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Alan Clark Rape Convictions Quashed Following Trial Judge's Misdirection of Jury

Scottish Legal News: A man jailed for eight years for the rape of two women has had his convictions quashed after Appeal Court judges ruled he suffered a miscarriage of justice. Lord Eassie, sitting with Lady Smith and Lady Clark of Calton ruled that Alan Clark, 40, suffered a miscarriage of justice. At the High Court in Glasgow in 2014, Mr Clark was convicted after trial of the rape of two of his former partners – convictions which turned on the application of the Moorov doctrine and hence on the complainers' evidence being credible and reliable.

A central issue at trial was the credibility of one complainer, LMcP, whose testimony and police statement – made hours after the alleged rape – were inconsistent. In the police statement she made no allegation of sexual assault. She also gave her doctor an inconsistent account of how she came by an earlier injury. The appellant's challenge turned on the directions given by the trial judge, Lord Carloway, on the issue of evidence of a prior statement by a witness – in particular direction given relating to prior statements of LMcP.

Counsel for the appellant stated the trial judge's instruction to the jury was not an entirely correct statement of law as it suggested it is admissible to bolster a witness' evidence with evidence of a prior extra judicial consistent statement or statements. And, while there are exceptions, none of the complainer's hearsay statements were de recenti or formed part of the res gestae.

After examining further directions of the trial judge, the court came to the view there was "force" in the criticisms that the trial judge's direction to the jury was inherently contradictory. He introduced matters that were not entirely relevant to the jury's task "and deflected the jury from a proper consideration of the assessment of the reliability and credibility of the complainer's testimony in light of her prior inconsistent position." His instruction would have led the jury to discount the significance of LMcP's police statement when determining her credibility and reliability as regards the allegation of sexual offending and rape. His use of the phrase "prose narrative" would further suggest unreliability.

Delivering the opinion of the court Lord Eassie said: "We have come to the view that there is substance in these criticisms advanced by counsel for the appellant and that his submission that, collectively, they constitute a material misdirection of the jury is well founded." The court was not convinced by the advocate depute's submission that the unusual jury directions did not result in a miscarriage of justice. Lord Eassie said that while such a view held an "initial attraction", on the basis of the directions cited, the judges were "ultimately not persuaded". The judge added: "It is to be noted that the trial judge did not put matters to the jury on the basis that there was a clear acceptance by the complainer, LMcP, that in her contemporaneous complaint to the police she had not suggested to the police that she had been raped and so the precise terms of the statement did not really matter. The focus is rather on the report – the statement to the police – which inevitably must draw the jury back to the directions given by the trial judge earlier in his charge about the statement and his directions on the limitations on the value of the statement."

He went on to cite the elision of the inconsistency between the complainer's prior account and her testimony in the trial judge's instruction to the jury. The "fundamental point" was missing. Lord Eassie said: "We would add that, while of course it is correct that the statement does not make any suggestion of rape, in her cross-examination the complainer did suggest that, as a prelude to an account not pursued, she had mentioned to the police that there had been some sexual activity and that the police had missed things out. When the police officer who noted the statement gave evidence, that particular point arising from the evidence of LMcP was taken up with the officer. She testified to the effect that if that sexual activity had been mentioned by the complainer in the course of the interview it would have been noted in the statement. Accordingly the matter was not as clear cut as the advocate depute sought to submit to us. "In these circumstances we have come to the conclusion that the jury were misdirected on a matter which was central to the position of the defence at trial and that we are unable to say that no miscarriage of justice may have occurred."

CPS Fails to Review Nearly 40 Per Cent of Files Before Court Hearings

More than a third of case files at the Crown Prosecution Service are not reviewed by lawyers in advance of going to court, a watchdog report revealed. Figures from the CPS Inspectorate indicate that there was a failure to review the prosecution files before a first hearing in nearly 38 per cent of cases. That figure soared to 69 per cent of cases in which the CPS anticipated a guilty plea, and dropped to just shy of 23 per cent where prosecutors anticipated a plea of not guilty. In its report, Transforming Summary Justice, the inspectorate said it was "disappointed" by the figures. It also pointed out there was a wide variation between CPS areas, with the best office having an initial review in 88.6 per cent of the cases examined, while the worst managed only 30 per cent. Kevin McGinty, the chief inspector, told The Brief: "The underlying purpose of the [report] initiative is to ensure that there are as few hearings as possible and that every hearing is effective. "If files are not reviewed before a court hearing it risks that hearing being rendered ineffective. It's essential these reviews take place in as many cases as possible and we have identified this as an issue which the CPS needs to address."

The Transforming Summary Justice Initiative was adopted by all criminal justice agencies from June 2015. Its aim is to reform the way that criminal cases are handled in the magistrates' courts, and to create a swifter system with reduced delay and fewer hearings. If it is successful, it will reduce the amount of distress that victims and witnesses suffer during the court process. HMCPSI, at the request of the Crown Prosecution Service (CPS), carried out an early inspection to assess how effectively the CPS is delivering its part in the Initiative. Under the Initiative, all cases should be reviewed by a CPS lawyer before the first hearing takes place. Any work needed to improve the case should take place before the first hearing, and unused material should be disclosed to the defence as soon as a not guilty plea is entered.

Although previous initiatives have failed substantially to improve the way that magistrates' court work is delivered, this inspection found that there is a good deal of buy-in among CPS staff and their criminal justice system partners to achieve the aims of the Initiative. It is encouraging that generally all agencies are looking at their own performance rather than blaming others when things do not go as planned. The CPS has delivered good legal training to its staff and strong governance arrangements are in place. Against this background, a number of aspects of the Initiative have had a promising start. Inspectors assessed 81% of first hearings as effective, with the right people present and the prosecutors well prepared, robust and able to make decisions. The prosecution file is now substantially digital and prosecutors present their cases in the magistrates' courts without paper copies, which can be of real benefit. However, it is essential that the focus is maintained and momentum is not lost. The initiative is still in its initial stages and

has to be given time to bring about a real culture change, which cannot happen overnight. It is also too early to say that the Initiative will lead to substantial long term improvements. It will be several months before this can be realistically and accurately judged. The success or otherwise of the Initiative will depend not only on an increase in the timeliness and numbers of guilty pleas but on a reduction in the numbers of trials and an increase in their effectiveness. There is still a good deal of work to be done operationally.

Although CPS charging decisions were found to be good, there was a failure to review the prosecution file in too many instances (37.7% of the cases considered). Both the quality and the timeliness of the CPS reviews need to be improved – this is fundamental to the success of the Initiative. CPS lawyers need to be much better at engaging with defence solicitors before court to ensure that the first hearing is as effective as possible. And the CPS needs to find a more effective way of working with the police to improve the quality of the prosecution file.

There are few effective mechanisms in place at this stage for sharing best practice between local CPS Areas or opportunities for them to learn lessons which could potentially save resources and avoid duplication. There is also some duplication and inconsistency between local Areas' individual processes to measure the success of the Initiative. The report details findings but does not make recommendations at this early juncture, rather it suggests steps to be taken to help embed the Initiative and to complement the work that is already being done. Suggestions include: a national forum to enable better sharing of good practice, learn lessons and save resources; improved coordinated training for administrative teams; simplifying the disclosure forms; and looking again, in conjunction with the Courts Service, at the numbers of cases listed in court so that resources are used most efficiently.

In carrying out this inspection, HMCPSI visited four CPS Areas (South West, West Midlands, London and East Midlands) during September and October 2015. Inspectors observed 19 magistrates' courts sittings, and assessed 271 files from each CPS Area across England and Wales. 190 files were anticipated not guilty plea cases; 81 were anticipated guilty plea cases. A follow-up inspection is planned within the next 12 months.

New Double Jeopardy Legislation Convicts Matthew Hamlen *BBC News*

Matthew Hamlen has been found guilty of beating a pensioner to death with a marble rolling pin, four years after being cleared of the same crime. Georgina Edmonds, 77, was found dead at her home near Eastleigh, Hampshire, in January 2008. She had been tortured for her debit card Pin codes. Hamlen was initially cleared of the murder in 2012. Under new double jeopardy legislation, he was convicted following a review of DNA evidence. The jury of three women and nine men at Winchester Crown Court returned a unanimous verdict. Hamlen, from Bishopstoke, showed no emotion as the verdict was read out, the sound of crying could be heard from the public gallery.

The widow, who lived alone, was found in her country cottage by her son, bludgeoned and stabbed to death, on 11 January 2008. A two-year manhunt began in 2008 with almost 2,000 DNA samples taken from local people in an attempt to identify the killer. The prosecution claimed DNA and telephone evidence placed Hamlen at the scene, but he repeatedly denied the killing. He had been acquitted of the murder in January 2012, but the removal of the legal principle of double jeopardy in the 2003 Criminal Justice Act meant he could be put on trial for the same crime. The Court of Appeal ruled a new DNA sample found on Mrs Edmonds' blouse represented "new and compelling" evidence and quashed the original verdict.He has been sentenced for life with 30 years minimum.

Crown's 'Double Jeopardy' Application to Retry Francis Auld For Murder Refused

A Crown application to prosecute anew a man acquitted of murder nearly 25 years ago has been refused. The application was based on alleged admissions which were made or became known after the date of acquittal, but the Criminal Appeal Court refused the application, made under section 3 of the Double Jeopardy (Scotland) Act 2011, after ruling that alleged comments did not constitute admissions or were "inadmissible". The Lord Justice General, Lord Carloway, sitting with Lady Dorrian and Lord Malcolm, heard that in 1992, at the High Court of Justiciary in Glasgow, the respondent Francis Auld stood trial for the murder of Amanda Duffy, but the jury, by a majority, found the charge against him "not proven". However, the Crown sought to set aside the acquittal and grant authority to bring a new prosecution against the respondent.

The advocate depute said Daniel McDougall, a friend of the respondent, had told him a day or two after the murder that he was not the last person to have seen the deceased and that it was a man named "Mark", but in response to a suggestion that if he could not prove that he would get "done" with the murder, the respondent replied "I won't get done with that, I'm too cute for that". Prosecutors also wanted to rely on evidence of the respondent's former girlfriend, Caroline Vandeleur, who asked him "did you have anything to do with that lassie's murder?" to which the respondent replied "that's something that naebody will ever know", adding "it doesnae really matter, she was ugly anyway". She also said that during the course of a telephone call a male voice, who she believed to be the respondent, said to her "Caroline you're next". Shortly after that call, Patrick Vandeleur received a call in which a male voice said "Patrick, Patrick, Patrick" and "you thought Amanda was the last, well you're next after Caroline".

There was further evidence from a taxi driver Paul McAteer, the manager of the band of which the respondent acted as a "roadie", whose affidavit stated that in early 1993, the respondent, a passenger in his taxi, seized the radio microphone saying "I done it, I done it, I done it". Finally, the Crown sought to rely on a statement from Alexander McCartney, a prison officer who spoke to the police in 2012 after investigators learned that he had information which could help their case. Mr McCartney claimed that when the respondent was on remand HMP Longriggend in Lanarkshire in June 1992, they had a conversation which the prisoner officer commenced by saying "it's quite a heavy charge you're in for," to which the respondent replied "we were just fooling about and things got out of hand". The Crown averred that the evidence "substantially strengthened" the case against the respondent and that, on that evidence, taken together with the evidence led at trial, it was "highly likely" that a reasonable jury properly directed would have convicted him. The advocate depute also averred that they had met the "reasonable diligence" test, and that it was "in the interests of justice" to set aside the acquittal and authorise a new prosecution.

But the respondent denied that any of the statements were made, but in any event, argued that the statements were "too ambiguous" to be construed as admissions. It was submitted that the words uttered "must be capable of being construed as an admission of involvement in the actual commission of the crime charged" and comments which may seem "callous or indifferent" to the fate of the victim or even showing approval of what has happened "cannot be construed as admissions". The comment "I won't get done with that, I'm too cute for that" was manifestly not an admission, as it was made against the background of a "clear and unequivocal exculpatory statement", it was argued. As to the statement to Mr McCartney was admissible, it did not constitute an admission.

Delivering the opinion of the court, Lady Dorrian said: "In the case of the confrontation of the respondent by Caroline Vandeleur the response cannot be construed as an admission. She reports asking him 'did you have anything to do with that lassie's murder?' but the response 'that's something that naebody will ever know', is not an admission, and the gratuitous

insults added thereafter, whilst they may indeed be cruel and ungenerous, cannot alter the character of what went before. None of the remaining statements involve confronting the respondent with the allegations. “It is important to recognise that the context in which the remarks to McDougall were made was that the respondent had made a clearly exculpatory statement to him, indicating that he had not been the last person with the deceased, the individual named Mark had been. In the context in which it was made, it is simply not possible to attribute to the respondent’s remark the character of an admission of murder.”

The same reasoning which applied to the conversation with Ms Vandeleur applied to the incident with Mr McAteer. She continued: “These remarks and the phone calls seem to fall more into the category of misguided, unpleasant and immature conduct. Having regard to the whole circumstances in which all these statements were made, we do not think they can reasonably and fairly be construed as admissions. “The position relating to McCartney is rather different. In our view the comments made to him could be construed as an admission, even without the addition of the words in the statement which are not referred to in the affidavit, because the context was one in which the charge upon which he had been remanded was specifically referred to.”

However, the judges held that the statement made to the prison officer was inadmissible. Lady Dorrian said: “It is obvious that any response to this opening gambit would be likely to relate to the same subject matter, namely the charge against him. A prison officer dealing with a remand prisoner, especially a young person, needs to think very carefully about the subject matter upon which he opens conversation. Here, he went straight to the charge which the respondent was facing. The response cannot be viewed as voluntary or spontaneous, and is inadmissible. “Had the statements in question been admissible admissions, we would have had no difficulty in concluding that the reasonable diligence test (3(4)(a)) had been met, but that question does not now arise.”

The judges also ruled that because the DNA evidence from the original trial had now been destroyed, the Crown could not bring Mr Auld to court for a second time. She added: “In reaching its decision the court is acutely conscious that this is a very delicate matter. The case is one which caused great distress to the family of the deceased, and shock within the community. The court must look at the evidence upon which the application is based, and the evidence led at the trial. It cannot be swayed by considerations of other, possibly strengthening, evidence, which may be in the hands of the Crown but which has not formed the basis of an application. “It is a matter of concern that DNA evidence of such a kind is referred to in the application, when, as the advocate depute frankly conceded that a decision had been taken that this material could not support a new evidence application under section 4 and requires to be left out of account. It is not helpful for such material gratuitously to be included in an application such as this, where the law is very clear that it is only in the interests of justice to set aside an acquittal where all the conditions imposed by Parliament have been met. In this case they have not, and the application must fail.

Albert Woodfox Freed After 43 Years in US Solitary Prison *BBC News*

The longest-serving prisoner to be held in solitary confinement in US history, Albert Woodfox, has walked free in Louisiana after 43 years. Woodfox was the last of a group known as the "Angola Three" for their decades-long stays in isolation. He had been there since April 1972 for the murder of a prison guard. Maintaining his innocence in the death of Brent Miller, Woodfox, 69, was finally freed after accepting the lesser charge of manslaughter. The plea bargain was negotiated with state prosecutors. Twice in decades of legal battles his murder conviction was thrown out of court, yet Louisiana state prosecutors were preparing to try him

a third time. He finally agreed to plead no contest to lesser charges in exchange for freedom but insisted this was not an admission of guilt. "Although I was looking forward to proving my innocence at a new trial, concerns about my health and my age have caused me to resolve this case now and obtain my release with this no contest plea to lesser charges," he said in a statement on Friday. I hope the events of today will bring closure to many."

Before driving off from Feliciana Parish Detention Center, in St Francisville, with his brother, Woodfox told media he wanted to visit his mother's gravesite. She died while he was in prison and Woodfox said he had not been allowed to go to the funeral. At the time of Mr Miller's death, Woodfox was in Louisiana's notorious Angola prison for armed robbery and assault. He was accused of grabbing the guard from behind while others stabbed him with a lawnmower blade and a hand-sharpened prison knife. Woodfox was placed in solitary and ordered to be kept on "extended lockdown" every 90 days for decades. His lawyers say he was confined to his cell for 23 hours a day.

He is one of three men who were held in solitary confinement at the maximum security facility and known as the "Angola Three", referring to a nearby former slave plantation called Angola. The other two men, Robert King and Herman Wallace, were released in 2001 and 2013 respectively. Wallace, also convicted over Mr Miller's murder, died soon after his release pending a new trial. King's conviction was overturned. Woodfox and Wallace were involved with the Black Panthers, a militant black rights movement formed in 1966 for self-defence against police brutality and racism.

Jury Criticises Scotland Yard Over Murder at Funeral of Gang Member *MailOnLine*

“If all relevant information regarding the funeral and gang activities were linked, the Metropolitan Police would have put in place a different policing plan, raising the level to either high risk or critical”. Scotland Yard has been criticised by a jury for failings related to the death of an innocent young man who was murdered at a gang member's funeral. An inquest into the killing of 21-year-old Azezur "Ronnie" Khan heard police failed to send officers to the funeral - despite warnings that violence could erupt. A respected mentor at his local mosque, Mr Khan died from a single gunshot wound to the abdomen in November 2011, shortly after leaving the graveside of his friend Joel Morgan at a cemetery on Forest Hill Road, Southwark, south London. Mr Morgan, who was killed in a car crash, had belonged to the GAS gang, based in Lambeth. His mother had requested that police attend the funeral because it was in a patch controlled by two rival gangs, the Peckham Young Guns and the Peckham Boys, but no officers were assigned.

At Southwark Coroner's Court on Monday 22nd February 2016, an inquest jury concluded structural and strategic failings in policing "hindered" an effective plan from being implemented. Returning a narrative verdict, a jury spokesman said the force had failed to recognise "that you don't need a named perpetrator and named victim for there to be a threat to life". They added: "Communication errors were prevalent within the Met Police Service. There was a lack of information, a dilution of information, a failure to flag up different boroughs, a failure to record verbal information and appropriate assignments for tasking. "Whilst the service officers understood their responsibility, they failed to liaise and delegate with team members to ensure that the policing plan was carried out correctly. The implemented plan was inappropriate as it was informal given the circumstances. Although Southwark had a policing plan, it was inadequate as they failed to investigate their responsibilities as a borough. If all relevant information regarding the funeral and gang activities were linked, the Metropolitan Police Service would have put in place a different policing plan, raising the level to either a higher risk or critical. If there was a visible police presence at or in the vicinity of the burial service, it may have deterred gang members."

Apology for Pregnant Mother Assaulted in Police Cell

On 7 July 2011 Lynnette Wallace, who was 7½ months pregnant, was arrested and taken to Bridewell Police Station in Nottingham, for an offence which was later dropped. In the first 24 hours of her detention, she was subjected to two separate assaults by police. One day after leaving the station, she was admitted to hospital, and the next morning gave birth prematurely to her daughter. The Chief Constable of Nottinghamshire Police has now apologised for the treatment Ms Wallace received in custody, and has settled her case for damages, albeit with no admissions of liability. Findings of gross misconduct were however made against an Inspector and two custody sergeants, and the CPS is currently considering whether they or any of the officers who used force on Ms Wallace should face criminal charges. Further disciplinary hearings will likely follow.

The circumstances in which force was used upon Ms Wallace are disquieting. Following an (incorrect) report that that she was trying to harm herself, a number of male officers entered her cell, grabbed hold of her and forced her down on to the ground. They cut her t-shirt off with a knife and cut and removed her bra. They then left her face down and naked from the waist up, with her hands cuffed behind her. Although she was covered again shortly afterwards, she was left with her hands cuffed behind her back for the next 11 hours. In the middle of the night that followed, and after being permitted to sleep for just an hour and a half, Ms Wallace was told to leave her cell to give fingerprints and DNA. Exhausted and distressed, she refused. Again, a number of male officers entered her cell and grabbed hold of her. One of these men put his weight on her and punched her repeatedly in the arm in an effort to re-apply handcuffs. Ms Wallace said: “It has taken almost 5 years to obtain this acknowledgement that what happened to me was wrong. Sadly however, my daughter will have lifelong health problems which I believe are a result of her being born too early”.

Carolynn Gallwey of Bhatt Murphy solicitors, who acted for Ms Wallace said: “This very troubling case implicates a large number of officers of all ranks at this police station. We await the CPS decision on criminal charges and trust that the force will then pursue appropriate disciplinary outcomes.”

Jury Return Highly Critical Findings Into Death of Sheldon Woodford

Sheldon Woodford was found hanging in his cell in HMP Winchester on 9 March 2015 and was pronounced dead at hospital on 12 March 2015. After a two-week inquest, the jury has returned a highly critical narrative conclusion finding that lack of staff, training and consistent care across the prison and healthcare led to a failure to spot obvious and escalating patterns of risk regarding Sheldon’s self-harm. Despite the self-harm warnings accompanying Sheldon’s arrival at the prison, neither the reception officer nor the first nurse who assessed Sheldon, placed him under suicide and self harm management programme in part due to the fact that vital information was not properly shared or made available. His risk of self harm and suicide was not formally assessed until ten days later, after Sheldon had cut his wrists.

The level of observations Sheldon was monitored under did not always always reflect his risk of self-harm – including staff only being required to check Sheldon twice an hour when he returned to prison after a serious suicide attempt. Meetings in relation to his risk of self harm were often not multidisciplinary and the prison staff did not receive adequate training to identify and manage his risk of self harm. At Sheldon’s final case review, held three days after he returned from intensive care having attempted to hang himself (and five days before he placed a ligature round his neck for the second, fatal time), Sheldon’s risk was graded as “low”. This was despite the fact that the hospital who had discharged Sheldon had described him as “high risk”, a prison GP considered his risk to stem from his “impulsive” and “unpredictable” behavior, and the prison psychiatrist,

told the inquest that the “low” grading was incorrect and inappropriate.

The jury retuning a highly critical narrative conclusion, found that the failure to identify Sheldon’s escalating levels of risk of self harm, insufficient levels of prison and healthcare staffing, inadequate training on how to assess and manage risks of self harm contributed to Sheldon’s death. They also identified unstructured application of the suicide and self harm management programme resulting inadequate integration between prison and healthcare as a contributory factor in his death. The Coroner indicated that she will be making recommendations to prevent future deaths in relation to training of prison staff and officers in suicide and self harm management and also in relation to the sharing of information. Since Sheldon’s death, 13 other young people (18-24) have taken their own lives in prisons across the UK.

Sheldon Woodford’s partner Alex said: “We always believed that Sheldon was badly let down by the system at HMP Winchester and we are pleased that the jury found that this was the case.To have had to visit him once in an induced coma after a hanging attempt was bad enough, but we had hoped that the prison would learn from the risks that Sheldon was clearly presenting and provide him with the care and support he needed.To have to return again to an intensive care unit less than two weeks later, and to have to make the horrendous decision to turn off his life support machine, was devastating and broke our hearts. We hope that the jury's highly critical findings and the coroner's Prevention of Future Deaths Report will mean that eventually other families will not have to go through this. We also hope that the government will consider the failures in staffing levels and training which contributed to Sheldon's death before making any further cuts to the prison system”

Alex Tasker’s solicitor Karen Rogers said: “The failure to properly implement ACCT procedures in this case was shocking. The evidence showed there was far too much reliance on prisoners' self-report, and insufficient attention paid to obvious and escalating risks of self-harm."

Deborah Coles : Director of INQUEST said : “Sheldon’s risk of suicide should have been obvious to anyone who was responsible to keep him safe. That the jury found such fundamental failings in care, training and staffing levels sends a clear warning to Government about the crisis in prisons. There have been 3 further self inflicted deaths in HMP Winchester. The Prisons Minister must account to Sheldon’s family as to what action is to be taken in response to the serious failings identified.” INQUEST has been working with Alex Tasker since March 2015. Alex Tasker is represented by INQUEST Lawyers Group member Karen Rogers from Tuckers Solicitors and Tom Stoate from Garden Court Chambers

HMP Maghaberry 'Stabilised' but Significant Work Remains

Historically we have found Maghaberry to be a prison which has struggled to adapt to the requirements of a 21st century establishment, and one where the legacy of the past has been a major impediment to its progress in providing safe, decent and rehabilitative outcomes for the men held there. *The prison should investigate and address the reasons for the poorer outcomes for Catholic prisoners*. An inspection of Maghaberry Prison carried out in January 2016 has indicated the prison has 'stabilised' seven months after a multi-disciplinary team of Inspectors found the high security facility had become unsafe for both prisoners and staff. Following the publication of the initial findings of the announced inspection Brendan McGuigan, the Chief Inspector of Criminal Justice in Northern Ireland and Martin Lomas, Her Majesty's Deputy Chief Inspector of Prisons in England and Wales, said they welcomed the action taken by the Northern Ireland Prison Service to start addressing the serious concerns that had been raised, particularly

around safety and leadership. "When the findings of the previous inspection report were published by Criminal Justice Inspection Northern Ireland (CJI), Her Majesty's Inspectorate of Prisons (HMIP), the Regulation and Quality Improvement Authority (RQIA) and the Education and Training Inspectorate (ETI) in November 2015, we indicated failures in leadership had led to Maghaberry becoming unsafe and unstable for prisoners and staff," said Mr McGuigan and Mr Lomas. "The depth of our concerns were such we took the unprecedented step of announcing the inspection team would return to the prison in January.

Following the completion of this work, our collective assessment was the prison had stabilised," said Mr McGuigan. "While some progress had been made in addressing our concerns and the nine recommendations made in the November 2015 report, this progress was fragile. In my view, a significant amount of work remains outstanding to make Maghaberry safer for prisoners and staff and for this to reflect more positively in the outcomes for prisoners and their experience," continued the Chief Inspector of Criminal Justice. "Urgent action had been taken to strengthen leadership within the prison with a new governor and transformed senior management team in place who were focused on stabilising the prison. A review of the Erne House fire has also been recently completed and lessons were being learned. A start has also been made in tackling the challenges around safety and Inspectors found some staff supervision had commenced in association rooms and exercise yards within Maghaberry. This should be extended to embed the more dynamic, modern approach to security which is required of a 21st Century prison establishment," said Mr McGuigan.

Mr Lomas indicated Inspectors remained concerned about the high levels of violence and the problems surrounding the availability of illicit drugs together with the diversion of prescription medication. "While some aspects of primary health care had improved since May 2015, it was very worrying that mental health provision had deteriorated as a result of staff shortages and now needed urgent attention. Given the vulnerability of many of the men in Maghaberry Prison and the prevalence of such health problems, this was a significant additional area of concern and we have been reassured by the South Eastern Health and Social Care Trust that it is prioritising this issue," he said. The inspection report noted that while restrictions to the daily regime within the prison were still significant, they had reduced from previous levels. "More prisoners were now attending activities and achievements were increasing. A new 'core day' had been introduced which was enabling prisoners in full-time work to achieve over nine hours out of cell. Inspectors also noted that fewer men were locked up during the working day," said Mr McGuigan.

The Chief Inspector of Criminal Justice said that while attention had been given to lessening the impact of the separated prisoner regime on the rest of the prison, and staff working in these units were now benefitting from a staff rotation and support scheme, the situation remained challenging and complex. "Historically, we have found Maghaberry to be a prison which has struggled to adapt to the requirements of a 21st Century prison establishment and one where the legacy of the past, has been a major impediment to its progress in providing safe, decent and rehabilitative outcomes for the men held there. Whilst the senior management team has started to raise expectations of what is wanted from and for the men in its care, and this was reflected in some of the staff that we met, it was not the norm. Many staff adhered to the view that prisoners were to be feared and that they could do little to influence prisoners' custodial or future behaviour on release. This is a matter of culture and one which will be difficult to change. It will take time but is, in our view, essential for the long-term modernisation of the prison to make it fit for the 21st Century," said Mr McGuigan. As an indication of our commitment to

managing the risks identified in our November 2015 inspection report, it is our intention over the next 18 months to support the prison governors at Maghaberry, to oversee the delivery of the nine inspection recommendations, through a series of announced, low-impact visits to the prison. We have taken this step to ensure the early momentum found at Maghaberry last month is not lost, and the fragile progress made to date is strengthened so that the Northern Ireland Prison Service does not allow Maghaberry to regress," concluded Mr McGuigan.

Immigration Detainees in Prisons

As at 4 January 2016 there were 418 detainees held in HMPs in England and Wales solely under immigration powers as set out in the Immigration Act 1971 or UK Borders Act 2007.

'Sobriety Tags' Rolled Out Across London

An innovative pilot to keep criminals sober will be extended throughout London, after results out today (25 February) showed it was successful in 92% of cases. Thanks to new funds from the Ministry of Justice (MOJ) and the Mayor of London, courts in the capital will be able to put an ankle bracelet on offenders whose crimes were influenced by alcohol. The tags perform around-the-clock monitoring of alcohol in an offender's perspiration. If they drink again, breaching their alcohol abstinence order, they can be returned to court for further sanctions.

Mayor of London Boris Johnson said: "Alcohol-fuelled crimes put a huge strain on frontline services, costing the taxpayer billions of pounds each year. From assault, to drink-driving, to theft and criminal damage, this innovative technology is driving down reoffending and proving rehabilitation does not have to mean prison. After such a success in South London, it's time to roll out these tags to the rest of the capital and rid our streets of these crimes, by helping even more offenders stay off the booze and get back on the right track."

Justice, Moral Panic and the Irish *Paul May, Justice Gap*

In June 2014, I attended the Belfast funeral of Gerry Conlon of the Guildford Four. Gerry's cruelly premature death made it a very sad occasion but I was delighted to be reunited with individuals who'd campaigned for innocent Irish prisoners. Among the mourners was Lily Hill – mother of another of the Guildford Four, Paul Hill. More than quarter of a century earlier, Lily and I spoke at public meetings calling for the release of innocent Irish prisoners. As we chatted outside St Peter's Cathedral, I was reminded of an incident which occurred in the 1980s. Waiting for a train after visiting her son at HMP Winchester, Lily was arrested by Hampshire Police. At the police station, she was allowed a telephone call to inform someone of her arrest. Lawyers were contacted. The police said Lily had been acting suspiciously. This seemed highly unlikely. She was (and is) a mild-mannered and manifestly law-abiding woman. After several hours, she was released without charge. Lawyers continued to ask why she'd been arrested. Eventually, officers admitted that a member of the public had overheard Lily speaking in a Belfast accent and called the police.

In those days, it wouldn't have been especially surprising if the government had added an offence of being in wilful possession of an Irish accent within designated areas of the Home Counties to the panoply of absurd, panic-stricken measures adopted in the wake of terrorist violence. The mistreatment and discrimination suffered by Northern Ireland's nationalist minority provided neither excuse nor justification for the paramilitaries' actions. Faced with terrorism, the State was under a positive duty to protect its citizens. However, the hasty introduction of senseless legislation which demonised entire communities in Britain and Northern Ireland was almost entirely counter-productive. Nor

was it reasonable to stifle democratic discussion about the conflict as typified by government media bans. Above all, it was unacceptable for the integrity of the courts and criminal justice system to be undermined and corrupted by repeated incarceration of innocent people.

Folk devils - For many decades, the British media paid scant attention to Northern Ireland. The UK government showed even less interest. Until the late 1960s, not a single Whitehall official worked full time on Northern Irish matters. The consequent reaction in Britain when paramilitary violence erupted was bewilderment swiftly followed by panic. Rather than seek any explanation of the causes of the conflict, most of the media resorted to grotesque stereotypes in which Irish people were portrayed as congenitally stupid 'folk devils' with an atavistic propensity for violence. When paramilitary bombings spread to England in the early 1970s, the public atmosphere of moral panic encouraged police from West Yorkshire down to Surrey to concoct cases against a succession of wholly innocent suspects. Prosecuting lawyers disposed of inconvenient evidence pointing to the innocence of those accused by deliberate non-disclosure and outright concealment. Government scientists falsified their findings. The courts and juries ignored manifest absurdities in the cases against the defendants. No part of the criminal justice system remained untainted.

Throughout the 1970s the majority of persons convicted of serious terrorist offences in England were innocent. Wrongful convictions in this period weren't random aberrations caused by a few rogue police officers. They were the norm. Efforts to transform Irish people into diabolic 'others' in the public mind were so successful that ostensibly normal behaviour was cited as proof of defendants' deviance. Thus, in his opening speech for the Crown at the trial of the Birmingham Six, Harry Skinner QC pointed to five of the men on a Heysham-bound train 'playing cards and…in a jolly mood' to demonstrate their perverse callousness after placing bombs 'in some illogical way'. Likewise, the unlikely circumstances in which some of the defendants were found when arrested weren't regarded as incongruous. No-one considered it odd that Judith (Judy) Ward should be apprehended homeless and destitute sleeping in a Liverpool shop doorway just days after she was supposed to have organised the M62 coach explosion. To establish her Hibernian 'otherness', the Crown claimed – based on no evidence whatsoever – that Judy's father was Irish (both her parents were English). When defendants in terrorism cases failed to conform to stereotype (as when the Times reported that Anne Maguire gave her trial testimony in an 'outwardly simple, homespun manner') sections of the media were almost indignant.

It's sometimes argued that hysteria and moral panic within the criminal justice system in response to Irish paramilitary violence subsided after the 1970s. This is a dubious proposition. Terrorism charges continued to be brought against innocent suspects well into the 1990s. What had changed was that defence lawyers and justice campaigners had learned to act swiftly in order to avert the fate suffered by the Birmingham Six and others. I was involved in several such cases.

In 1993, I was contacted by the aunt of a young Derryman called John Matthews. He'd been staying with her while working in London after failing to find employment at home. She'd just been released from custody after several days questioning. John was accused of hi-jacking a minicab with the intention of causing an explosion in Downing Street. Arrested at Heathrow Airport three days after the incident, he was charged despite having a water-tight alibi. John's SDLP constituency MP, John Hume had known him since birth and worked strenuously to have the charges withdrawn enlisting the energetic support of Sir Peter Bottomley MP and Labour MP Kevin McNamara. Thanks to the efforts of his estimable solicitor Gareth Peirce, charges against John were dropped after he'd been incarcerated for several months. With

almost unbelievable vindictiveness, Home Secretary Michael Howard ordered that John be re-arrested as he left the court and served with an order to exclude him from Britain insisting he was a terrorist whatever the court said.

Moral panic - Elaine Moore was a Dubliner working and living in London. In 1998, she was arrested and held in oppressive conditions accused of storing explosives. Successive hearings at Belmarsh Magistrates Court took place in a decidedly surreal atmosphere. At one hearing, the prosecution claimed a pendant she possessed in the shape of a map of Ireland was the emblem of the 32 County Sovereignty Movement – a group linked to the Real IRA. The pendant was widely available in tourist souvenir shops and had been given to her two years before the group in question had even formed. At another hearing, the stipendiary magistrate refused to accept a proposed bail surety on the grounds that the person resided in Armagh which the magistrate asserted was outside UK jurisdiction. During the lunch break, I undertook the bizarre task of visiting bookshops and newsagents in the Plumstead area in search of an atlas which would show that Armagh is indeed within the UK. Elaine was eventually released after it transpired police had known all along that she was innocent thanks to information provided by an undercover officer.

Moral panic was occasionally directed at those challenging wrongful convictions. In 1988, the Independent Broadcasting Authority (IBA) banned a Pogues song about the Birmingham Six because it might 'invite support for an organization proscribed by the Home Secretary's directive in that they indicate a general disagreement with the way in which the British government responds to, and the courts deal with, the terrorist threat.' We wrote to the IBA from the Birmingham Six Campaign asking whether the ruling also applied to our own activities and they replied that it did. More serious was a statement issued in 1990 by the West Midlands Chief Constable, Geoffrey Dear. He alleged the IRA had infiltrated the Birmingham Six Campaign and 'there is no doubt that the IRA are working with the campaigners'. He provided no evidence for his lurid claim (he was no doubt hampered by the fact that none existed). Nor did he express concern that those of us in the campaign's leadership with family in Northern Ireland might be endangered by his groundless accusation.

Have the UK government, criminal justice system and media learned any lessons from the 30 year moral panic during the Northern Ireland conflict? Hardly. Not long ago, I met with Vincent Maguire who together with five relatives and a family friend was imprisoned in the 1970s for terrorist offences which never existed. Speaking of the irrational atmosphere in which the Maguire Seven were tried and convicted, Vince commented 'Back then it was Irish people on the receiving end. Now it's Muslims.' Moazzam Begg freed from months of detention on terrorism charges in October 2014 after the Crown's supposedly strong case against him seemingly evaporated without trace would doubtless agree.

Anwar Hussain Claimant - V - Parole Board of England and Wales

In this case, the court returns to the legal effect of delays in the Parole Board advising and making recommendations to the Secretary of State in respect of life prisoners, this time in the context of pre-tariff reviews to determine whether a prisoner should be transferred from closed to open prison conditions. The case raises an important issue as to the scope of the duties owed by the state to an indeterminate sentence prisoner during the currency of his minimum custodial term to enable him to demonstrate, after the expiry of that term, that he no longer presents an unacceptable danger to the public; and thus he can and should be released.

The Facts: On 1 August 2005, as one of a group of young men, the Claimant (then aged 16) chased, assaulted and stabbed to death Charles Anokye, who was defenceless and had

done nothing to provoke the attack. Mr Anokye was stabbed thirteen times, including, fatally, a deep wound through his heart. The Claimant took a knife to the scene, was the main participant in the assault, and almost certainly delivered the fatal blow.

On 18 December 2006, following a trial at which he was found guilty of murder, the Claimant (still only 17) was sentenced to detention during Her Majesty's pleasure with a tariff of 12 years. By the time he was sentenced, the Claimant had spent over a year in custody on remand. As a result, subject to any acceleration of the date under the principles set out in Smith (see paragraph 6 above), his tariff expiry date is 19 August 2017. The Claimant has not made any application for review of his minimum custodial term.

On 16 April 2014 (about three years four months before tariff expiry), the Secretary of State referred the Claimant's case to the Board for a pre-tariff review, seeking the Board's advice as to whether the Claimant was ready to be moved to open prison conditions; and, if they decided to make such a recommendation, asking for their comments on the degree of risk involved. That was the full extent of the advice and recommendation sought.

In line with the calculation of the required hearing date to which I have referred (paragraph 21 above), the target month for the panel hearing was set by the Board as November 2014.

On 5 August 2014, in accordance with the ICM regime then in place, a member of the Board reviewed the dossier, and directed that there should be an oral hearing. By this time, the Claimant's Offender Supervisor and Offender Manager had lodged statements recommending that the Claimant be moved to open conditions; and solicitors acting for the Claimant had also lodged representations. The member conducting the review noted that there were no reports outstanding before the hearing could be listed; but directed that various updating reports be lodged by 15 September 2014. Two witnesses were directed to attend the hearing, i.e. the officers who had lodged positive statements. Their dates of availability were filed by 9 September; and the case was then ready to list.

The first listing exercise after the Claimant's hearing was ready to list took place on 23 September, for the calendar month of December 2014. However, the Claimant's case was not then listed. Nor was it listed at the subsequent monthly exercises until the exercise that commenced on 23 February 2015, for the month of May. Dates of availability for the witnesses were then checked, and the hearing listed on 8 March for 22 May 2015.

The reason for the failure to list the case in the five month period December 2014 to May 2015 is clear and uncontroversial: the Board accept that it was a result of a lack of panel capacity to hear the cases that were ready to list (see, e.g., paragraph 17 of Sir David Calvert-Smith's statement of 12 October 2015: Sir David is the Board's Chairman, a post he has held since October 2012). As Mr Collins put it in his oral submissions: the Board simply could not list enough hearings to meet the demand. The Claimant's case was not one that fell within the Board's policy for prioritising hearings; and it therefore had to wait its turn. At the five listing exercises from September 2014 to January 2015 inclusive, it was not sufficiently high on the list of non-prioritised cases to be set down for hearing. It came to the top of the list by the February 2015 exercise, which listed for May 2015.

Nor is there any uncertainty about the cause of this lack of hearing capacity. The Board having only just overcome the challenge posed by the introduction of sentences of imprisonment for public protection ("IPP") – a new indeterminate sentence which resulted in large numbers of additional cases being referred to the Board – on 9 October 2013, the Supreme Court handed down judgment in R (Osborn, Booth and Reilly) v Parole Board [2013] UKSC 61 ("Osborn"), which gave guidance as to when the ECHR and the common law duty of procedural fairness require the Board to hold an oral hearing. This very substantially increased the number of oral hearings that the Board were

required to hold. In October 2013, the number of hearings ready to be listed was 305, and the number which the Board failed to list was 57. By September 2014, the figures were 1188 and 1101 – and by October 2014, 1587 and 1322 - respectively. The capacity of the Board to hold hearings simply could not cope with this new level of demand. I deal with the action taken by the Secretary of State and the Board in the light of Osborn below (see paragraph 45 and following).

The Claimant was promptly informed that there would be delay in the listing of his case. On 23 September 2014, the Board wrote to him explaining the effects of Osborn. They said that, each month, they were hearing as many cases as they could, but a queue of hearing-ready cases was developing. It continued: "At the moment your case is proceeding as swiftly as possible but we have not been able to secure a date for your oral hearing at this time. We fully acknowledge that this may cause you concern and that any long wait term delay is unacceptable. Should you hearing date be further delayed you may want to discuss your options with a legal representative."

The Claimant did. On 6 November 2014, his solicitors wrote to the Secretary of State requesting an administrative transfer to open conditions without a Board review (a so-called "Guittard application": see paragraph 15 above) – and the Claimant followed that up with a personal request to the Board in January 2015 – but without response. On 23 February 2015, the Claimant's solicitors wrote a pre-action protocol letter to the Board requiring rectification of the failure to provide a hearing date by 2 March. After Osborn, such claims were not unexpected by the Secretary of State: indeed, he gave the Board additional funding in the year 2013-14 on the basis that claims would be received (see paragraph 47 below).

The Board responded to the pre-action protocol letter on 3 March. Their letter purported to concede that the delay breached the Claimant's rights under article 5(4) of the ECHR, so that the Claimant was entitled to damages. That concession was later withdrawn, on the basis that the Claimant was still pre-tariff, and thus article 5(4) had no application (see paragraph 8 above). But, in any event, the letter denied that the Claimant was entitled to any mandatory relief, and refused to expedite the Claimant's Board panel hearing date over those above him in the queue. The Claimant issued these proceedings that day (3 March 2015).

By 8 March 2015, the Board had ascertained witness availability for the panel hearing in the Claimant's case; and, immediately, listed his hearing for 22 May 2015 which proved to be an effective date. Following that hearing, on 27 May, the Board recommended the Claimant's transfer to open conditions. On 24 June, the Secretary of State informed the Claimant that he accepted that recommendation; and the Claimant was transferred to open conditions at the end of August 2015. To complete the chronology, on 30 October 2015, due to alleged intimidation of other offenders, inappropriate comments to staff and other offenders and failures to comply with the open prison routines, the Claimant was returned to a closed prison, where he has remained since.

The Claim: The Parties' Arguments: In lengthy written and oral submissions, Mr Rule contended that, in failing to list the matter for hearing in the period December 2014 to May 2015, the Board was in breach of each of the four common law and ECHR duties identified in Kaiyam. He put forward the claims for breach in a wide variety of ways that were disparate and sometimes lacking optimal analytical consistency, precision and clarity.

I shall focus on the best formulation of the claim, as I understood it. The James public law duty and the article 5 ancillary duty each requires the state to afford ISPs a reasonable opportunity to demonstrate to the Board, at tariff, that the risk they pose to the public is at no more than an acceptable level. He submitted that what amounts to a "reasonable opportunity" in these circumstances is in practice determined by the Secretary of State himself. The

Secretary of State properly considers that, to afford a prisoner a reasonable opportunity to demonstrate to the Board sufficiently reduced risk at tariff, a prisoner must be given a prior reasonable opportunity to rehabilitate in open conditions.

In terms of the common law duty, that is dependent upon a system that ensures that an ISP is transferred to open conditions at the appropriate time, and no later. The Secretary of State assesses the stage of the point in the sentence at which transfer might be appropriate. Whether that is in fact appropriate is dependent upon an assessment of risks and benefits conducted by the Board. However, the parole system set up by the state means that oral hearings before the Board (and, hence, the response, advice and recommendations of the Board, and thus the ultimate decision of the Secretary of State on transfer) are routinely delayed. That deprives prisoners generally of a reasonable opportunity to rehabilitate in open conditions and thus a reasonable opportunity to demonstrate to the Board, at tariff or at their next review, that the risk they would pose to the public is at no more than an acceptable level. In failing to ensure that such a system is set up and in operation, the state is in breach of the James public law duty. In the Claimant's case, it is also in breach of the ancillary article 5 duty; because, as a result of the systemic failure, the Claimant has been denied a reasonable opportunity to demonstrate to the Board, at tariff, that the risk he personally would pose is at no more than an acceptable level.

Mr Collins frankly acknowledged that the system adopted by the Board has been unable to deal with hearings by the time required by the Rules and Secretary of State's policy; and he acknowledged that, as a result, the listing of the Claimant's hearing was delayed. However, he did not accept that the Board had materially breached any duty.

Relying upon the passage from the judgment of Lords Mance and Hughes at [48] quoted above (paragraph 77), he submitted that Kaiyam (SC) did not describe the ancillary article 5 duty in terms wider than a duty to provide a prisoner with a reasonable opportunity to prove his suitability for release at the time of, or reasonably soon after, his tariff expiry date. In this case, despite the unfortunate delay in listing his panel hearing, the Claimant was in fact transferred to open conditions at the end of August 2015, two years before his tariff expiry date. The failure to list the hearing more promptly (Mr Collins submitted) has not denied the Claimant a reasonable opportunity to prove his suitability for release at the time of his tariff expiry date; because, in the two years from August 2015, the Claimant will have every reasonable opportunity to produce an evidential basis upon which he could prove that suitability. Any failing of the Board thus has been, or will be, "corrected"; and there has been no breach of the ancillary duty. As the Claimant has not been denied a reasonable opportunity to prove his suitability for release at the time of his tariff expiry date, it is not open to him to claim in respect of an alleged defective system which has not had any adverse impact upon him. For those in the position of the Claimant, there is no material systemic deficiency.

Relief: There was a substantial amount of time spent before me debating appropriate relief, should I find the alleged breaches proved, as I have. Despite that lengthy debate, I can deal with the issue shortly. So far as the breaches of the common law duty I have found proved, the Claimant is entitled to appropriate declaratory relief.

A breach of the ancillary article 5 right finds satisfaction in a declaration of unlawfulness and, in appropriate cases, damages. Mr Rule, realistically, does not suggest that the Claimant can show that his release date has been adversely affected by the Board's breach of duty. In those circumstances, the award of damages is limited to damages for "legitimate frustration and anxiety", if and to the extent that such can properly be shown or inferred to have been occasioned, on the

basis of the general approach set out by Lord Reed JSC in Faulkner and Sturnham (see Kaiyam (SC) at [39]). In Faulkner and Sturnham at [13], Lord Reed set out a number of propositions relating to this head of damage, as follows: "10. Damages should not be awarded merely for the loss of a chance of earlier release. 11. Nor should damages be adjusted according to the degree of probability of release if the violation of article 5(4) had not occurred. 12. Where it is not established that an earlier hearing would have resulted in earlier release, there is nevertheless a strong, but not irrebuttable, presumption that delay in violation of article 5(4) has caused the prisoner to suffer feelings of frustration and anxiety. 13. Where such feelings can be presumed or are shown to have been suffered, the finding of a violation will not ordinarily constitute sufficient just satisfaction. An award of damages should also be made. 14. Such damages should be on a modest scale. 15. No award should however be made where the delay was such that any resultant frustration and anxiety were insufficiently severe to warrant such an award. That is unlikely to be the position where the delay was of the order of three months or more."

The Board accept that, if (as I have found) they breached the ancillary article 5 duty, damages are payable subject to and in accordance with these principles. I did not, however, hear detailed or focused submissions on quantum. I shall therefore adjourn that issue, to allow the parties time to agree the amount or, if they are unable to agree, to provide me with written submissions on quantum within the next 14 days. Unless any party considers it necessary to have a further hearing, I shall determine the amount of damages due on the basis of those written submissions alone.

In addition to that relief, which is relatively uncontroversial, the Claimant seeks wider relief as follows (see paragraph 65(4) and (5) of the Statement of Grounds, repeated in paragraph 127(4) and (5) of Mr Rule's skeleton argument): i) "a declaration that the Board is not sufficiently resourced or managed, and consequently the state is failing to properly resource and provide a parole system that meets its obligations under the ECHR"; and ii) "a mandatory order that the state must supply to the Court its proposals within 35 days of judgment identifying what steps are to be taken to remedy the systemic problem with the Parole Board lacking the resources to meet, inter alia, the requirements of article 5(4) of the ECHR. Thereafter the Court shall determine whether to make any further mandatory order."

There is no doubt that, in appropriate cases, this court has the power to make orders to ensure that a public body will, in the future, comply with its public obligations. Lord Judge LCJ said in James, in the context of the failure of the Secretary of State to make sufficient provision for rehabilitative courses that prisoners subject to a sentence of IPP required to enable them to obtain a recommendation from the Board for release (at [133]): "If the Parole Board failed to comply with its own public law duty, or if complaints legitimately made by the Board were ignored by the Secretary of State, then the Administrative Court might see fit to intervene, to direct either the Parole Board better to fulfil its responsibilities, or the Secretary of State to comply with the reasonable requests of the Parole Board for improvements to the IPP regime, sufficient to enable the Parole Board to be satisfied that it can fully discharge its own section 28(6) [i.e. of the 1997 Act] public law responsibilities."

Mr Rule accepts that such relief would be unusual; but he submits that this is a case in which it is appropriate for the court to take on "a supervisory responsibility for the proper discharge of the functions of the state", because "without [a] mandatory order insufficient respect is paid by the state authorities to the need to fund and resource the system of [ISPs]…" (paragraph 66 of the Statement of Grounds). In support, he relies upon a case, in which he appeared and in which he says the court did take on such a role in the context of the release of ISPs, namely

Fletcher. The claimants in that case had been sentenced to IPP, and had been the subject of long delays in obtaining rehabilitative courses which most of the claimants still awaited. Dingemans J found a breach of the James public law duty, and then adjourned to allow the Secretary of State to submit evidence to address the continuing breach of that duty. Mr Rule said that it was his understanding that that adjournment was not to consider mandatory orders only in respect of the individual claimants (i.e. orders that those particular prisoners be put onto the relevant courses without further delay), but more general declaratory and mandatory orders addressed to the Secretary of State and/or the Board (paragraph 119 of Mr Rule's skeleton argument).

However, I am entirely unpersuaded that an order for such wide relief would be appropriate in this case. In coming to that conclusion, I have particularly taken into account the following: i) In James, immediately after the passage quoted above, Lord Judge went on to emphasise that, although the court had power to make such orders, they would be highly unusual – reserved, he said, for "extreme cases" – because: "Although possessed of an ultimate supervisory jurisdiction to ensure that the Parole Board complies with its duties, the Administrative Court cannot be invited to second-guess the decisions of the Parole Board, or the way in which it chooses to exercise its responsibilities", the Board being "… exclusively responsible for the procedures by which it will arrive at its decision" (at [134]). I accept that that was said in a slightly different context; but it rightly emphasised that the Secretary of State and the Board have the primary role here. Whilst the court is able to determine whether the Board is acting unlawfully, a lawful scheme may be developed in a wide variety of ways; and the court is not equipped to supervise how that might be done. ii) The evidence before me suggested that the Board are confident that the new model of working that has been set up will eradicate the hearing backlog by April 2017 (see paragraphs 50-51 above). If this court were to make an order requiring the Board (and/or the Secretary of State – although he is not currently a party to these proceedings) to produce proposals for the establishment of a lawful scheme, that scheme is bound to take some time to set up. Mr Rule asserted – without any apparent evidential foundation – that it should be possible to set up a new system and get rid of the current hearing backlog within, say, six months, i.e. by about August or September. However, the court is not well-equipped to consider whether proposals for eradicating the backlog – which the Board (and, it seems, the Secretary of State) are committed to do – are the "best" or most expeditious that can be devised in the current circumstances. iii) Although Mr Rule appeared in Fletcher, in determining the court's intention in that case, I can only read and interpret the judgments of Dingemans J. They appear to me to be clear. He gave three judgments reported as [2014] EWHC 3586 (Admin), [2014] EWHC 4338 (Admin) and [2015] EWHC 3451 (Admin); which I shall refer to as simply the First, Second and Third Judgment respectively. The judge rightly emphasised that it is not for the court to determine how public law duties (including those that arise from the ECHR) should be discharged, "management" being ultimately a matter for the Secretary of State (see, e.g., the Second Judgment at [12], and the Third Judgment at [5]). Although he required the Secretary of State to address the continuing breach of the James public law duty in the form of further evidence, he did so because he "hoped would lead to a situation where the claimants were put on the [relevant] course" (the Third Judgment, at [6]). Once it became apparent that the individual claimants had been put on courses – or it was imminent that they would be – he considered it was "no longer necessary to make a mandatory order" (the Third Judgment at [16]). Whatever Mr Rule had understood, it seems clear from these judgments that Dingemans J was only concerning himself with mandatory orders requiring the individual claimants to be put upon the relevant course; and not more general relief. iv) The declaration

that Mr Rule seeks is little more than a declaration that the Board comply with their legal obligations. It appears to do no more than reiterate in the form of an order, the findings of law and fact that I have made. In the circumstances of this case, I do not consider such further relief necessary or appropriate: it would not be helpful to attempt to encapsulate those findings in the manner proposed. v) The mandatory order sought – said by Mr Rule in his oral submissions to be a mere proposed "direction" – requires the Board to produce proposals for a new system of dealing with oral hearings, with a lead-in time, which the court is ill-equipped to assess. In terms of the mandatory relief proposed, if and when proposals were forthcoming, it is difficult to see how the court could mandate particular steps to be taken. Again, I do not consider such relief to be necessary or appropriate. - In my view, although the Board have been found to have been in breach of the James public law duty, this case falls very far short of one in which it would be appropriate to give the wide, general relief sought – or, indeed, anything like it. For those reasons, I shall allow this judicial review.

HMP Ranby – Safety Remains A Significant Concern

Not enough progress had been made at HMP Ranby, said Martin Lomas, Deputy Chief Inspector of Prisons. As he published the report of an announced inspection of the Nottinghamshire training and resettlement prison. HMP Ranby holds just over 1,000 men. The accommodation is arranged in two distinct parts: house blocks 1 to 3 were older and generally delivered poorer outcomes than newer house blocks 4 to 7. At an inspection in 2014, inspectors reported significant concerns about the prison as a whole and about safety in particular. There had been improvement in some areas but this more recent inspection 17 months later found inadequate progress overall and safety remained a significant concern. A number of factors had combined to undermine progress. The role of the prison had become more complex and in addition to its function as a working prison that should have kept men occupied in education, training, work and offending behaviour courses, it now had a new role as a resettlement prison which received men in the last three months of their sentence and prepared them for release in the local area. A lack of work for some of the workshops and staff absences meant many prisoners had too little to do. There were problems resolving simple domestic issues. On top of this, the prison was attempting to combat a surge in the availability of new psychoactive substances (NPS). Health services were at risk of being overwhelmed by the need to treat the most seriously affected. The trade in NPS was leading to high levels of debt and associated violence.

Inspectors were concerned to find that: 24 Recommendations from the previous inspection had not been achieved • too many prisoners held on the large house blocks 1 to 3 and staff working on the units said they felt unsafe; • the number of violent incidents was much higher than in similar establishments; • assaults on staff had increased significantly and a number of very serious incidents had occurred; • in the 17 months between inspections there had been six self-inflicted deaths; • prisoners in house blocks 1 to 3 reported difficulties obtaining cleaning materials, clean clothes and clean bedding, staff appeared very busy with little time to talk to prisoners, and this was compounded by the long time many prisoners spent locked behind their doors; • too many men were locked in their cells during the working day because of a shortage of workshop instructors and delays in materials arriving; • the quality of some teaching and learning provision needed to improve; • even when activity places were available, attendance and punctuality were often poor; and • the backlog of OASys assessments required to assess prisoners' risks, and on which sentence plans should have been based, remained extensive. Inspectos made 55 rececommendations.

Martin Lomas said: “HMP Ranby had not made sufficient progress since the previous inspection. We remain seriously concerned about the stability of the prison, the safety of prisoners and staff and the inadequate measures being taken to prepare prisoners for release and reduce the risk they will reoffend. The prison has already been provided with some additional staff and there is more to be done by prison managers to improve outcomes. However, the prison faces the challenge of a destabilising supply of NPS which threatens to overwhelm it. The harm caused by NPS in prisons requires a national policy. There should be an immediate temporary reduction in the population to give staff the opportunity to regroup. The prison is struggling to cope with its dual working and resettlement prison roles. The resettlement role involves a very high throughput of challenging prisoners, some of whom have little investment in the opportunities the prison offers because they are so near to their release. The prison should return to being a working prison if only so that it is able to concentrate fully on that task.”

Brothers Jailed After Mocking Judge Who Let Them Off

Daniel and Samuel Sledden are behind bars after being hauled back to court for mocking a judge on Facebook . The two men were delighted when Judge Beverley Lunt decided to give them a suspended sentence when they appeared before her for drug dealing earlier this month. Just forty minutes after leaving Burnley Crown Court, Daniel, 27, posted online: “Cannot believe my luck 2 year suspended sentance (sic) beats the 3 year jail yes pal! “Beverly [sic] Lunt go suck my c***”. Soon after, his brother, Samuel, 22, wrote: “What a day it’s been Burnley crown court! Up ur **** aha nice 2 year suspended...” The judge did not take kindly to their remarks after two defendants from Accrington, Lancs, assured her at their first appearance they were full of remorse. She dragged them back before her for a sentence review and sent them to prison for two years. She told them: “The question I have to ask myself is this: if I had not known their real feelings at being in court would I have accepted their remorse and contrition, and suspended the sentence. “And the answer is of course not.

HMP & YOI Holloway – Sustained But Limited Improvement

HMP and YOI Holloway had continued to improve, but its poor design limited what could be achieved, said Martin Lomas, Deputy Chief Inspector of Prisons. s he published the report of an unannounced inspection of the North London women’s prison.On 25 November 2015, the government announced its intention to close HMP and YOI Holloway. Findings from this most recent inspection should be read with the knowledge of this. A number of recommendations have been made as women continue to be held for a period of time until the closure. Holloway remains the largest women’s prison in the UK. It holds a complex mix of prisoners, including those remanded in custody by the courts and women sentenced to life. Its population reflects the complexities and diversity of London with a large number of foreign national women and those with mental health issues, disabilities and substance misuse problems. After years of being very critical of the treatment provided to women at Holloway, inspectors reported a much improved picture after an inspection in 2013. Despite the size of the population and the difficulties of the physical environment, this more recent inspection found a prison which had continued to improve in three out of four healthy prison tests: safety, respect and resettlement.

Inspectors were concerned to find that: • 13 recommendations from the last report had not been achieved • too many women reported feeling unsafe on their first night or at some time while at the prison and the reasons for this needed to be better understood; • many women lived in cramped dormitories with little privacy; • support for the many foreign national women needed improvement; • despite significant efforts by staff there were unacceptable delays in moving women with mental health issues to secure hospital beds; • public protection arrangements needed urgent attention to ensure they provided full reassurance that anyone who presented this type of risk was identified and that release planning started as early as possible; and• allocation to work, education and training was ineffective and attendance and punctuality was not good enough. • Inspectors made 55 recommendations

Lincolnshire Police Custody – Insufficient Progress

Police custody in Lincolnshire had not improved sufficiently since its last inspection, said Martin Lomas, Deputy Chief Inspector of Prisons, and Dru Sharpling, HM Inspector of Constabulary. As they published the report of an unannounced inspection. The inspection was part of a national programme of joint inspections of police custody and the second inspection of Lincolnshire Constabulary custody suites. The first inspection was in January 2011 and was described as disappointing. This more recent inspection found the situation had not improved and that progress had been insufficient. Many recommendations made previously had not been achieved. Inspectors visited custody suites at Lincoln, Boston, Grantham and Skegness. Inspectors were concerned to find that: • strategic leadership required improvement; • the collection of performance data in some key areas, particularly in relation to vulnerable detainees, was inadequate; • the number of people detained in police custody under section 136 of the Mental Health Act was still too high; • staff were not held sufficiently accountable for the practices they employed in the custody suites as there was no monitoring of the use of force or strip-searching; • although staff interacted well with detainees, there were inconsistencies in the way detainees’ risks were managed; • it was common practice for vulnerable adults and children to have their fingerprints, DNA and photograph taken without the support of an appropriate adult (AA) and, in some cases, without understanding what was taking place; • the lack of a 24-hour AA service prolonged the detention of children; • the complaints system was inadequate and there was no guidance from the force outlining the process; and • detainees sometimes experienced long delays in receiving appropriate care by health care professionals. Martin Lomas and Dru Sharpling said: “Lincolnshire police had made insufficient progress since the previous inspection. Better strategic oversight and working with partners to ensure safe and appropriate detention for the most vulnerable detainees was needed. Systems for checking the practice of custody staff and officers across the custody suites were insufficient to provide reassurance that detainees were held safely and staff were supervised or monitored. The report is critical of police custody being used too often as a place of safety under section136 of the Mental Health Act, although the street-based mental health triage service and diversion schemes were good starts to reversing this trend.

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.