the City of London Police case at [19]): "if there is a case to answer on one legitimate construction of the facts, the investigator has to recommend that there is a case to answer…"

77. Having considered carefully all the points made by Mr Stern QC in relation to the evidence, the findings of the investigator and the decision of the IOPC, it seems to me impossible to say that, on one legitimate construction of the facts, there was not a case for the claimant to answer if the objective civil law test were to be applied. It simply cannot be said that the claimant is incontrovertibly right in his version of what occurred or that, even if he were, there would still not be a case to answer applying the objective civil law test. The claimant simply fails to surmount the very high threshold of irrationality.

78. Conclusion: In relation to Ground 1, I consider that in applying the objective civil law test in determining that there was a case to answer, the IOPC applied the wrong test. It should have applied the criminal law test. Its decision must be quashed. In those circumstances, Ground 2 is academic but, if it were not, it fails for the reasons I have given.

Alex Salmond Receives £512,000 Costs After ‘Botched Investigation’

Severin Carrell, Guardian: The Scottish government has paid Alex Salmond more than £512,000 to cover his legal costs after he won a bitterly contested court battle over its sexual misconduct investigation. The government admitted in court it had botched its internal inquiry into claims of inappropriate conduct against Salmond while he was first minister, after he launched legal proceedings in 2018. Government lawyers said a senior human resources official overseeing the investigation into whether Salmond had broken its harassment rules had also spoken to the two complainants before the investigation began, making the investigationunlawful and “tainted by apparent bias”.

In a statement on Tuesday13th August , the Scottish government said: “We can confirm that final settlement of £512,250 has been made to Mr Salmond for legal costs arising from his petition for judicial review.” The Scottish government has already said its own spending on external legal fees amounted to £118,523, taking its total legal bill to £630,773, excluding all its internal costs.

That legal case is not directly related to the decision this year to prosecute Salmond on 14 alleged offences including two of attempted rape, nine of sexual assault, two of indecent assault and one of breach of the peace. Salmond has denied all the charges, with the case expected to be heard at the high court in Edinburgh in January 2020.

However, the Police Scotland investigation was triggered by the decision by Leslie Evans, the permanent secretary at the Scottish government, to send the results of its internal inquiry to the police. The Scottish parliament has launched a separate special investigation into the decisions taken by Evans and other officials, as well as the role played by Nicola Sturgeon, the first minister, during the internal inquiry. Sturgeon has admitted to meeting and talking to Salmond about the internal inquiry five times, including private meetings with him at her home which were set up by her chief of staff, Liz Lloyd. Donald Cameron, a Scottish Conservative MSP who sits on the Holyrood committee, said it was outrageous so much money had been spent by the government on the case. “This scandal cannot simply be swept under the carpet, and parliament must get to the bottom of exactly what happened,” he said.

News & Views From the Prisons & Probation Ombudsman

Welcome to the third edition of The Investigator, the PPO's quarterly newsletter for everyone who works in prisons, probation, immigration detention and our other key stakeholders.

stakeholders. The Prisons & Probation Ombudsman (PPO) received 4,968 complaints in 2018-19. This was a 4% increase on the previous year Far and away the most common thing to complain about is property. 36% of all the complaints received were about property. PPO completed investigations into 2,569 complaints, 9% more than the previous year. Once again, prisoners in the LTHSE made a disproportionality high number of complaints. Prisoners in the LTHSE make up about 11% of the population, but about 38% of the complaints we receive. The PPO found in favour of the complainant in 32% of cases. In the LTHSE, we were less likely to find in the prisoner's favour – 28% of LTHSE complaints were upheld.

The Long Term and High Security Estate is a newly formed Directorate within Her Majesty's Prison and Probation Service. At present it includes 13 Public Sector prisons housing the most complex, challenging and high risk Category A and B men and young people in the country. There are eight High Security Prisons, one establishment for young offenders and four long term Category B prisons in the LTHSE. The prisons consist of HMYOI Aylesbury, HMP Belmarsh in London, HMP Frankland near Durham, HMP Full Sutton near York, HMP Garth near Preston, HMP Gartree near Market Harborough, HMP Manchester, HMP Isle of Wight, HMP Swaleside on the Isle of Sheppey, HMP Wakefield, HMP Whitemoor in Cambridgeshire HMP Long Lartin in Worcestershire, and HMP Woodhill in Milton Keynes.

Allocating complaints for investigation: In recent months, the PPO has undertaken a number of changes aimed at improving our productivity and increasing the impact of our work on our service users. One example of this is the new complaints allocations system which was launched in early July. While carrying out analysis into the causes and content of our backlog of unallocated complaints cases in January, we noticed that there were some areas of our complaints allocations system that could potentially be improved.

We set goals for the process and determined that we wanted a new system that would allow for swifter and more flexible allocation of work to investigators and help us to prevent backlogs of unallocated cases building up in the future. We also wanted to explore ways we could build up expertise on individual prisons and their processes so that we could complete investigations more efficiently, more effectively spot persistent problems and track failures to follow up on repeat recommendations. With these goals in mind, we decided to introduce a system in which each team of complaints investigators would be assigned specific prisons and that team would investigate all complaints coming from that prison. Our analysts worked to divide up the prisons estate based on the PGD map and historical data on the volume of complaints from each establishment. We did this so that we can start to build relationships with PGDs and communicate with them directly about persistent problems and new approaches to managing complaints.

We also believe that as our investigators become more familiar with processes at their assigned prisons, complaints will be investigated more efficiently and resolved more quickly. We have also built in procedures for if we experience an unexpected spike in complaints from a prison or group of prisons, allowing our investigators to work flexibly as the work demands. It's our hope that this new system will not only help us to be more productive and efficient, but that it will strengthen our communication with services in remit, leading to better outcomes for complainants and (eventually) fewer complaints overall.

Sue McAllister CB, Prisons and Probation Ombudsman

Seamus Bradley: Coroner says 1972 Army Killing Unjustified

The Army's killing of a member of the IRA in Londonderry in 1972 was unjustified, a coroner has found. Seamus Bradley, 19, was shot and killed in the Creggan area of the city during Operation Motorman on 31 July 1972. The Army claimed the teenager was shot while he was in a tree and suffered additional injuries as he fell. His family alleged he was killed later, claiming he was taken away in an Army Saracen vehicle They allege he sustained fatal injuries while being subjected to interrogation.

Both those versions of events were rejected by coroner Judge Patrick Kinney at Belfast Coroner's Court on Thursday. Judge Kinney said he was satisfied Mr Bradley was killed by a soldier who got out of a Saracen vehicle, dropped to one knee and opened fire several times. "The coroner found that the soldier who shot Seamus Bradley was not justified in opening fire and that the investigation into his death was flawed and inadequate," the summary of the inquest's findings read.

• Seamus Bradley died on 31 July 1972 at a time approximately between 05:15 am and 06.30am. He died in the rear of a Saracen whilst in the custody of soldiers belonging to the 1 Royal Scots Regiment.

• The cause of his death was laceration of his left femoral artery due to a gunshot wound

• That injury amongst others was sustained when he was struck by at least four bullets fired by a soldier of the 1 Royal Scots Regiment.

• Seamus Bradley was on an open area of ground known as Bishops Field, Derry when he was shot.

• The soldier who shot him had got out of a Saracen located on Bishops Field near the junction of Central Drive and Linsfort Drive, knelt on one knee near the rear of the Saracen, aimed his rifle at Seamus Bradley and shot him several times.

• The shooting took place at around 05.15am to 06.15am.

• Seamus Bradley was running across Bishops Field away from the Saracen and did not have a weapon.

• He could not reasonably have been perceived as posing a threat of death or serious injury to the soldiers in the Saracen or any other person.

• The use of force by the soldier was entirely disproportionate to any threat that could have been perceived.

• The identification of the soldier who shot Seamus Bradley cannot be made.

• The soldier who shot Seamus Bradley did not adhere to the terms of the Yellow Card.

• The soldier was not justified in opening fire.

• Seamus Bradley was collected by the same Saracen and taken to St Peter's school which was a designated aid station. He died en route to that aid station.

• No first aid or medical assistance was provided to Seamus Bradley by the soldiers. If such aid had been provided then there was a reasonable prospect that Seamus Bradley may have survived the shooting.

• Seamus Bradley was not mistreated by military personnel in the Saracen in the form of physical assault, torture or shooting. However he was denied even the most basic form of first aid treatment.

• Operation Motorman was not planned, controlled or regulated in order to minimise to the greatest extent possible the risk to life, principally because of the lack of planning for casualties, both civilian and military.

• The investigation into the death of Seamus Bradley was flawed and inadequate.

Northern Ireland Judicial Communications: https://is.gd/pwrKij

Call for Written Evidence on Miscarriages of Justice

Deadline for submissions is Monday 2 September 2019.

The All Party Parliamentary Group (APPG) on Miscarriages of Justice was formed in November 2017 to examine the structural problems within the criminal justice system which result in miscarriages of justice, and to provide a forum to improve access to justice for those who have been wrongly convicted. The APPG aims to focus on, but is not restricted to, the following issues: • The ability of the criminal justice system to identify and overturn miscarriages of justice • Disclosure, including post-conviction • Joint enterprise • Treatment of exonerees • Best practice from other jurisdictions

Given that there are serious misgivings expressed in the legal profession, and amongst commentators and academics, about the remit of the Criminal Cases Review Commission (CCRC) and its ability to deal with cases of miscarriages of justice, and given that perceptions of injustice within the criminal justice system are as damaging to public confidence as actual cases of injustice, the Commission will inquire into: 1. The ability of the CCRC, as currently set up, to deal effectively with alleged miscarriages of justice; 2. Whether statutory or other changes might be needed to assist the CCRC to carry out is function, including; (i) The CCRC's relationship with the Court of Appeal with particular reference to the current test for referring cases to it (the 'real possibility' test); (ii) The remit, composition, structure and funding of the CCRC; 3.The extent to which the CCRC's role is hampered by failings or issues elsewhere in the criminal justice system; and make recommendations.

Submission Guidelines: Submissions should be posted to APPEAL, The Green House, 244-254 Cambridge Heath Rd, London E2 9DA. Please include as few logos or embedded pictures as possible. Submissions should: • State clearly who the submission is from; • Include an executive summary – setting out in bullet points the main points of your submission; • Include a brief introduction about yourself/your organisation and your reason for submitting evidence; • Use numbered paragraphs; • Be concise – no more than 3,000 words in length; • Include any recommendations for action by the Government or others which you would like the Commission to consider.

You should be careful not to comment on matters currently before a Court in the UK or matters in respect of which Court proceedings are imminent, where such comment could prejudice these matters or constitute contempt of court. Moreover, submissions should not include any potentially libellous or defamatory material. The Commission reserves the right to redact or anonymise such material before publication.

Please note, the Commission's intention is for submissions to be published online. If you do not wish your submissions to be published, you must clearly say so and explain your reasons for not wishing its disclosure. This will be considered by the Commission when they decide whether to publish. If you wish to include private or confidential information within your submissions, please contact the Commission Secretariat to discuss this. The Commission is not obliged to accept your submission as evidence, nor to publish any or all of the submission even if it has been accepted as evidence.

If you have difficulty making a written submission by email or post and wish to submit evidence in an alternative format such as an audio file, or have any other questions about submitting evidence, please contact alex@appeal.org.uk. The deadline for submissions is Monday 2 September 2019.

Evidence Sessions The Westminster Commission on Miscarriages of Justice held its first session on 15 July 2019 in the House of Lords. The panel heard evidence from Helen Pitcher, Chair of the CCRC, and Karen Kneller, Chief Executive of the CCRC. The second evidence session was held 24 July. The Commission heard from Gerard Sinclair and Chris Reddick, representing the Scottish CCRC, and experienced criminal barristers Michael Birnbaum QC, Henry Blaxland QC, and Kirsty Brimelow QC. The transcript of the Scottish CCRC's evidence is available here. The record of the second session has been made available with the help of JUST: Transcription, a product of JUST: Access Ltd, a not-for-profit social enterprise that harnesses technology to overcome barriers to justice. To find out more, please visit www.just-transcription.com or contact the team at hello@just-transcription.com.

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Serving Prisoners Supported by MOJUK: 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, Warren Slaney, Melvyn 'Adie' McLellan, Lyndon Coles, Robert Bradley, 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 William Kenealy, Glyn Razzell, Willie Gage, Kate Keaveney, Michael Stone, Michael Attwooll, John Roden, Nick Tucker, Karl Watson, Terry Allen, Richard Southern, Jake Mawhinney, Peter Hannigan.