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Ben Geen: Thrill-Seeking Killer Nurse or Innocent Victim of Statistics?

Jon Robins, Justice Gap: Lawyers for a nurse serving 30 years for murdering two patients and harming 16 others are challenging a decision by the miscarriage of justice watchdog not to refer the case back to the Court of Appeal in a final attempt to have his conviction overturned. Last October the Criminal Cases Review Commission decided not pursue the case of Ben Geen, described in the press as 'a thrill-seeking nurse' who relished his killings but whose family and supporters claim is serving time for crimes that were never committed. 'We have to judicially review the decision. It is the only step that we have left to take,' Ben's father Mick Geen tells the Justice Gap. 'We have been with the commission for two years and it has come to nothing. We have very good new evidence, probably the most compelling that we have had in the last nine years.' Some 18 patients suffered unexplained respiratory arrests while staff nurse Ben Geen was on duty at Horton Green General Hospital between December 2003 to February 2004, including two who died – Anthony Bateman, 66, and David Onley, 75. Geen has always protested his innocence. Yesterday 23/03/2016, the High Court granted permission for the judicial review.

At Ben Geen's trial in February 2006 the prosecution case was that incidents of respiratory arrest in A&E were extremely rare, and unheard of without a cause. The former Territorial Army lieutenant was said to have been the common factor linking all patients, two of whom had drugs in their system capable of causing incapacitation and which had not be prescribed. When Geen was arrested an empty syringe was discovered in his fleece jacket pocket that he had just discharged. When the lining of the jacket was analyzed, it tested positive for incriminating drugs – a muscle relaxant (vecuronium) and an anaesthetic (midazolam). The syringe was said to have been old and worn from repeated use.

The prosecution argued that the sequence of incidents amounted to an 'unusual pattern' of sudden and unexplained respiratory arrest, and that Geen had to be the killer. There have been other cases of 'serial killer' nurses where doubts have been raised about the safety of the convictions and where clusters have been misread as sinister as opposed to coincidental – for example, Colin Norris convicted in 2008 of murdering four elderly women and attempting to kill a fifth, by poisoning them with insulin and whose case is with the Commission.

Mark McDonald, a barrister who practices at Mansfield Chambers, is convinced Ben Geen is in prison for 'crimes that were never committed – but were created to fit the circumstances'. 'I am of the firm view that no crime has been committed here. What we have is an innocent man in prison,' says McDonald, who is the founder of the London innocence project. He has been acting on the case pro bono for eight years. 'The whole basis of the prosecution case was that there was a pattern: he was on duty at the same time that these patients were falling ill, and the illness that these patients were getting was rare,' he says. 'If you dissect the pattern – and you say the pattern itself was based on a false premise – then the core of the prosecution case goes. It's as simple as that.' That was the argument that Ben Geen's legal team attempted to put before the Court of Appeal in November 2009. In a report prepared ahead of the appeal, a medical statistician Prof Jane Hutton wrote: 'The evidence of an unusual pattern of sudden collapses given in the summing up was of no value in supporting a conclusion that there was an unusual pattern, nor a conclusion that any unusual pattern was not a chance event. Opinions given by expert or other witnesses which are based on anecdotal evidence are very likely to be misleading.'

The Court refused to hear evidence from Hutton. 'We are satisfied the jury was entitled to, and perfectly capable of, drawing proper inferences from the evidence that this pattern of events was as a result of deliberate action rather than mere chance,' said Lady Justice Hallett, giving judgment. Geen's application to the CCRC is backed by a distinguished cast of experts: Professor David Hands, emeritus professor of mathematics at Imperial College; Sheila Bird OBE, the Royal Statistical Society's vice-president for external affairs; Sir David Spiegelhalter, professor for the public understanding of risk and professor of biostatistics at the University of Cambridge; Professor Norman Fenton, professor in the school of electronic engineering and computer science at Queen Mary University of London; and Professor Stephen Senn, professor of statistics at CRP-Santé. All attack the statistical base of the prosecution case.

Rarity In Itself Means Nothing: 'You cannot say that something is "rare", simply by stating that it is rare,' says McDonald. 'You have to have a statistical basis. You have to define what "rare" means.' The barrister cites the example of one street where half a dozen children are struck by leukaemia. 'That is rare, therefore it can be said there must be a connecting problem – maybe it is the overhead electrical lines, maybe something in the water or, maybe, it is just a cluster of kids and it just so happened that they all got leukaemia?' he continues. 'If I win the lottery twice in a row, you might say I was cheating. Well, it could be just that I won the lottery twice in a row. "Rarity" itself does not mean anything – because there are clusters.'

In a report in support of the application, Sir David Spiegelhalter of Cambridge University, cited the example of three plane crashes taking place in an eight day period in July 2014. Whilst striking in itself, Sir David pointed out that, according to some calculations, there was 'a 60% chance' of such a cluster happening over a 10-year period. In preparation for Ben Geen's appeal, freedom of information requests were made for data relating to respiratory arrests at hospitals which suggested that, for a small hospital like Horton General, it was not unusual for there to be several incidents a month.

Prof Fenton's report also supported the notion that a cluster of respiratory arrests at the hospital – 18 in two months where the same nurse was present – was 'not at all unusual'. 'In any four year period in the UK it is almost certain that there will be several instances of exactly this kind of "abnormally high" sequence of respiratory events,' Fenton wrote. 'It is actually very likely that, purely by chance, in at least one case there will be a nurse present at each event.' Once the idea of 'unusual events' had been established in people's minds, there was 'a well-known phenomenon of selecting historical data to fit the "coincidence",' wrote Spiegelhalter. 'I am very surprised that a sequence of events has been labeled as unusual without any formal analysis of what 'unusual' means. This is a very subtle area in which human intuition is remarkably fallible.'

Under Suspicion: Mark McDonald points out that Ben Geen was the only nurse under suspicion. 'They only looked at the notes of patients that he was treating – so they didn't see how other patients were doing at the same time. The whole case was stacked against him,' says the barrister. 'He had no chance of a fair trial – and trying to explain as the commission has been difficult.' What about the syringe? If you take that out of context yes it 'looks highly suspicious', the lawyer agrees; but not, he argues, if you are nurse. Before Mark McDonald came to the bar at 33 years of age, he worked in A&E and, like Ben Geen, lived in a nurses' home. 'I used to walk backwards and forwards with a load of rubbish in my pockets, including syringes, and I use to throw them away at home – just

as he did. His girlfriend told him to put it back in the 'sharps' bin – and so he took it back.'

What about the discharging of the syringe? 'It could be that he just knew he should not have been carrying it,' the barrister says. McDonald also argues that the prosecution contention that syringe was worm through use is a nonsense. 'If you want to get hold of a syringe, you do not have to carry around the same one,' he says. 'Nurses go through syringes like we go through pencils.' So why did Ben Geen come into the frame? According to the barrister, the former TA lieutenant stood out. 'He was loud and overconfident. He liked to be centre of attention – not in a juvenile way,' he says. Geen was different to his colleagues in that he liked working in emergency situations. 'He was like the fireman who likes to go to the fire, and not sitting at base watching TV. He liked the buzz.'

Plus, he was only man working in an A&E. 'I'm not saying that he was not liked because he was a man,' says McDonald. 'But he was the one that they pointed the finger at and that is why no one else was looked: no other nurse, no other patients' records.' The family says that there is fresh compelling evidence from Professor Vincent Marks, a leading expert on insulin poisoning. 'There is a real concern about how non expert evidence was allowed to go before the jury and when now scrutinised plainly shows that Ben Geen's convictions are unsafe,' comments McDonald. Whilst the CCRC has only lost one JR, it often concedes and so last year there were 28 challenges, two conceded before application and one after a hearing. 'The Commission would rather spend its resources reviewing cases than contesting expensive litigation, but on the few occasions when it is necessary we will fight judicial reviews all the way through the Admin Court process,' a spokesman says.

Deaf Prisoner Awarded Damages After Discrimination

Leigh Day Solicitors: A prisoner with a hearing disability has received compensation following the settlement of his claim for discrimination he suffered whilst in prison. The prisoner, known as "Mr A", became deaf whilst in prison. His deafness continued to worsen over time. Even with the help of hearing aids, he faced significant difficulties in being able to participate in important parts of prison life. These difficulties included using the telephone, attending visits, hearing announcements, participating in education and work, and speaking to other prisoners and staff. This caused him upset and isolation. Mr A repeatedly raised his difficulties with the prison. Because he had not been deaf before being in prison, he did not know what could be done to help him with his difficulties. Therefore, when raising his difficulties, he also requested that he be assessed by a deaf specialist, and then be provided with any appropriate aids or services. However, despite this, very little was done by the prison to address his difficulties. Mr A instructed Benjamin Burrows, a lawyer in the prison law team at Leigh Day, to bring a claim for discrimination. The claim was brought under the Equality Act 2010 and the Human Rights Act 1998 and alleged that the Ministry of Justice had unlawfully discrimination against Mr A by failing to take reasonable steps to avoid the substantial disadvantage he was suffering from. Mr A's claim was settled shortly after its commencement, with him receiving compensation, as well as being assessed by a deaf specialist and being provided with appropriate aids and services. Benjamin Burrows said of the settlement: "I am pleased that Mr A's difficulties have finally been resolved. However, it is frustrating that this was only done after a claim had been brought and that this is one of several such claims we have had to bring. "The experiences of the deaf prisoners in these claims have been largely same, but disappointingly so have been the responses from the prisons. It seems clear that lessons are simply not being learnt." Mr A's claim was funded by the Legal Aid Agency, and he was represented by Raj Desai, a barrister at Matrix Chambers.

Roe 4 Republican Prisoners Clarification on Recent Events in HMP Maghaberry

Republican Prisoners wish to clarify several points which have arisen in the media over the past number of weeks. It is obvious that we, as Prisoners, played no role in the recent attack on the 6 County Prison Service. The situation has been used however to demonise and attack us. Within a week of the attack Republican Prisoners were subjected to a lock-down for almost 48 hours. During which we were verbally abused, our living space was turned upside down, our educational resources were removed and two men were forcibly strip-searched. Days later, when Republican Prisoners encountered the Governors responsible for this lock-down and made clear that it had not, as intended, intimidated us into silence; we were accused, falsely, of gloating and celebrating. Indeed, this line was pushed by former republicans who have seemingly forgotten the spurious allegations of taunts directed at screws in the H-Blocks each time one of their number was executed.

This was not the only lie carried by the media; the deceitful Director General, Sue McAllister, was keen to manipulate an emotive situation by claiming that the repressive regime in Republican Roe House existed due to threats on the landings. In Republican Roe House there are less alleged threats than elsewhere in the Jail, and only a fraction of the so called disciplinary procedures and discipline alarms compared to the rest of the Jail, no guilty verdicts ever for a threat and there has never been a violent assault by Republican Prisoners against Jailers. Yet despite all this, controlled movement exists only on the Republican Wing. Sue also made claims that strip-searching now seldom occurred. Yet strip-searching has been used within the Jail on countless occasions in the past year alone against Republican Prisoners. This further highlights the irony of media comments alleging that Republican Prisoners were sub-human and deranged: Anyone seeking to witness genuine inhumanity would only need to see an arbitrary forced strip-search being carried out by the heroic Jailers in Maghaberry: The worst Jail In Europe.

Finally, the following facts should be heeded closely: • Republican Prisoners have engaged with countless individuals and organisations including Churchmen, Politicians, Community and Trade Union Figures, none of whom have stated that our position is unreasonable. • The regime in Republican Roe House has been criticised in 2006, 2009 and 2015 by the HMIP/CJINI, in 2011 by the Anne Owers' Prison Review Team and by consecutive Prisoner Ombudsmen and a host of others. • Republican Prisoners have engaged in countless processes to attain a resolution including the August 2010 Agreement which was reneged on by the Jail Administration (as recognised in the 2013 Ombudsman Report). The 2014 Stock-take and 2015 ICRC process, all of which were scuppered and sabotaged by elements within the 6 County Prison Service. Republican Prisoners seek only that the Administration abide by the August 2010 Agreement and countless aforementioned reports this would bring about the resolution which has been long sought. Republican Prisoners, Roe 4, Maghaberry, 24/03/16

Kars and 21 Others All Turkis Nationals v. Turkey (no. 66568/09)

The case concerned an operation conducted by security forces in Bayrampaşa Prison on account of hunger strikes and a death fast begun by the prisoners, including the applicants, and its consequences. Throughout the year 2000 prisoners in various Turkish prisons, including Bayrampaşa Prison, began hunger strikes and death fasts to protest against the introduction of "F-type" prisons, which provided for smaller living units for prisoners. In spite of attempts by various interlocutors, the prisoners refused to end the death fasts; they also refused to be examined by doctors sent by the Medical Council, who noted alarming weight loss in the prisoners and deterioration in their heath,

which could affect their vital functions and entail their deaths within a few days. On 18 December 2000 the governor of Bayrampaşa Prison submitted for the prosecutor's approval a request for intervention by the security forces, in order to provide the necessary treatment and prevent the deaths. On 19 December 2000 the security forces intervened in the prison, but they were met with resistance from certain prisoners, carrying firearms and inflammable products. The operation gave rise to violent confrontations; 12 prisoners were killed and about 50 prisoners were injured, including the applicants.

On 20 April 2010 39 gendarmes were charged; their trial, opened before the Bakırköy Assize Court, has apparently not yet ended. On 16 July 2001, the State prosecutor also charged 155 members of the prison staff, on the ground that they had allowed firearms to be brought into the prison, and 1,460 gendarmes who had evacuated the prisoners at the close of the operation, accusing them of ill-treating the prisoners during their evacuation. On 23 June 2008 the criminal court declared that the prosecution of the gendarmes and the prison staff was time-barred, in two separate judgments. On 27 February 2001 criminal proceedings were brought against 167 prisoners on a charge of rebellion. Those proceedings were also declared time-barred in a decision issued by the Eyüp Criminal Court on 28 April 2009, upheld by the Court of Cassation. Relying in particular on Articles 2 (right to life) and 3 (prohibition of inhuman or degrading treatment), the applicants notably alleged an excessive and disproportionate use of force by the authorities during the operation conducted in Bayrampaşa Prison. Relying further on Article 6 (right to a fair trial), they complained that the proceedings brought against them for rebellion had been unfair and excessively long. Violation of Article 2 – in respect of Birsen Kars, Mehmet Kulaksız, Serdal Karaçelik and Hakkı Akça. Violation of Article 3 – in respect of Münire Demirel, Gülizar Kesici, Nursel Demirdöğücü,Mesude Pehlivan and Filiz Gençer. Violation of Article 6 (length) – in respect of Ercan Kartal, Şadi Naci Özpolat, Kenan Günyel, Serdal Karaçelik, Nursel Demirdöğücü, Mehmet Güvel, Filiz Gençer, Mehmet Kulaksız, Mesude Pehlivan and Münire Demirel.

CIA Photographed Detainees Naked Before Sending Them To Be Tortured

Spencer Ackerman, Guardian: Classified pictures showing CIA captives bruised, blindfolded and bound raise new questions about US's willingness to use 'sexual humiliation' on suspects. The CIA took naked photographs of people it sent to its foreign partners for torture, the Guardian can reveal. A former US official who had seen some of the photographs described them as "very gruesome". The naked imagery of CIA captives raises new questions about the seeming willingness of the US to use what one medical and human rights expert called "sexual humiliation" in its post-9/11 captivity of terrorism suspects. Some human rights campaigners described the act of naked photography on unwilling detainees as a potential war crime. Unlike video evidence of CIA torture at its undocumented "black site" prisons that were destroyed in 2005 by a senior official, the CIA is said to retain the photographs. In some of the photos, which remain classified, CIA captives are blindfolded, bound and show visible bruises. Some photographs also show people believed to be CIA officials or contractors alongside the naked detainees.

It is not publicly known how many people, overwhelmingly but not exclusively men, were caught in the CIA's web of so-called "extraordinary renditions", extra-judicial transfers of detainees to foreign countries, many of which practised even more brutal forms of torture than the US came to adopt. Human rights groups over the years have identified at least 50 people the CIA rendered, going back to Bill Clinton's presidency. It is also unclear how many of those rendition targets the CIA photographed naked. The rationale for the naked photography, described by knowledgeable sources, was to insulate the CIA from legal or political ramifications stemming from their brutal treatment in the hands of its partner intelligence agencies.

Stripping the victims of clothing was considered necessary to document their physical condition while in CIA custody, distinguishing them at that point from what they would subsequently experience in foreign custody – despite the public diplomatic assurances against torture that the US demonstrably collected from countries with a record of torturing detainees. The Guardian is aware of the identities of some of the detainees photographed naked and is choosing not to disclose them out of concern for their safety and dignity. "Is the naked photography a form of sexual assault? Yes. It's a form of sexual humiliation," said Dr Vincent Iacopino, the medical director of Physicians for Human Rights. Iacopino has not seen the nude photographs but raised grave concerns. "It's cruel, inhumane and degrading.

International human rights law, to include the Geneva conventions, forbids photographing prisoners except in extremely limited circumstances related to their detention, to include anything that might compromise their dignity. "Photographing or videotaping detainees in US custody unrelated to the processing of prisoners or the management of detention facilities can constitute a violation of the laws of war, including the Geneva conventions, in some cases," said Nathaniel Raymond, a researcher at the Harvard Humanitarian Initiative and an expert on detainee abuse. Any evidence that the CIA or any other US government agency intentionally photographed naked detainees should be investigated by law enforcement as a potential violation of domestic and international law."

The naked photographs from rendition targets are distinct from previously identified caches of torture photos from the US military and the CIA. The renditions remain the most secret aspect of the CIA's since-discontinued apparatus of detentions, prisoner transfers and abusive interrogations. In 2015, attorneys for the former black-site detainees now charged with war crimes at Guantánamo Bay learned of the existence of up to 14,000 photographs the CIA took and maintains of their former detainees. That cache is not believed to contain photographs of people the agency rendered to allied intelligence services. All of those photos remain undisclosed to the public. The 500-page portion of the Senate's landmark investigation into George W Bush-era CIA torture that the government released in 2014 dealt overwhelmingly with the CIA's detentions and interrogations, keeping the rendition program a secret. But the report's 318th footnote reveals that the CIA photographed the people it captured and sent to other countries.

World's End Murderer Angus Sinclair Fails In Appeal Against 'Excessive' Sentence

Angus Sinclair, who was convicted in 2014 of raping and murdering teenagers Helen Scott and Christine Eadie in 1977, argued that the punishment part of 37 years – the "longest in Scotland to date" – was "excessive". However, the Criminal Appeal Court ruled that the sentencing judge was "entitled" to impose a punishment part "at the very top of the range". Lady Paton, Lady Clark of Calton and Lord Malcolm heard that the appellant was convicted on 14 November 2014 after trial at Livingston High Court and sentenced by Lord Matthews to life imprisonment with a punishment part of 37 years. The court was told that in 2007 the appellant was tried and acquitted for the World's End murders after the court sustained a "no case to answer" submission. But following the introduction of the Double Jeopardy (Scotland) Act 2011, the Crown applied and was granted authority by the High Court to bring a fresh prosecution against him, based on advances in DNA techniques.

After a five-week trial the appellant, then a serving life prisoner who had appeared from

custody each day, was convicted unanimously of the murders. The Lord Advocate then moved for sentence and in the course of his address he advised the court of the appellant's history, which included a culpable homicide conviction at the age of 16 of a seven-year-old girl, a conviction of rape and lewd practices in 1982, and a conviction of the murder of 17-year-old Mary Gallagher in 2001. In his report to the appeal court, the sentencing judge explained that in selecting a punishment part of 37 years, he "had regard to the nature of these offences and the appellant's dreadful criminal record", which included convictions which post-dated the offences, in terms of section 101A of the Criminal Procedure (Scotland) Act 1995.

Lord Matthews stated: "I concluded that a punishment part of a period of years in the high 30s was appropriate. I could have chosen a longer period than 37 years but it did seem to me that coincidentally there was an element of real justice in the period I selected which reflected the length of time the families had had to live with the consequences of these dreadful crimes. There was in my opinion no comparable case." But the appellant argued that the "principal basis" for the selection of the punishment part was the "length of time between the date of the murders and the conviction of the accused". Counsel for the appellant submitted the passage of time prior to conviction "should not have been a relevant factor" in determining the length of the punishment part in circumstances where the accused was not actively evading arrest and had previously been tried and acquitted for the current offences. It was argued that the trial judge failed to take sufficient account of "comparable sentences" and failed to take "sufficient account" of what period a judge might have recommended be served had the appellant been convicted in 1977. While the case concerned the "brutal and merciless murders" of two young girls, the question was whether 37 years was "necessary, appropriate, and fell within the judge's discretion". Having regard to the appellant's criminal record, in terms of section 101 and 101A of the Criminal Procedure (Scotland) 1995 Act, the punishment part of 37 years was "excessive", it was submitted.

Refusing the appeal, the judges noted that the appellant was found guilty of "appalling crimes" which demonstrated "an immeasurable capacity for evil, depravity, and sadism". Delivering the opinion of the court, Lady Paton said: "We do not accept that the sentencing judge selected 37 years because that represented the length of time which had passed since the commission of the murders. As the sentencing judge explains, he had concluded at the outset that a punishment part 'in the high 30s' should be imposed. "That was his assessment of the gravity of the case. As he puts it, it was only 'coincidentally' that the period selected mirrored the passage of time since the murders. In the result we are not persuaded that there is any merit in this argument." The judges accepted that comparisons with other cases may, in some circumstances, be of assistance, but added that "each case must be decided on its facts". "There is no mandatory upper or lower limit set by either statute or case-law," Lady Paton said. She continued: "It seems to us that an experienced sentencing judge who has presided over the trial, heard the witnesses, and seen the labels and productions, is in the best position to decide, in his discretion, the punishment part appropriate to the circumstances of the case. An appeal court should be slow to alter such an assessment, a fortiori as other punishment parts may have been imposed in different circumstances and in a different sentencing era. "Against that background, it is our view that the present case, one of a sadistic double murder and rape of two young girls in the circumstances outlined in the judge's report, was truly horrific. In addition, the previous conviction for culpable homicide of a young girl was a major aggravating factor. "In all the circumstances, we consider that the sentencing judge was entitled, exercising his discretion in the context of retribution and deterrence, to select a

punishment part at the very top of the range." Source: Scottish Legal News

Freddy Got Fingered - 15 Years After the Event

A man who failed to return a VHS copy of Freddy Got Fingered to his local rental store has been arrested 15 years later. James Meyers, 37, was pulled over last week due to a broken tail-light when officers noticed an outstanding warrant for his arrest. Because his daughter was in the car, Mr Meyers was told he could continue on his journey to drop her off at school as long as he subsequently reported to a local police station. Once there, Mr Meyers - who says he does not recall renting the film in the first place - was arrested for failure to return rental property. The film's director and star Tom Green has since offered to pay the man's potential $200 fine.

Children in Care Homes 'Excessively Criminalised' *Guardian, 30/03/2016*

Private providers using police cells as respite to cover staff shortages, according to Howard League for Penal Reform. Children living in care homes are "excessively criminalised" compared with other boys and girls, campaigners have said. Research suggests there is a "systemic" problem that leads staff to resort to the police – often in relation to minor incidents that would never come to officers' attention if they occurred in family homes, the Howard League for Penal Reform claimed. It said police data indicated that some forces had been called thousands of times in the past three years. In an example outlined to MPs in 2013, officers were said to have been called to a children's home to investigate a broken cup. Police suggested they were trying to limit the damage caused by a "social care deficit", while there were also said to have been claims that private providers "were using the police cells as respite to cover staff shortages and because staff were not trained and competent to deal with children's behaviour", according to a report published by the charity.

The majority of children legally defined as "looked after" are placed in foster care, while others go to secure units, children's homes and hostels. There are about 1,760 children's homes in England. The study said looked after children in all forms of care were being criminalised at a much higher rate than other youngsters. In 2013-14, 6% of looked after children aged 10 to 17 had been convicted or subject to a final warning or reprimand, compared to around 1% of non-looked after children, it said. Those in children's homes were much more likely to have been exposed to the criminal justice system than looked after children in other kinds of care, the report added.

Howard League also requested data from police forces in England and Wales on how often they were called to incidents at children's homes. The majority of forces for which information was supplied showed an increase between 2012 and 2015, with several recording totals in the thousands. Some figures will include call-outs for missing or absent children, while others only cover information relating to reports of criminal behaviour. Howard League's chief executive, Frances Crook, said children taken into care "deserve every chance to flourish". She said: "Private companies, charities and local authorities that are paid a fortune by the taxpayer should give these children what they need and deserve."

Jonathan Stanley, of the Independent Children's Homes Association, said: "Children's homes are the most scrutinised and accountable service for young people, inspected rigorously twice a year. If training and competence were issues this would be raised in inspection. Inspection outcomes have risen yet again, according to latest figures. "Children's homes are very careful as to the young people who they accept. Meeting their needs is paramount. This is closely looked at in inspection. It seems that what is being reported here is history. Police and children's homes work closely together and meet regularly in local areas. That's not to say there aren't some particular issues but this

needs real life, detailed evidence in order for them to be understood."

Olivia Pinkney and Nick Ephgrave, of the National Police Chiefs' Council, said: "Children are children first and foremost, no matter what their background. It is vital that all agencies work together more effectively and more determinedly to get their response right. "The police should not be called to minor incidents which would otherwise be dealt with in a family environment. If this is not appropriate, officers should consider tools such as restorative justice or community resolutions. Every effort should be made to avoid holding young people in police cells overnight. By engaging with 'looked after' children in non-crisis situations we can help build positive relationships and earn their trust. All of this will be impossible, however, without better data – which is currently lacking."

The children's commissioner, Anne Longfield, said: "We know that there are an extremely high number of calls to the police from residential children's homes, with one police force reporting 3,500 calls from its 47 children's homes last year. Ensuring that staff are able to work in partnership with the police to positively deal with difficult behaviour will be essential if we are to offer children with particularly challenging behaviour the guidance and support of a parent – in this instance a corporate parent."

Manchester Sex Workers' Rights Case Collapses After Five Years

Nazia Parveen, Guardian: A court case that would have tested the right of sex workers to offer services together in brothels to protect themselves has collapsed after a police officer refused to give evidence. Three women appeared before a crown court after the brothel they had run together in Greater Manchester was raided in July 2011. Jane Young, Deborah Daniels and Catherine McGarr had all been charged with keeping a brothel and faced up to seven years in jail if they were found guilty during the trial at Manchester crown court. But after five years of being kept on bail the trial collapsed on Tuesday morning after the chief investigating officer in the case said he would not be able to give evidence on medical grounds.

The case would have been a first in the UK as the defendants were planning to use a novel defence to fight the criminal charge of keeping a bordello. The women were planning to argue that under the Human Rights Act it was against the rights of sex workers not to allow them to work together in safety. The court heard that DC Philip Anderson, who had brought the case against the women, would not be able to give evidence on health grounds. Despite being in the court building the officer did not make an appearance during the hearing. David Temkin, prosecuting, said he had had a "frank discussion" with the officer and it had been agreed that he would not be able to attend the trial due to his "worsening health". The exact details of Anderson's medical conditions were then discussed in secret but it was revealed that his decision had been approved by two detective chief inspectors within the force.

The law around prostitution in the UK is complicated. The act of prostitution and exchanging money for sex is not in itself illegal – but a string of laws criminalises activities around it. The 1956 Sexual Offences Act bans running a brothel and it is against the law to loiter or solicit sex on the street. Under the Sexual Offences Act 2003 it is an offence to cause or incite prostitution or control it for personal gain. Niki Adams, from the English Collective of Prostitutes which was supporting the three women, labelled the prosecution as outrageous, and branded it a miscarriage of justice. Adams said that the women had previously had the endorsement of police to keep the brothel and officers had turned a blind eye.

But following an alleged policy change the premises in north Manchester were raided in

July 2011. Adams said: "Police had previously turned a blind eye to it because even they could see it was safer for women to work together. But then all of a sudden they were raided and it has been five years while they have been on bail – which is just outrageous. "This has been an astounding miscarriage of justice and a terrible waste of resources. These women are just trying to earn a living and want to do it in the safest way possible. It was an outrage that the police even sought to bring this prosecution in the first place and the fact that it has collapsed shows how badly this case has been managed from the start." The charges relating to brothel keeping will now lie on file. Young, 50, pleaded guilty to three counts of possessing Class B and C drugs including amphetamines. She was given a six-month conditional discharge.

Apology and Compensation for Student Victim of Police Assault

Will Horner was violently assaulted by PC Andrew Ott, then a Metropolitan Police Officer, as he was attempting to leave a student demonstration in December 2010. PC Ott was convicted of ABH in May 2015 and was sentenced to 8 months in prison. Following his release he was dismissed from the force. PC Ott had also accidentally recorded himself on his police radio, discussing the circumstances of the assault with colleagues, including PC Lindsey and PC Barnes. On those recordings another police officer is heard to say that Mr Horner had done nothing but run from the demonstration, to which PC Ott responds "Well, he's going to have to have done, because I just put his tooth out. I've had enough of these c**ts, I just f***ing hit him." Another officer, who was not previously known to PC Ott, is then recorded saying that he had "forgotten" to say that he had heard Mr Horner threaten to "smash up that building". PC Ott's response was "Perfect". Mr Horner then was arrested for 'attempting to cause criminal damage', although he was never charged. As a result of these recordings, PC Ott, PC Lindsey and PC Barnes were charged with conspiring to pervert the course of justice, although all three were acquitted. PC Lindsey and PC Barnes will however face gross misconduct charges at a hearing between 5 and 8 September 2016.

The Metropolitan Police have now apologised to Mr Horner, and he has received a substantial sum in damages. He had this to say: "I am of course pleased with the apology and damages but if it wasn't for the accidental recording by PC Ott I could instead be living with a criminal record now." Carolynn Gallwey of Bhatt Murphy Solicitors represents Mr Horner. She said this: "PC Ott's inadvertent recordings disclose a culture of worrying impunity. We look now to the outcome of the gross misconduct hearings in September as a measure of how the MPS views this type of conduct".

Hammerton v. United Kingdom – No Violation of Article 5 Violation of Article 6

The European Court of Human Rights has held that the detention of an individual following his breach of a civil contact order, where he had no legal representation, did not violate his rights under Article 5, ECHR (Right to Liberty and Security of Person). However, the decision not to provide compensation to the individual following a failure to provide him with a lawyer during domestic proceedings resulted in a violation of Article 6 (Right to a Fair Trial).

Background: The applicant, Mr Hammerton, divorced from his wife in August 2004. Prior to his, he applied for contact with two of his five children. During these contact proceedings, the applicant's former wife alleged that he had harassed her. As a result, the applicant gave an undertaking to the County Court that he could not contact his wife or her parents unless through his own solicitors. Further, the County Court prohibited, via an injunction, Mr

Hammerton from using threatening violence towards his former wife. Later, the applicant's former wife applied to have Mr Hammerton sent to prison for breaching both the undertaking and the injunction. The applicant's requests for contact with two of his children were ongoing. The judge, sitting in the Central London Civil Justice Centre, decided to combine the hearings on the applicant's conduct and his request for contact with his children. During this hearing he was unrepresented. Mr Hammerton was sentenced to three months in prison for contempt of court due to his actions towards his former wife. After six and a half weeks, he was released in September 2009.

Mr Hammerton then lodged an appeal against the finding that he had been in contempt of court. Both the conviction and the sentence imposed were quashed by the Court of Appeal. The decision to hear both issues relating to the contact order and the potential contempt of court "led to inescapable errors in law". The proceedings relating to the contempt of court were to be considered "criminal" and, according to the protections within Article 6(3), Mr Hammerton should have been provided with legal representation. Mr Hammerton then claimed damages in the High Court by relying on both the common law tort of wrongful imprisonment, and the scheme for payment of damages under the Human Rights Act 1998. However, both claims failed due to the fact that the decision taken to imprison the applicant was taken in good faith. Mr Hammerton applied to the European Court of Human Rights and argued that the United Kingdom had violated his rights under Articles 5, 6, and 13.

Article 5: The applicant argued that his committal to prison was in violation of Article 5(1). The text of Article 5(1) reads: "Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law: (a) the lawful detention of a person after conviction by a competent court; (b) the lawful arrest or detention of a person for noncompliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law" Despite arguments from the UK Government that Article 5(1)(b) was solely applicable, the Court considered that both Article 5(1)(a) and (b) were of relevance. The next step for the Court was to consider whether the detention could be justified under Article 5(1)(a). There are three conditions that must be satisfied in order for such a detention to be justified – it must be lawful, lack arbitrariness, and not constitute a flagrant denial of justice.

Lawfulness: The Court considered that not every procedural fault in proceedings that result in a detention results in "unlawfulness". A distinction is to be made between faults that result in the decision being automatically unlawful (ex facie invalid) and those that are only invalid once they have been overturned by a higher court (prima facie valid). Only the former will be consider "unlawful" for the purposes of Article 5(1) (Mooren v. Germany, (GC), Application no. 11364/03, 9 July 2009, paras. 72-75). In addition to jurisdictional issues, a detention could be considered automatically unlawful if flaws in the proceedings amounted to a "gross and obvious irregularity". The Court referred to previous case law that stated the lack of legal representation of itself was insufficient to meet this stringent standard (para. 114). Accordingly, the detention cleared the first hurdle.

Arbitrariness: The existence of arbitrariness in the decision to detain often results from bad faith on the part of the decision maker. Additionally, if the detention has no link to the conviction relied upon under Article 5(1)(a), the detention will be considered arbitrary (para. 97). The Court, in applying these principles, held that there had not been any arbitrariness in the present case.

Flagrant Denial of Justice: The flagrant denial of justice test considers the extent to which the rights of the individual under Article 6 were infringed during the proceedings that lead to the detention. Not every violation of Article 6 will result in a flagrant denial of justice. The violation of Article 6 must go beyond "a mere irregularity or lack of safeguards" and result in "a nullification or destruction of the very essence, of the right guaranteed" (para. 99). Whilst Mr Hammerton had not been provided with a lawyer, as required under Article 6(3)(c), this did not amount to a flagrant denial of justice. To hold that such a standard was met would "come close to removing the distinction between a violation of Article 6 and a flagrant denial of justice" (para. 119). Due to the fact that the detention did not fall short of any of the applicable standards, the detention was justified under Article 5(1)(a). As a result, the Court did not consider it necessary to answer the question of whether the detention was justified under Article 5(1)(b) (para. 120).

Article 6 and 13: Although the domestic courts had recognised that the proceedings had violated the right to legal assistance under Article 6(3)(c), the applicant argued that he should have been entitled to compensation in order to properly address this violation. In addressing this issue, the Court considered whether Mr Hammerton could still be considered a "victim". There would be no need for the Court to consider the issue if the individual has been adequately compensated by domestic authorities for the violation of Article 6. The Court considered that if the applicant had been provided with legal assistance during the domestic proceedings then this would have likely had an impact on the outcome of the case by significantly reducing his prison sentence.

The Court stated that the mere acknowledgment that the applicant's rights had been violated was insufficient to remedy this significant disadvantage he had been subjected to – he should have been provided with financial compensation. (para. 137). Accordingly, the Court held that there had been a violation of Article 6 due to the lack of legal representation during the domestic proceedings. Additionally, the fact that he had not been provided with such financial compensation following the Article 6 violation demonstrated that no effective remedy existed at a domestic level. Thus, the applicant's right under Article 13 had also been violated.

Dissenting Opinion: The Court decision was reached bya majority of 4 to 3. The dissenting judges found that the detention could not be justified. Instead of focusing on Article 5(1)(a), the minority considered that Article 5(1)(b) should be applicable due to the fact that it was on this ground that the Government attempted to justify the detention (paras. 3-5 of partial dissent) The arbitrariness test applicable to Article 5(1)(b) is more stringent than the test relevant to detentions justified by reference to Article 5(1)(a). The minority found that the decision to detain the applicant was arbitrary, and thus not justified under Article 5(1)(b). The domestic judge had, in the words of the Court of Appeal, "paid no heed to the purpose of punishment in contempt proceedings" when setting the sentence and, further, the whole sentencing proceedings had been "fatally flawed". (para. 22 of partial dissent).

The minority also considered that the decision to detain the individual should have been considered automatically unlawful (ex facie invalid). This test, equally applicable to Article 5(1)(b) and (a), had not been met due to the "very serious procedural defects" in domestic proceedings that resulted in the applicant's "complete lack of any meaningful ability to defence himself" (para. 19 of partial dissent) In addition to the issues surrounding legal representation, the decision to combine the contact order hearing with a hearing relating to the alleged contempt of court concerned the minority. Due to the fact that the contempt proceedings were criminal in nature, the applicant had a right to remain silent, which could not co-exist with his need to establish his claims regarding his request for contact with his children. These "gross and obvious irregularit[ies]" in the proceedings resulted in the detention being unlawful under Article 5(1) (para. 20 of partial dissent).

Comment: In short, civil contempt proceedings that can result in detention should be considered "criminal" for the purposes of Article 6. Whilst this does not mean such proceedings are criminal as a matter of domestic law, in future, the full defence rights pro-

vided in Article 6(2) and (3) should be provided to the individual due to the proceedings possessing a "criminal nature" for the purposes of the ECHR. *UK Human Rights Blog*

De Menezes Judgment – Four Dissenting Opinions – Clear Violation of Article 2

Joint Dissenting Opinion of Judges Karakaş, Wojtyczek and Dedov

1. We respectfully disagree with the majority because in our view there has been a violation of Article 2 under its procedural limb in the instant case.

2. In the instant case the applicant has not complained of a violation of Article 2 under its substantive limb. In this respect the case has been settled between the parties with the payment of compensation to the victim's family. We note, however, that had the case been brought under the substantive limb of Article 2, the Court would have had to find a violation of this provision. The substantive and procedural issues are so closely intertwined in the instant case that it is impossible to assess whether the respondent State has fulfilled its obligation under the procedural limb of Article 2 without taking into account the substantive dimension of the case.

3. In assessing compliance by the respondent State with its obligations, it is important to bear in mind the international standards on the use of force by the police. "Law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty" (Article 3, Code of Conduct for Law Enforcement Officials, adopted by United Nations General Assembly Resolution 34/169 of 17 December 1979). "In general, firearms should not be used except when a suspected offender offers armed resistance or otherwise jeopardizes the lives of others and less extreme measures are not sufficient to restrain or apprehend the suspected offender" (Official commentary on Article 3 of the Code of Conduct). "Law enforcement officials shall not use firearms against persons except in self-defence or defence of others against the imminent threat of death or serious injury, to prevent the perpetration of a particularly serious crime involving grave threat to life, to arrest a person presenting such a danger and resisting their authority, or to prevent his or her escape, and only when less extreme means are insufficient to achieve these objectives. In any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life" (Principle 9, Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990).

For those reasons, if the police plan an operation which may require the use of firearms, they have the duty to act with the utmost care and in particular to meticulously check all the relevant information on which the operational plan is based. While planning their operations, the police also have the obligation to carefully assess the available alternatives and to choose the means which entail the least risk for human life and health.

4. Article 2 of the Convention, as interpreted by the Court, requires that States carry out an investigation of cases of alleged unlawful killing by State agents. According to the established case-law of the Court, an investigation must be capable of leading to the establishment of the facts and, where appropriate, the identification and punishment of those responsible. Substantive criminal law, by defining specific offences, indicates the exact purpose of an investigation into a person's death and in particular determines the specific issues which have to be investigated. Therefore, the quality of the investigation depends first and foremost on the quality of substantive law. An investigation will be capable of leading to the identification and punishment of those responsible only if there are adequate provisions of substantive criminal law. Defective provisions of substantive law can render the investigation ineffective from

the perspective of Article 2. In particular, if national provisions of criminal law concerning the use of force by the police do not comply with the Convention standards, the authorities will not be able to investigate whether the use of lethal force by the police was absolutely necessary under Article 2 of the Convention. The investigation may then focus on other issues of lesser importance from the viewpoint of the Convention.

5. The investigation in the instant case led to the conclusion that the members of the police force who killed Mr de Menezes had genuinely believed that he was about to detonate a bomb on the underground and that they were accordingly required to repel an imminent terrorist attack threatening the passengers. The killing of Mr de Menezes by members of the police can thus be characterised as an act committed in putative self-defence. Force used in putative self-defence is never absolutely necessary.

Article 2 of the Convention requires that the substantive criminal law should ensure protection against excessive use of force by the police. This requirement of criminalisation does not mean that any use of force which is not absolutely necessary has to entail criminal liability. A person will bear criminal liability only if personal guilt can be shown. It would not be just to criminalise acts committed in putative self-defence if the factual error was justified in the specific circumstances and the person responsible could not be reproached for it. At the same time, in our view, Article 2 of the Convention requires the State to criminalise putative self-defence in so far as the factual error was not justified in the circumstances and the perpetrator may therefore legitimately be reproached for it. If acts of killing in putative self-defence based on an unjustified error are not properly criminalised and punished under domestic law, there is a serious danger that the police may use excessive force with lethal effect.

The Court has set the following standard which is relevant for assessing cases of putative self-defence: "[T]he use of force by agents of the State in pursuit of one of the aims delineated in paragraph 2 of Article 2 of the Convention may be justified under this provision where it is based on an honest belief which is perceived, for good reasons, to be valid at the time but which subsequently turns out to be mistaken' (see McCann and Others v. the United Kingdom, 27 September 1995, § 200, Series A no. 324, emphasis added; see also: Andronicou and Constantinou v. Cyprus, 9 October 1997, § 192, Reports of Judgments and Decisions 1997-VI; Brady v. the United Kingdom (dec.), no. 55151/00, 3 April 2001; Bubbins v. the United Kingdom, no. 50196/99, §§ 138 and 139, ECHR 2005-II; and Giuliani and Gaggio v. Italy [GC], no. 23458/02, §§ 178-179, ECHR 2011; see also the concurring opinion of Judge Pinto de Albuquerque in Trévalec v. Belgium, no. 30812/07, 14 June 2011)."

Under this approach, national criminal law on putative self-defence is compliant with Article 2 if it provides for two cumulative conditions for exemption from criminal liability: a subjective one (an honest belief which subsequently turns out to be mistaken or, in other words, actual error as to factual circumstances) and an objective one (existence of good reasons for which the belief is perceived to be valid at the time or, in other words, the existence of objective grounds justifying the error). Acts committed in putative self-defence may be exempted from criminal liability if these two conditions are met jointly. However, in the instant case the majority seem to reinterpret the existing case-law by putting the emphasis on the subjective element and by diminishing the importance of the objective element. In our view, such an approach is not acceptable. It puts citizens' lives at risk in the context of police operations because acts committed by the police in putative self-defence as a result of gross negligence may become immune from criminal liability.

Furthermore, effective protection of the right to life under Article 2 of the Convention

requires also that the substantive criminal law should ensure protection against gross negligence in the preparation and carrying out of police operations in which force is used.

6. The test applicable in English law for justified putative self-defence is a subjective one: "Did the officer honestly and genuinely believe that it was necessary for him to use force in defence of himself and/or others?" (see paragraph 249 of the judgment). Therefore, the investigation in the instant case had to answer the question whether the police officers involved honestly and genuinely believed that Mr de Menezes was about to detonate a bomb. However, the crucial question which should have been investigated and answered in the instant case was whether the police officers' belief that a bomb was about to be detonated was justified in the circumstances. The investigation should have established whether the error of each officer involved, including those who directed the whole operation, was justified. Furthermore, the reasonableness of this belief should have been assessed in the context of the police's duty to exercise the utmost care in preparing operations which may potentially entail the use of lethal force. Because of the content of the relevant substantive law, in the circumstances of the instant case the investigation did not focus on these crucial questions. Therefore, in the circumstances of the case, the use of force by the police officers concerned was not adequately investigated and the investigation was not able to lead to the punishment of those involved in using such force. More generally, under English law the investigation will not be adequate and will not always be able to lead to punishment in cases where police officers use lethal force in putative self-defence.

7. We also would like to draw attention to another important factual element in the instant case. The tragic events of the case took place within the context of a pre-planned police operation. It was the duty of the police to devise a realistic plan of action which made it possible to arrest the suspect without using lethal force. It appears that Mr de Menezes could and should have been arrested by the police just after leaving his home. It was the fact that the police officers waited until he entered the underground which caused the situation entailing a putative threat to the lives of a large number of people. In other words, the putative danger arose because of the delay in the reaction by the police. This factor is also of primary importance for establishing personal criminal liability on the part of the individuals involved. Even assuming that Mr de Menezes really was carrying a bomb, the delayed reaction of the police officers could not be considered absolutely necessary, because it appears that the suspect could have been apprehended much earlier. In our view, this aspect of the case has likewise not been properly investigated for the purpose of establishing criminal liability on the part of the individuals involved.

8. We note that in the instant case criminal proceedings were instituted against the police service. Criminal proceedings against legal entities may be helpful for establishing the facts. However, the Convention requires that criminal law should provide for the punishment of individuals and that an investigation should be able to lead to such punishment. Under the Convention, criminal liability of legal entities can never replace criminal liability of individuals. In the instant case, the criminal liability of the police service as such is not sufficient to satisfy the Convention criteria. Furthermore, gross negligence on the part of a legal entity always stems from the misconduct of specific individuals. It is difficult to understand that, in the instant case, the persons responsible for the negligence could not be prosecuted under English law.

9. In assessing the overall effectiveness of the investigation, regard should be had in our opinion to some important mistakes committed by the investigators at the very beginning. The IPCC expressed its concern about the delay in handing the scene and the investigation to it, and about the fact that Charlie 2 and Charlie 12 had been allowed to return to their own

base, refresh themselves, confer and write up their notes together (see paragraph 69 of the judgment). These mistakes might have affected the subsequent stages of the investigation.

It is worth recollecting here that the Court made the following assessment in the case of Makbule Kaymaz v. Turkey (no. 651/10, § 141, 25 February 2014; translation from original French): "The Court observes at the outset that ... the police officers implicated in the incident were not interviewed by the public prosecutor until 4 December 2004, more than ten days after the events. Furthermore, they were not kept apart after the incident and were called to give evidence in the context of the administrative investigation before the prosecuting authorities became involved. In this connection, the Court reiterates that in Bektaş and Özalp (cited above, § 65, seven days after the incident) and Ramsahai and Others (cited above, § 330, three days after the incident) it held that such delays not only created an appearance of collusion between the judicial authorities and the police, but could also lead the victims' relatives - and the public in general - to believe that members of the security forces operated in a vacuum and thus were not accountable to the judicial authorities for their actions. In the instant case, although there is no indication that the police officers in question colluded with each other or with their colleagues from the Mardin police, the mere fact that appropriate steps were not taken to reduce the risk of such collusion amounts to a significant shortcoming in the adequacy of the investigation (see Ramsahai and Others, cited above, § 330)."

10. According to the established case-law of the Court, an investigation carried out under Article 2 of the Convention should be prompt. This criterion has not been fulfilled in the instant case. The United Nations Human Rights Committee stated the following in its Concluding Observations, issued on 30 July 2008, on the report submitted by the United Kingdom under Article 40 of the International Covenant on Civil and Political Rights: "The Committee is concerned at the slowness of the proceedings designed to establish responsibility for the killing of Jean Charles de Menezes and at the circumstances under which he was shot by police at Stockwell underground railway station (art.6). The State party should ensure that the findings of the coroner's inquest, due to begin in September 2008, are followed up vigorously, including on questions of individual responsibility, intelligence failures and police training." (document CCPR/C/GBR/CO/6, paragraph 10, emphasis in the original) Many years elapsed after the events before such an investigation started. We cannot agree with the assessment of the majority that the criterion of promptness has been fulfilled in the instant case.

11. The applicant complained about the test for prosecution in cases of putative self-defence. Under English law, a prosecution will be brought only if a conviction is "more likely than not" (see paragraphs 164 and 265 of the judgment). The majority refer in the reasoning to an interesting comparative-law report on this issue (see paragraphs 176 and 269 of the judgment). We note in this connection that the analysis of comparative-law data leads to the conclusion that the test applied under English law for prosecution is clearly more stringent than in other States Parties to the Convention. Such a stringent test may prevent the prosecution and conviction of a person who has committed an offence if the prospects of success are not correctly assessed by the prosecutor. There is a serious risk that borderline cases will escape independent judicial assessment. As a result, certain acts involving excessive use of force by the police may be covered by a de facto immunity from prosecution. In our view, for the sake of efficient protection of the right to life, if there are serious doubts concerning the legitimacy of lethal force used by the police in actual or putative self-defence, the final decision on the

question of criminal liability should be left to the courts.

12. We agree with the majority that in the instant case there was indeed an investigation which clarified many relevant aspects of the factual circumstances and triggered important reforms in the police. However, in our view, the combination of the different factors mentioned above led to a situation in which the death of an innocent person was not properly investigated in compliance with the Convention standards. The investigation carried out was not capable of leading to the establishment of individual criminal liability as required by the Convention.

13. Finally, we would like to note briefly that the majority considered that the complaint concerning the alleged violation of Article 13 of the Convention read together with Articles 2 and/or 3 was manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. Judges Karakaş and Dedov voted with the majority on this point. Judge Wojtyczek considers that the reasoning on this issue is not persuasive. In his view, this part of the complaint should have been communicated to the parties and examined by the Court.

Dissenting Opinion of Judge López Guerra

1. I disagree with the Grand Chamber judgment. I consider that in this case the United Kingdom authorities did not comply with the procedural requirement deriving from Article 2 of the Convention to conduct an adequate investigation into the responsibility of the State agents involved in the killing of Mr Jean Charles de Menezes. The starting-point and basis for my disagreement with the Grand Chamber judgment is that no individual responsibility was derived from the established fact, acknowledged by the United Kingdom agencies, that there were very serious deficiencies in all aspects of the police operation resulting in Mr de Menezes' death. The facts are adequately stated in the judgment, but I consider it essential to note several central aspects.

2. Suspects of previous bombings in the city of London were thought to be living in an apartment at 21 Scotia Road in London. In order to identify and arrest them safely, a strategy was devised consisting in following the persons leaving those premises in order to challenge and stop them. The officers in charge of the operation were to be supported by a group of highly trained special firearms officers (SFOs).

In this case, the entire operation went wrong. When Mr de Menezes (a Brazilian national living at 17 Scotia Road, with no connection to the bombings) left his apartment, the support unit from the Metropolitan Police Specialist Crime and Operations Branch (SO19) had not yet arrived. As a result, Mr de Menezes was not stopped. He was followed for over half an hour from Scotia Road to Stockwell underground station. The facts of the case indicate that during that time the surveillance team had not identified Mr de Menezes as a terrorist suspect. At Stockwell station, while in a stationary underground train, two members of the SO19 team shot him several times and killed him.

3. The deficiencies of the operation were extensively stated in a report by the Independent Police Complaints Commission (IPCC). The report concluded (see paragraph 66 of the Grand Chamber judgment) that in the course of the investigations grave concerns had been raised about the effectiveness of the police response, identifying a number of failings related to the different phases of the operation resulting in Mr de Menezes' death.

4. However, despite this detailed and extensive report, no individual responsibility for his death was ever established. This is particularly surprising, given that institutional criminal responsibility for Mr de Menezes' death was found in a court decision declaring that the Office of the Commissioner of Police of the Metropolis (OCPM) had contravened sections 3 and 33 of the Health and Safety Act 1974, for having exposed third parties to risks to their health and safety. Since the charges were directed against the OCPM as an institution, no responsibility was determined in those proceedings with respect to individuals.

5. Despite this finding of severe organisational deficiencies, other decisions provided a blanket exemption from any individual responsibility. The IPCC decided not to pursue disciplinary action against any of the eleven frontline or surveillance officers involved in the operation (see paragraphs 74 and 135 of the judgment). Moreover, the IPCC did not issue any recommendation for the senior officers involved in the operation to face disciplinary proceedings.

All the individuals participating in the operation resulting in Mr de Menezes' death were not only free of any disciplinary liability; they were likewise exempt from criminal prosecution. On 17 July 2006 the Crown Prosecution Service (CPS) decided that no individual was to be prosecuted in relation to the death of Mr de Menezes. That decision was confirmed by the office of the Director of Public Prosecutions (DPP) on 8 April 2009 (see paragraph 133 of the judgment), since it deemed there was insufficient evidence to prosecute any individual.

6. It is difficult to understand how it is possible to establish that an institution (the OCPM) was criminally responsible (as adjudicated in a court of law) and, in spite of that, to exclude (as a consequence of the decisions of the IPCC and the CPS) all disciplinary liability and to preclude any effective investigation into the criminal responsibility of individual members of that institution.

7. In the light of the circumstances of this case, there is no justification for the United Kingdom's failure to comply with its obligations deriving from the procedural dimension of Article 2 of the Convention, as consistently established in the Court's case-law - that is, the obligation to conduct an effective investigation to establish the circumstances leading to intentional loss of life and to determine the possible punishment for those responsible for the death. The IPCC's report acknowledging serious deficiencies in the police operation and the judgment finding the OCPM criminally responsible clearly provided a reasonable basis for investigating possible individual responsibilities for those organisational deficiencies, since organisations do not act independently of their members.

8. It cannot be concluded that the United Kingdom's positive obligation was met merely because the authorities in charge of the initial investigation (the IPCC) and those that decided not to prosecute (the CPS) were deemed to be independent authorities for the purposes of Article 2 of the Convention (see paragraph 262 of the Grand Chamber judgment). Independence in itself is not enough to guarantee the existence of an effective investigation. In this case, what is missing are all of the other guarantees deriving from judicial proceedings in which evidence is publicly examined, with the intervention of all the affected parties, so that responsibilities may be ascertained accordingly. This was what the applicant sought when she asked the DPP to review the previous decision not to prosecute: to ensure the conduct of judicial proceedings with all the appropriate procedural guarantees, which go further than the independence of an administrative investigating body.

9. In other respects, the existence of a practice authorising the prosecution service to decline to bring criminal proceedings on the basis of the probability of achieving a guilty verdict (the so-called Manning test) is not in itself a sufficient reason to fail to determine responsibility, in judicial proceedings, for an intentional death. The question for our Court was not to rule whether the Manning test conformed to Convention requirements in the abstract, but rather whether the application of that test in this specific case represented a failure to comply with the procedural obligations under Article 2 of the Convention - that is, whether the CPS's decision to refrain from bringing criminal proceedings against the individuals involved in the operation disregarded those obligations.

10. The Grand Chamber judgment accepts the reasonableness of the Manning test; but the Grand Chamber essentially takes into account its application to the two SFOs (Charlie 2 and Charlie 12) who killed Mr de Menezes. The responsibility of those two officers is not, however, the only or even the main question in the case, which relates to the responsibilities of all those involved in the police operation and the deficiencies in its planning and execution. Even admitting that there was a subjective perception of grave danger, justifying an honest belief in a situation of legitimate self-defence on the part of the two SFOs, the fundamental question remains concerning the responsibility of the other participants in the operation - that is, whether the SFOs' fatal subjective perception was the result of the previous actions or omissions of other individuals, and of the erroneous or deficient instructions they had received as a result of the mismanagement of a serious incident in which human lives were at stake, and in which the SFOs' briefing had indicated from the outset that " a critical shot could be taken" (see paragraph 26 of the judgment).

11. In such circumstances, involving multiple subjects and actions at different levels, entailing considerable risk for human lives and findings of serious deficiencies, a complete investigation of possible individual responsibilities for those deficiencies should not have been precluded on the basis of a conjectural test applicable only to certain aspects of the police operation. In practice, the lack of such an investigation, with all the appropriate guarantees of adversarial and public proceedings, effectively granted immunity to those responsible for the serious and acknowledged errors resulting in Mr de Menezes' death.

MOJ to Extend Current G4S Contract and Review Arrangements

Justice Minister Andrew Selous : As you will be aware on 26 January 2016, the Secretary of State laid a Written Ministerial Statement in which he announced he had set up and appointed a Medway Independent Improvement Board. The Board is overseeing the implementation of the Improvement Plan prepared by G4S in response to an Improvement Notice agreed with G4S on 17 February 2016. The final report will detail the Improvement Board's confidence in the capability of G4S to meet appropriate safeguarding standards at Medway STC in the future, and provide recommendations to make sure the performance and monitoring arrangements are suitable. The Secretary of State for Justice will consider the final recommendations made by the Medway Improvement Board when it reports at the end of March. I am writing to let you know that in the meantime, the Secretary of State considers the appropriate course of action is to extend the current contract with G4S for a short period, rather than allowing transition to its new contract under which services would otherwise have commenced on 1 April 2016. This will enable us to properly consider all options for the future delivery of services at Medway in light of the Improvement Board report. The Secretary of State has extended the current contract with G4S at Medway Secure Training Centre, secure youth detention accommodation for 15-17 year olds which was due to end on 31 March 2016 for up to four (4) months.

Judge Sentenced to Probation for Ordering Defendant to be Given Electric Shock

Rachael Revesz, Independent: A former Maryland judge has been sentenced to one year of probation after he ordered an official to give an electric shock to a defendant in the court room. A disturbing video shows the defendant Delvon L King reading from a paper in the court room when the former judge, Robert C Nalley says to a sheriff's deputy: "do it". The deputy approaches the man and administers the 50,000-volt electric shock via a Stun-Cuff attached to his ankle. Mr King falls to the ground, crying out. Mr Nalley tells the officers to wait until the defendant has "calmed down" and he will come back to the court room.The former judge pleaded guilty to a misdemeanor charge, as reported by the Washington Post, of violating the civil rights of the defendant as he was facing trial for a gun charge. Mr Nalley spoke of his "deep regret" about his "error in judgement" but reportedly did not apologize to Mr King who was standing a few feet away in the spectators' gallery. Mr King, 27, accused Mr Nalley of "torturing" him and depriving him of a fair trial. He was representing himself and was about to face a jury. Mr King's lawyer said the sentence on Mr Nalley had been too light and there was "no justice here today". In July 2013, Mr King and Mr Nalley had been discussing what the defendant should be called, as Mr King said he considered himself a "sovereign citizen" who was not subject to the government's laws. Mr Nalley then talked about the jury selection process for the defendant's case, and the defendant spoke over him to make what he said he believed to be a legal point. Then Mr Nalley ordered the shock, before the jurors were about to walk in the room. The 72-year-old retired in September 2013, two months after the incident, but he continued to preside over cases part time. The incident became public a year later and Mr Nalley was banned from the bench by Maryland's highest court. In August 2009, Mr Nalley pleaded guilty to deflating the car tyre of a woman who worked as a member of the court cleaning crew who, Mr Nalley believed, was parked in his usual spot. He was ordered to pay $500 and write the woman a "heartfelt apology".

Banged Up, After Kiss Kiss, Turned to Bang Bang

A man in France will spend three months in jail after sending an emoji to his ex-girlfriend. A local judge ruled that a message from 22-year-old Bilal Azougagh, which contained only a cartoon icon representing a gun, could be interpreted as a death threat. The ex-girlfriend's lawyer argued that the message gave her nightmares and left her afraid to go out by herself. Counsel for Azougagh argued that a contextless image would not have such a strong effect. He lost the case and was sentenced to six months in jail with three months suspended, and ordered to pay €1,000 to his victim. The maximum penalty for death threats in France is three years in prison and up to €45,000 in damages.

Prisoner Arrested After Inmate Killed at HMP Coldingley

A prisoner has been arrested on suspicion of killing a fellow inmate at HMP Coldingley near Woking. Madala Washington, 25, died after being attacked at the prison in Bisley around 1pm on Friday 1st April 2016. Surrey Police said he had been the victim of a "serious assault" at the prison, which houses around 500 inmates, and detectives have launched a murder investigation. A spokesman said: "A 25-year-old man, believed to be from south-west London, was sadly declared dead at the scene. "A 23-year-old man, who is also an inmate at the prison, has been arrested on suspicion of murder and remains in police custody while the investigation continues. Officers from the Surrey and Sussex Major Crime Team are making a number of enquiries to establish the circumstances surrounding the incident and are working with HM Prison Service and the Ministry of Justice." The Prison Service said an investigation would be carried out by the independent Prisons and Probation Ombudsman.

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.