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Sheku Bayoh: Fresh Questions Over Death in Police Custody

New evidence uncovered by BBC Scotland has raised fresh questions about the way police officers treated a man who died in their custody. Fife father-of-two Sheku Bayoh, 31, died in 2015 after being restrained by police in Kirkcaldy. CCTV, other footage and documents obtained by the BBC casts doubt on some of the officers' accounts of the events that led to the death. Police Scotland said they could not comment while the case was ongoing. Evidence the first officers on scene escalated the situation instead of trying to defuse it. CCTV footage which questions officers' claims a female officer was kicked and stamped on by Mr Bayoh. Evidence that Mr Bayoh's actions were exaggerated in official police documents Claims that racism may have played a role in the events

In October, Mr Bayoh's family were told by the Lord Advocate there was not enough evidence to prosecute any of the officers involved. The Crown Office has not confirmed the decision publicly, and says the case remains open. Mr Bayoh's family are likely to ask for the decision to be reviewed but are now calling for a full public inquiry. His sister, Kadi Johnson, said: "We are still here suffering, his boys are suffering. "There was no need for Sheku to have died that day. We just want to know how our brother died, that's all." On the day he died, Mr Bayoh had been at a friend's house in the morning watching a boxing match. He had taken the drugs MDMA and another drug known as Flakka.

The drugs dramatically altered his behaviour, and he became aggressive with a friend. He later left home with a knife from his kitchen, and neighbours called the police. He had discarded the knife by the time police arrived. Mr Bayoh, who was originally from Sierra Leone but had lived in Scotland since he was 17, was restrained by six officers and lost consciousness. He died at hospital soon after. Days after his death, the Scottish Police Federation (SPF) lawyer Peter Watson told the media that "a petite female police officer was subjected to a violent and unprovoked attack by a very large man who punched, kicked and stamped on her. The new evidence obtained by BBC Disclosure casts doubt on this account.

A leading authority on police restraint and use of force, Eric Baskind, of Liverpool John Moore University, analysed the documents, which included the first statements given by the officers involved. The documents reveal that before Mr Bayoh's alleged stamping attack on the officer, three officers discharged their irritant spray into his face and a fourth drew her baton at him. Mr Baskind said: "What strikes me from the evidence of the officers is that they approach the scene with the intention of using force. He's not running away, he's not, at that moment in time, creating a danger to anyone. They get there, they screech to a halt, they get out of the cars with irritant sprays and batons. That to me doesn't seem measured. That is not best practice. And all of those actions were very escalatory." The CCTV shows that Mr Bayoh hits the female officer, known as Officer D, knocking her to the ground. The officer had injuries consistent with being hit on the head. Mr Baskind said this could have been prevented, if the officers had approached Mr Bayoh "in a different way, in a calming way, to try and find out what was wrong".

Police statements: The SPF claim about the stamping incident is based on the testimony of two officers, known in the statements as B and C. Officer C said: "He stomped on her back with his foot with a great deal of force. He put his full bodyweight into the stomp and used his arms to gain leverage." In her own statement, Officer D does not say she was stamped on. There's no mention of it in the statements of three civilian witnesses who saw the incident either.

The CCTV casts serious doubt on this claim. As soon as Officer D is knocked to the ground by Mr Bayoh, it looks as though the action immediately moves elsewhere, and Mr Bayoh is engaged by the other officers, and within five seconds, he is brought down. Officer D appears to get up and walk away with another officer's help. Mr Baskind said: "The quality of the footage is not very good, but you can certainly make out what's going on, and I can see no evidence at all of two stamping attacks on the officer on the ground, let alone two very violent ones, that is described in the papers. It looks to me as though the officer's gone down, and pretty straight away Mr Bayoh is taken to the ground by others. There certainly seems to me to be a significant discrepancy between what I can see on the footage, and what I've read in the papers." The BBC also obtained mobile phone footage of the incident, raising questions about how Mr Bayoh was restrained.

Officer B, who is 6ft 4in and weighed 25 stone, told investigators he had Mr Bayoh pinned to the ground for "a maximum of 30 seconds". Another said the restraint had been, "appropriate, text book stuff, in line with their training." A civilian witness saw it differently. She told investigators officers were lying across Mr Bayoh for several minutes. She said: "I heard him screaming. It sent chills through me. I heard the man shout to get the police off him. They never moved."

Mr Bayoh suffered 23 separate injuries including a cracked rib, head wounds consistent with baton strikes, and petechial haemorrhages, or burst blood vessels in the eyes, which can be a sign of positional asphyxia, or suffocation. Cause of death was noted as "sudden death in a man intoxicated…[drugs] whilst under restraint." After the death, the Police Investigations and Review Commissioner (Pirc) launched an inquiry. Under advice from the SPF lawyer, the officers refused to provide statements to Pirc for 32 days. BBC Disclosure has seen evidence which shows SPF advice to officers was to wait until the toxicology report was returned before giving statements.

Did race play a part? The BBC has also seen evidence suggesting that Mr Bayoh's actions may have been distorted or exaggerated by police. An internal police document written less than an hour after Bayoh's death said that police attended reports of a male with a "machete" in the street, and that the "male strikes one with machete". None of the officers saw Mr Bayoh with a knife or machete, nor has there ever been any suggestion he struck one of them with a blade. Police did not respond to questions as to how misinformation like this got into an official police document.

Deborah Coles, from the charity Inquest, which investigates deaths in custody, has been supporting the Bayoh family. She told the programme: "The pattern that we've seen is that the state narrative is very often, when somebody dies after restraint, there is an attempt to demonise or speak ill of the person who's died…to try and deflect attention away from the actions of the police officers concerned [by] painting a picture of a dangerous man carrying a machete." She added: "I think we cannot ignore the role that race may have played in this death…and their immediate resort to the use of force. Racial stereotyping of black men as being…big, black, dangerous, informs the way in which they're treated, and the fact that they are over-policed."

The Bayoh family's lawyer Aamer Anwar, told the BBC that racism had been "the elephant in the room". He said: "It always has been. It was the stories, it was the pictures, it was the stereotypical images of a large, black male crazed, acting erratically. It was all those things, the word "terrorist" being bandied about. "Sheku Bayoh's family believes that race is central to this. The black community believes that race is central to this." His sister Ms Johnson, told the BBC: "It has made me lose faith in the police and the justice system as a whole…I don't think he would have died if he hadn't

met the police. She added: "He wasn't himself, the way he was acting, but then no duty of care was given to him…because he was a black man. That's how we feel."

Inappropriate to comment: Claire Baker, MSP for mid Scotland and Fife, said the allegations in the Disclosure programme were "shocking." She added: "I recognise the police do a difficult job…but something went wrong, which raises questions about whether the police's response was proportionate. "I think there should be a public inquiry." The Scottish government said it was considering a public inquiry.

Police Scotland said it could not comment while the case remained open. A spokesman offered sympathy for the Bayoh family. The Scottish Police Federation, which represents some of the officers involved in the restraint, said it would be inappropriate to comment until all legal processes were complete, but it added that the BBC sought to publish "fundamental inaccuracies" about the case.

No Power to Impose Conditions on a CTO Depriving a Patient of his/her liberty.

Welsh Ministers (Respondent) v PJ (Appellant) – UKSC 2018/0037

On appeal from the Court of Appeal Civil Division (England and Wales)

The appellant, PJ, is a man with a mild learning disability, an autistic spectrum disorder and significant behavioural impairment. He has capacity to make decisions about restriction of his liberty. He was detained in a hospital between 1999 and 2007 following a conviction for actual bodily harm and threats to kill, and was detained again in 2009. He has spent almost all of his adult life detained in hospital. PJ was made the subject of a *Community Treatment Order* made by his responsible clinician in September 2011. The order discharged him from hospital into the care of a residential specialist facility. It had the effect of significantly restricting his liberty by providing for near continuous supervision and very limited unescorted leave from his residential placement. The reasoning of the responsible clinician was that PJ required treatment for his safety and the protection of others. PJ applied for discharge of the order.

The issues are: Whether a statutory power to impose conditions amounting to a deprivation of liberty can ever lawfully be "implied"; Whether the framework for Community Treatment Orders provides practical and effective protection for patients' rights under the European Convention on Human (ECHR) Rights; What is the scope of a tribunal's power to take into account ECHR rights. The Supreme Court unanimously allows the appeal and declares that there is no power to impose conditions in a CTO which have the effect of depriving a patient of his liberty.

Background To The Appeal: A patient detained under the Mental Health Act 1983 (MHA) may be released from compulsory detention in hospital subject to a community treatment order (CTO). The question arising on this appeal is whether a patient's responsible clinician (RC) may impose conditions in a CTO which amount to the deprivation of his liberty within the meaning of article 5 of the European Convention on Human Rights.

The appellant, PJ, is 47. He has a mild learning disability and difficulties falling within the autistic spectrum. This has been accompanied by aggressive and irresponsible behaviour consisting of violent and sexual offending. He was convicted in 1999 of assault occasioning actual bodily harm and threats to kill, and the court imposed a hospital order on him under s 37 MHA. He was discharged from a medium secure unit to a unit which later became a hospital, where he remained voluntarily as an informal patient before, in May 2009, he was compulsorily detained for treatment under the civil power in s 3 MHA. In September 2011 he was discharged from hospital subject to a CTO, which required him to reside in a care home subject to close supervision, from which his absences were either escorted or subject to strict limits as to time, purpose and place.

Before the Mental Health Review Tribunal (MHRT), PJ argued that the arrangements under the CTO amounted to an unlawful deprivation of his liberty and he should therefore be discharged from it. The MHRT held that they did not but, even if they had, the need for a CTO took precedence over any human rights issues. The Upper Tribunal held that this approach was wrong, but the Court of Appeal concluded that by necessary implication the MHA permitted such conditions in a CTO. It also held that the MHRT had no power to discharge the CTO even if its terms meant that the patient was unlawfully deprived of his liberty.

The Supreme Court unanimously allows the appeal and declares that there is no power to impose conditions in a CTO which have the effect of depriving a patient of his liberty. Lady Hale, with whom all the other justices agree, gives the only reasoned judgment.

Reasons For The Judgment: CTOs were introduced into the MHA by amendment in 2007, as a new form of order which permitted patients to be released into the community subject to conditions which would support their continuing treatment [1]. The statutory regime is set out in ss 17A to 17F. The conditions in a CTO are imposed by a patient's RC without judicial input. None of the elaborate provisions in the MHA authorising the detention of patients and their recapture if they escape or go absent apply to a community patient. There is no power to impose medical treatment on a community patient who has the capacity to consent to it and does not consent. There are no sanctions for failing to comply with the conditions in a CTO, but a patient may be recalled to hospital if he breaches certain conditions, or if he requires medical treatment and there would otherwise be a risk to his health or safety, or that of others [16].

The Welsh Ministers argued that as any conditions imposed in a CTO cannot be enforced they cannot therefore deprive a patient of his liberty [17]. This is indeed the legal effect of a CTO, but it does not mean that a patient has not in fact been deprived of his liberty. The focus is always on his concrete situation created by the conditions [18]. The fact that the purpose of the deprivation is to enhance rather than curtail the patient's freedom does not affect this assessment [20-22].

There is no express power in s 17B(2) to impose conditions which have the effect of depriving a community patient of his liberty. It is a fundamental principle of statutory construction that a power expressed in general words should not be construed to interfere with fundamental rights such as the right to liberty of the person [24]. The test for a necessary implication is a strict one and there is no reason to suppose that Parliament would have included such a power in the MHA had it been thought of [26]. A strong indication to the contrary is the fact that CTO conditions cannot compel a patient to take his medication [27]; and the lack of detailed rules which the MHA would have provided had detention in a place outside hospital been contemplated [28].

If the MHRT finds on the facts that a community patient is being deprived of his liberty, it has no power to revoke or vary the conditions. The question therefore arises as to whether it should exercise its only power under the MHA to discharge the patient, or whether the patient must challenge his unlawful detention in an action for judicial review [30-32]. This problem is more theoretical than real for two reasons. First, although the MHRT has no jurisdiction over the conditions of treatment and detention in hospital, these can be relevant as to whether the statutory criteria for detention are made out; and the patient's actual situation may well be relevant to whether the criteria for the CTO are made out. If, however, the patient needs to challenge his unlawful detention under a CTO other than by his right to make periodic applications to the MHRT, his remedy is either habeas corpus or judicial review [33]. Second, a conscientious RC can be expected not to impose conditions which this judgment makes clear are not permitted in a CTO, and this is reinforced by the duties to provide information to a patient and (usually) his nearest relative about the effect of a CTO [34].

NHS: Negligence

Lord Storey Department of Health and Social Care: To ask Her Majesty's Government, further to the Written Answer by Lord O'Shaughnessy on 5 November (HL10962), whether the figures for the total government spend on clinical negligence in 2016–17 and 2018–19 include legal costs.

Lord O'Shaughnessy: NHS Resolution handles clinical negligence claims on behalf of National Health Service organisations and independent sector providers of NHS care in England. As stated in my answer of 5 November, the total Government spend on clinical negligence was £1.7 billion in the financial year 2016-17 and £2.2 billion in the financial year 2017-18. These figures did include legal costs and NHS Resolution has provided the following information about legal costs in these two financial years.

Legal costs for 2016-17 were: - Claimant costs: £498 million - Defence costs: £126 million

Legal costs for 2017-18 were: - Claimant costs: £467 million - Defence costs: £129 million

Note: Claimant costs are legal costs incurred by the claimant in bringing a claim for compensation. Defence costs are legal costs incurred by NHS Resolution in dealing with the claim received.

CPS to Extend Effective Domestic Violence Prosecution Scheme

Owen Bowcott, Guardian:Measures to boost conviction rates in domestic violence cases which provide extra support to victims are to be adopted nationally by the Crown Prosecution Service. Prosecution rates in some areas have improved by almost 10% using techniques developed in pilot projects over the past two years, including enabling witnesses to give evidence from behind screens. The scheme's rollout across England and Wales is being announced at a law enforcement conference in Birmingham on Tuesday ahead of Christmas and the new year which are traditionally the busiest periods for domestic violence.

On Christmas Day last year, CPS Direct, the prosecution department which liaises with police, took 592 calls from officers seeking charging decisions. At peak times, 68 calls an hour were received. On New Year's Day last year, there were 914 calls from police seeking charging decisions. The call rate reached 76 an hour at its height.

Additional prosecutors, working from their homes, will be on duty on New Year's Day this year to advise on charging decisions. Domestic violence accounts for the majority of CPS Direct's workload over the holiday periods. The new prosecution measures have been developed in CPS pilot projects in London, Nottingham and Yorkshire since 2016. They include: • Making sure victims can visit court before trial to familiarise themselves with surroundings. • Allowing victims, as long as the courts permit, to give evidence from behind a screen. • Providing separate courthouse entrances for victims and offenders where possible, as well as childcare facilities. • Better support from an independent domestic abuse advisor (IDVA) to support victims.

Known as the domestic abuse best practice framework, it is due to be introduced in domestic abuse courts across England and Wales from January. A recent report by the police and crime commissioner for Northumbria, Dame Vera Baird QC, highlighted the absence of IDVAs and inadequate training for staff as key problems that undermine the effectiveness of specialist domestic violence courts. There has been a decline in the number of domestic abuse cases referred to the CPS by the police recently, a drop linked by many to problems of police resources. In 2017-18, there were 110,562 referrals flagged up by officers as being related to domestic abuse. The overwhelming majority of victims were women.

Kate Brown, who is chief crown prosecutor for CPS Direct and the CPS's national lead for domestic abuse, said: "We are developing a clear multi-agency approach and ensuring that we have consistently trained staff. It's always been the case that the guilty plea rate in domestic abuse cases is lower than in general crime because offenders hope that victims will not see the trial through. We want to see that [fallout rate] reduced by taking away the stress of the experience for victims."

The CPS says its research demonstrates that a targeted approach provides victims of domestic abuse with better support through the criminal justice system and is having a significant impact on conviction rates, guilty pleas and reducing the number of cases that fail due to victim and witness reluctance to participate. On its pilot programme in London, at Highbury court, the CPS's four measures generated a 7.9% rise in the rate of early guilty pleas and an 8.2% rise in the overall conviction rate. Another pilot in Nottingham achieved a 9.5% increase in the rate of convictions after trial. At the third site in Yorkshire, there was a 4.1% fall in the attrition rate of victims dropping out of prosecutions because they were unhappy with proceedings. The conference in Birmingham will be attended by the new director of public prosecutions, Max Hill QC, the National Police Chiefs Council and HM Courts and Tribunals Service.

Resin v. Russia - Restriction on Family Visits Breach of Article 8

The case concerned a convicted prisoner's complaint about restrictions on family visits. The applicant, Andrey Resin, is a Russian national who was born in 1974 and is serving a life sentence in the Sverdlovsk Region (Russia). He served his sentence from 2012 to 2014 in penal colony IK-56 in the Sverdlovsk Region, which is 7,000 kilometers from his home town of Khabarovsk. During his time in this facility he was able to have six short visits from his family, with a glass partition separating them and supervised by a prison officer. He made a request to have visits without such restrictions, but it was rejected. When transferred to a remand prison in Khabarovsk for two months in 2014 as part of an investigation, he requested to have both short and long visits with his family. The prison governor said it was up to the investigator to decide about the short visits, with the investigator and his supervisor later rejecting his request. The governor rejected his request for a long visit because the applicable law did not allow them for convicted prisoners taken to a remand prison from a correctional facility as part of an investigation. All of his challenges before the courts were apparently dismissed as unfounded. Relying in particular on Article 8 (right to respect for private and family life), Mr Resin complained that the restrictions on his family visits in the penal facility and remand prison had been excessive. Violation of Article 8. Just satisfaction: EUR 7,500 (non-pecuniary damage) and EUR 1,500 (costs and expenses)

Successfull Challenge to UK 's 'Unlawful' Failure to Provide 'Forum Bar' defence to Extradition

Scottish Legal News: A Scot wanted by the FBI over an alleged shares scam has successfully challenged a decision by the UK Government to delay the introduction of a possible defence to his extradition to the USA. A judge in the Court of Session ruled that the UK Government was acting "unlawfully" by failing to bring into force in Scotland the "extradition forum bar" provisions, which were introduced in the rest of the UK by the Crime and Courts Act 2013. Lord Malcolm heard that the petitioner James Craig is the subject of an extradition request by the US government over accusations he tried to distort prices on the Nasdaq exchange by starting rumours on Twitter about two companies and buying shares when the price fell before selling them at a profit when the price recovered.

He is challenging his extradition at Edinburgh Sheriff Court, but brought a petition for judicial review complaining that the UK government has failed to commence in Scotland the extradition forum bar provisions in section 50 of, and schedule 20 to, the 2013 Act, which have been in force in the rest of the UK for more than five years. The underlying aim of the provisions is to prevent extradition

if the alleged offence can be fairly and effectively tried in the UK and it is not in the interests of justice that the accused person be extradited, and the petitioner believes he could mount an "additional defence" under and in terms of the forum bar provisions were they to apply in Scotland.

The court was told that the 2013 Act was the result of a review, during which the Crown Agent, on behalf of the Crown Office and Procurator Fiscal Service, expressed concern that the forum bar to extradition would be "a challenge to the independence of the Lord Advocate" as head of the prosecution system in Scotland, in that the court would be invited to consider the merits of a prosecutorial decision. While the courts in England and Wales were prepared to contemplate judicial review of such decisions, that was not the tradition in Scotland. The review, which was chaired by Sir Scott Baker, concluded that the forum bar provisions should not be introduced in the UK because prosecutors were best placed to make decisions on forum.

However, the UK government did not accept that recommendation, considering that "enhanced protections" were needed, including scrutiny of decisions in open court. In due course a bill containing, amongst other things, a forum bar defence for the UK as a whole - extradition being a reserved matter - was passed by the UK Parliament as section 50 of, and schedule 20 to, the Crime and Courts Act 2013, which came into force in England, Wales and Northern Ireland in October 2013.

In September 2014, the Lord Advocate gave evidence to the House of Lords Select Committee on Extradition Law, during which he stated that provisions relating to forum bar brought into force under the Crime and Courts Act 2013 will only be implemented in Scotland if the Scottish Ministers request it, adding that there was "no intention to do so for the foreseeable future", consistent with the historic position in Scotland where prosecutors are "fully independent" and have a "fundamental discretion" on whether to raise a prosecution or not.

The court also heard that last December Alistair Carmichael MP table parliamentary questions asking the Home Office to confirm why the provisions had not been commenced north of the border and when they would be, to which Home Office Minister Brandon Lewis replied that the Scottish Government had decided that it did not wish section 50 of the 2013 Act to be commenced in full in Scotland and there was "no timetable for its commencement", adding that this was "a decision for the Scottish Government" and there had been "no recent discussions on the issue".

Lord Malcolm said: "The UK government has brought the forum bar provisions into force everywhere in the UK other than Scotland. The obvious question is, why not Scotland? Here is where the proceedings took a surprising turn. The question is not answered in the pleadings. During the hearing, and on more than one occasion, the court inquired of counsel for the Advocate General for Scotland (who is the UK government's representative in Scotland) as to the reason, but he was either unable or unwilling to provide an explanation."

Government 'Acting Unlawfully' - The judge held that the UK Parliament had intended that the forum bar provisions would be brought into law "throughout the UK" and that there was "no power" to do so in different parts of the country at different times. "Even if I am wrong on the latter point," he added, "this does not mean that the petition should be refused". On behalf of the Advocate General for Scotland, it was submitted that commencement in Scotland "could be delayed for as long as the executive chooses". In response to questions from the court it was claimed that this would remain true if in 10 years, or even 50 years, nothing had changed. "I consider this to be a wholly unreal position, which...is clearly contrary to Parliament's intention," the judge said.

In a written opinion, Lord Malcolm concluded: "I shall pronounce decree of declarator that in its continuing failure to bring into force in Scotland the extradition forum bar provisions in section 50 of, and schedule 20 to, the Crime and Courts Act 2013, the UK government is acting unlawfully and contrary to its duties under section 61 of the Act." For the same reasons a contemporaneous petition brought Christopher Thomson, who is also challenging extradition to the US, was also upheld. Declarators were also sought in both cases against the Scottish Government in respect of alleged illegality and oppression, and also interdict prohibiting the extradition of the petitioners to the USA, but the court refused to grant the orders on the basis that these were matters for the extradition court.

HMP/YOI Isis – Serious Concerns Around the Use of Force by Staff

HMP/YOI Isis in south east London was assessed by inspectors as having become a more respectful prison over two years, with an encouraging change of culture under the current governor. However, inspectors were concerned about high levels of violence at the prison. HMP Isis also, they found, needed "more rigorous scrutiny" of the use of force by staff. Isis, which sits within the perimeter of the high-security Belmarsh jail, held 600 prisoners at the time of the inspection in July and August 2018. Nearly 70% of the population were under 30 and 22% were under 21 years old. Nearly half of those held were serving over four years.

Peter Clarke, HM Chief Inspector of Prisons, said the current governor took up post shortly after the "disappointing" 2016 inspection and she had "clearly prioritised getting the basics right, with visible leadership evident and a more positive culture beginning to emerge." The governor believed a local recruitment campaign had enabled her to appoint officers more committed to the aims of her establishment.

As with other prisons holding significant numbers of young people, however, levels of violence at Isis had increased and were high. Prisoners aged under 25 accounted for about 70% of violent incidents, the report noted, and one in four prisoners said they felt unsafe. The prison, though, had introduced initiatives aimed at reducing violence and encouraging good behaviour.

One of inspectors' most serious concerns was around the use of force by staff – which, Mr Clarke said, "we were not assured was always justified. We identified a need for more rigorous scrutiny of when and how force was applied…Some of the youngest prisoners are often the most vulnerable and yet they were disproportionately represented in the statistics relating to force and segregation." The report noted: "Too many incidents were in response to non-compliance." Though inspectors noted positive interactions between prisoners and staff, the Inspectorate survey of prisoners "was very negative around two critical areas: only 48% of respondents said that most staff treated them with respect, and only 46% could say that they had not experienced any kind of victimisation by staff."

Mr Clarke added: "Important recent steps had been taken by the senior team to deal with staff who contributed to the negative experiences of prisoners, but more work was needed to understand and address these negative perceptions. Our own observations and discussions with prisoners about staff, in contrast, were more positive. Indeed, we were encouraged by the energy and commitment of many staff." Living conditions had improved since 2016 and the food was particularly popular. The prison, however, was urged to strengthen its work on equality and diversity and to improve the poor levels of attendance and punctuality at training and education.

Overall, Mr Clarke said: "Our assessments have remained largely unchanged since the last inspection, although this was not the whole story. We noted an encouraging change in direction since the appointment of the current governor and the culture and atmosphere in the prison were definitely improving. We left the prison confident that the senior managers and staff would use our report to effect further positive change, particularly in those areas which caused us most concern."

Prison Service Going to the Dogs

Puppy therapy to help prisoners with mental health and addiction is being offered in the first scheme of its kind in the UK. Prison staff have recruited Jingles, a four-month-old black Labrador, who will undergo intensive training to become an "assistance dog" for the inmates. The dogs have been found to promote positive changes in behaviour, reduce stress and reliance on medication and boost the development of social skills, self-esteem and self-confidence. Jingles has already assisted in interviews with inmates and been on family induction visits as part of his socialisation at Magilligan jail in County Londonderry. He will now join therapy sessions with the prisoners.

Governor Richard Taylor, who has launched the scheme in partnership with Assistance Dogs Northern Ireland (NI), said: "Many of those people who come into our care have mental health and addiction issues, and with numerous pieces of research highlighting the therapeutic benefits of animals it made perfect sense for us to work alongside Assistance Dogs NI. Together we are supporting and challenging prisoners in our care as part of the commitment to reduce re-offending and help build a safer community." Geraldine McGaughey, Chief Executive Officer, Assistance Dogs NI, said: "The benefits of a dog interacting with a prisoner can build self-confidence and self-esteem and ultimately play a part in rehabilitation." Assistance Dogs UK, coalition of eight charities, provides the animals to more than 7,000 disabled people to help with practical tasks and offer emotional support and independence.

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A recent report by the police and crime commissioner for Northumbria, Dame Vera Baird QC, highlighted the absence of IDVAs and inadequate training for staff as key problems that undermine the effectiveness of specialist domestic violence courts. There has been a decline in the number of domestic abuse cases referred to the CPS by the police recently, a drop linked by many to problems of police resources. In 2017-18, there were 110,562 referrals flagged up by officers as being related to domestic abuse. The overwhelming majority of victims were women.

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Court of Appeal Orders Retrial of Christine Connor

The Court of Appeal today 18/12/2018, quashed Christine Connor's convictions for attempted murder and causing explosions because of doubts whether her pleas represented genuine confessions of guilt. The Court ordered a retrial. Christine Connor ("the appellant") pleaded guilty on 3 May 2017 to one count of attempted murder, two counts of possessing explosives with intent, two counts of causing an explosion and one count of being involved in the preparation of terrorist acts. The counts relate to two explosions in May 2013 involving the deployment of improvised explosive devices.

The Crown Court heard that in April and early May 2013 the appellant and her co-accused, Stuart Downes, spent time researching bomb making techniques. Downes then purchased bomb parts and shipped them to the appellant. Whether or not the appellant actually carried out the construction of the devices or arranged for another to do so was uncertain but the devices, which were viable, clearly were constructed, deployed and exploded. Two devices were deployed in an attack on 16 May 2013 and two in a later attack on 28 May. The first involved a 999 hoax call referring to a suspect device at 02:11 hours and at the same time there were reports of explosions in the Ligoniel Road area. The trial judge stated that this may have been a dry run or practice run carried out by the appellant and then recorded by her on a movie file recovered from her lap top either to remind her what to do in the future or as a propaganda exercise.

The second incident on 28 May 2013 was described by the trial judge as much more sinister. There was a 999 call reporting to come from a person who indicated that she was suffering from domestic violence at an address on the Upper Crumlin Road. This was at 02:12 hours. Two officers responded - one went to the relevant address and the other was providing cover when two devices were deployed and exploded. Shrapnel was dispersed from the devices up to a radius of around 35 metres. Fortunately, both officers were able to take evasive action and did not sustain any physical injuries.

The appellant was present at the scene having transported the devices and may have actually thrown them but the trial judge acknowledged that this latter point was uncertain. Downes made a call to UTV claiming responsibility for the attack on behalf of what he described as the Irish Republican movement. Forensic evidence linked the appellant both to the scene and to the device. She was arrested and interviewed by the police over an extended period and large-

ly gave no comment in response to the questions that were put to her but she did provide a statement stating that she may have been in the vicinity of the second bomb at 2am.

The trial judge said this was clearly a well thought out attack or attacks and that they were researched and planned. He noted that while "certain elements of your conduct were bizarre" the appellant was sufficiently motivated to construct the devices and to press home such attacks. Whilst the appellant, according to the trial judge, appeared to be acting alone or within a small group he noted that it clearly lay within her power to manipulate and to influence others such as Downes. He stated that the appellant was committed to a violent philosophy to achieve political objectives through the means of violence. The trial judge took into account in mitigation the fact that there were "certain aspects of amateurism and lack of sophistication in relation to her criminal activity" but noted that it had to be taken in the context of the fact that she was able to complete the manufacture of these bombs and to successfully deploy them. The trial judge imposed an extended custodial sentence of 16 years and 4 months after assessing the appellant as posing a danger to society. The effective overall sentence was one of 13½ years custody with an extended custodial sentence of 3 years and 8 months.

The appellant appealed against her conviction contending that her pleas of guilty were ambiguous or equivocal and a nullity in law. She also contended that her pleas were involuntary and the result of being subjected to pressure by her legal advisers. The transcript of when the appellant was re-arraigned on 3 May 2017 confirmed she said the following in relation to the six counts:

Count 1 – "Well I am not guilty, however on advice I will plead guilty"

Count 4 – "As I said I'm not guilty but on advice I will plead guilty"

Count 2 – "I'm not guilty but on advice I will plead guilty"

Count 5 – "I am not guilty but on advice I will plead guilty"

Count 3 – "I am most definitely not guilty of that but on advice I will plead guilty"

Count 6 – "I am not guilty but on advice I will plead guilty"

The trial judge then indicated "I am recording guilty pleas for Counts 1-6". Neither the trial judge nor counsel for the prosecution or defence addressed the nature of the "pleas" which were entered by the appellant.

Applicable Legal Principles Regarding Plea: The Court of Appeal referred to guidance on the principles applicable to a plea of guilt. Where an accused purports to enter a plea of guilty but, either at the time he pleads or subsequently in mitigation, qualifies it with words that suggest he may have a defence (eg 'guilty, but it was an accident' or 'guilty, but I was going to give it back'), then the court must not proceed to sentence on the basis of the plea but should explain the relevant law and seek to ascertain whether he genuinely intended to plead guilty. If the plea cannot be clarified, the court should order a not guilty plea to be entered on the accused's behalf. Should the court proceed to sentence on a plea which is imperfect, unfinished or otherwise ambiguous, the accused will have a good ground of appeal.

Discussion: The Court of Appeal said the guilt of the accused in this case rested upon her confession by way of a plea of guilty. It commented that this case was somewhat unusual in that the appellant expressly stated that she was "not guilty" before qualifying this with "on advice I will plead guilty". Her first words were "I am not guilty but…". In respect of the most serious charge of attempted murder, which requires specific intention to kill, she said "I am most definitely not guilty but ….": "In these circumstances we do have doubt as to whether a confession was intended. On any showing the pleas were heavily qualified, ambiguous

and equivocal. The pleas were plainly "imperfect, unfinished or otherwise ambiguous". In those circumstances … the court must not proceed to sentence on the basis of such a plea "… but should explain the relevant law and seek to ascertain that (s)he genuinely intends to plead guilty". Inexplicably those inquiries were not made when these pleas were entered. We consider that in these circumstances a conviction resting solely on such a plea of guilty cannot be regarded as safe. The prosecution in resisting this aspect of the appeal and has relied heavily upon the suggestion that the case against the appellant was overwhelming. Whether that be so or not, and we express no view, a conviction resting solely on the heavily qualified pleas entered in this case cannot be regarded as safe."

The Court of Appeal concluded that reliance on such a plea might work an injustice and said it entertained serious doubts that the "pleas" represented a genuine confession of guilt. It quashed the convictions and ordered a retrial.

R v Ivor Bell Decision

Mr Justice Colton, sitting today 19th December 2018, in Belfast Crown Court, found Ivor Bell unfit to be tried in accordance with Article 49(4) of the Mental Health (Northern Ireland) Order 1989. The judge refused an application to stay the proceedings for abuse of process. He ordered the criminal trial shall not proceed further but that it shall be determined by a jury on such evidence as may be adduced by the prosecution, or adduced by a person appointed by the court under Article 49 to put the case for the defence whether it is satisfied as respects the counts on which the accused was to be tried that he did the act or made the admission charged against him. Ivor Bell is charged with two counts: • Count 1 – Encouraging persons to murder; • Count 2 – Endeavouring to persuade persons to murder. Both counts relate to the murder of Jean McConville in December 1972. The evidence upon which the counts are founded was based on audio interviews said to have been conducted in Northern Ireland by Anthony McIntyre and recorded as part of the Boston Tapes. Part of the audio material obtained by the PSNI includes interviews between Anthony McIntyre and "Z". The prosecution case is that Z is Ivor Bell. Mr Justice Colton ordered that there is to be no reporting of today's decision or the subsequent proceedings apart from the above information . This Order will remain in place until the completion of the proceedings or until further order of the court.

Home Office Publishes Its First Anti-Corruption Report Card – Could Do Better

Gherson Solicitors: The Home Office has just published its first annual report on its anti-corruption strategy. Somewhat bizarrely the Minister of State for Security and Economic Crime, Ben Wallace MP, who opens the report references the popular television series McMafia as an example of the government's determination to tackle the threats of corruption and economic crime but – fictional dramas aside – what is there to learn from the first report?

The Prime Minister's Anticorruption Champion, John Penrose MP, explains the policy as follows: "The anti-corruption strategy boils down to 134 actions, over 5 years. I am particularly pleased that this report includes details of our progress – good or bad – on each one. Transparency is a vital weapon in the anticorruption fight, so we have to keep walking the talk ourselves."(sic) Of those 134 actions (also known as commitments elsewhere in the report) the Home Office states that 30 were due for completion before the end of 2018. Two have not been completed but 28 have been completed in full or in part. The Home Office states that they are, "on track to deliver" on the remaining commitments.

So what are these 28 successfully completed actions?

When one digs into the vast majority are fairly opaque.

One example is, "Increase transparency and improve accountability in policing." This is supposedly complete but there is no clear explanation what this means. Another is, "Introduce a new Ministerial Economic Crime Strategic Board, chaired by the Home Secretary, to oversee strategic priorities, overall performance and align funding and capability development on economic crime." According to the report the Ministerial Economic Crime Strategic Board is due to meet early in 2019.

The centrepiece of the Home Office's achievements in 2018 is undoubtedly the introduction of the Unexplained Wealth Orders. There have only been three orders issued thus far, only two of which remain active. Gherson is instructed in both cases and remains at the forefront of this emerging new area of law.

Having waded through this 47-page report one can't help feel that there is a focus on strategies and policy as opposed to concrete actions. Nevertheless, it is abundantly clear that the Home Office intends to continue with its supposed assault on money laundering. It remains to be seen who the next target of an unexplained wealth order will be but there have been reports of at least 100 further orders in the pipeline.

Gherson remains skeptical about the efficacy (and indeed the appropriateness) of these orders but having dealt with the first two orders we are more than happy to discuss their operation with anyone who has concerns. Nobody would doubt the importance of tackling money laundering. But one has to raise an eyebrow when Ministers are referencing a television programme as an example of their increased focus on the issue. Furthermore, the government must also consider the potential economic impact of such intrusive measures. An important component of the economy and property market in London has been the influx of foreign money to the capital. The authorities must be careful not to throw the baby out with the bathwater.

Home Office Criticised for Deleting Records on Death Of Detainee

Diane Taylor, Guardian: A coroner has accused the Home Office of "manipulating statistics" relating to deaths in immigration detention after it emerged that some records relating to the death of a detainee had been deleted. Senior coroner André Rebello made the comments at the conclusion of an inquest at Liverpool and Wirral coroner's court on Wednesday into the death of 35-year-old Polish man Michal Netyks. Netyks was found dead at HM Prison Altcourse in Liverpool on 7 December last year. A jury concluded that the cause of death was suicide, partly contributed to by the immigration deportation process. Netyks had completed a short prison sentence and had packed his bags ready for release when he received the news that, instead of being freed, the Home Office was going to deport him to Poland. He had lived and worked in the UK for 12 years.

The eight-day inquest heard that he died from a head injury after jumping from a floor of the building soon after he received the news that he was going to be deported. Rebello said that partially redacted notes provided to the inquest by the Home Office indicated that records had been deleted by senior management. He said: "This needs investigation and an explanation as its effect is to manipulate statistics – it appears to be almost a denial of the facts."

This is not the first time the Home Office has been criticised over its lack of transparency relating to deaths in detention. The Guardian and other sources reported that there were 11 deaths n immigration detention last year – an all-time high. However, at the end of last month the Home Office for the first time ever published detention death statistics as part of new "transparency data". Officials said there had only been four deaths last year.

The charity Medical Justice, which works for health rights for people in detention, questioned this Home Office data and received a response from the Home Office on 7 December, admitting that deaths of immigration detainees held in prisons, such as Netyks', were not included in the data. "Further work is ongoing to ensure any statistics published on deaths of those held solely under immigration powers in prisons … are aligned with wider statistics that are published on deaths in prisons and deaths in the detention estate," the Home Office official stated. Former prisons ombudsman Stephen Shaw raised concerns about the fact that the Home Office did not conform to the practice followed by the Ministry of Justice of publishing data on deaths of immigration detainees, when he gave evidence to the home affairs select committee in September 2018. "I find it frankly odd and self-defeating that the Home Office doesn't face the normal practice in the Ministry of Justice of making a statement when there is an apparently self-inflicted death in detention. I think they should do so routinely," Shaw, who has carried out two comprehensive reviews into immigration detention for the Home Office, told the committee.

Arthur Netyks, Michal's brother, said: "I miss my brother daily and the inquest has been a difficult time. A year on from Michal's death, the family remains devastated by our loss and we find it worrying that there have been so many immigration detainee deaths in the same year." Deborah Coles, director of the charity Inquest, which has supported Netyks's family, condemned the Home Office's role in the death. "Their conduct has been part of a wider pattern of denial and obfuscation," she said. A Medical Justice spokeswoman said: "Medical Justice has repeatedly raised concerns about the lack of prompt and accurate reporting of people who die while held under immigration powers. The lack of such reporting shows a shameful disregard for those who die while held under immigration powers."

The most recent death in immigration detention was on 2 December in Harmondsworth immigration removal centre near Heathrow airport, when Algerian Bouamama Redouan died. The Home Office has confirmed that the prisons and probation ombudsman is investigating the death. A Home Office spokesperson said: "We would like to express our condolences to the friends and family of Mr Netyks. "The Home Office is committed to increased transparency around those held in detention, and in November 2018 began publishing data on deaths in immigration removal centres. We are committed to extending this level of transparency to all those in immigration detention. However, given the very sensitive nature of the information and low numbers reported it is imperative that we ensure absolute certainty on figures before they are published."

Imprisonment for Public Protection Sentences

Lord Brown of Eaton-under-Heywood: To ask Her Majesty's Government whether in the case of imprisonment for public protection prisoners they will encourage the Parole Board to apply the legal principle that the longer the prisoner serves beyond the tariff period, the clearer should be the Parole Board's perception of public risk to justify the continued deprivation of liberty involved.

The Advocate-General for Scotland (Lord Keen of Elie) (Con): The Parole Board may direct release only if satisfied that detention is no longer necessary for the protection of the public. The board will base its decision on a comprehensive assessment of the risk posed by the individual prisoner. This will be determined by reference to all the offender's circumstances.

Lord Brown of Eaton-under-Heywood (CB): Call it what one will, the plain fact is that the longer a prisoner serves beyond his tariff, the more he is detained beyond due punishment. Worboys had a tariff term of eight years and within two years of that was recommended for release—a case that has done terrible damage to the IPP cause. However, I am concerned with those at the other end

of the IPP spectrum. Six years after the regime was abolished, of the 2,500 remaining IPP prisoners, 261 with a tariff of fewer than two years have served more than eight years beyond their tariff. Indeed, 129 have served over ten years beyond their less than two-year tariff for punishment. Does the Minister not agree that that is a gross injustice and that the burden of proving a prisoner to be unsafe for release should in future lie with the detaining authority?

Lord Keen of Elie: It is important to remember that the original sentence was imposed on individuals who had committed serious violent or sexual offences so that, at the end of the day, not only should they be punished for those severe offences, but the public and future potential victims should be protected. The Parole Board must, as I said, have in mind all material considerations when it scrutinises the level of risk that is or is not acceptable when one of these prisoners applies for parole. Of course, the time spent in prison post-tariff will be a relevant consideration; albeit that that is not a principle of law, it clearly is one of the considerations the Parole Board will have in mind.

Lord Blunkett (Lab): I rise to support the noble and learned Lord, Lord Brown, and once again to accept my responsibility for the failure of Parliament to be clear enough about the intention when laying down this law back in 2003. It is absolutely clear now that people are serving way beyond their tariff in an unacceptable fashion under the IPP—but also under previous legislation. I have been trying to help an individual, David McCauliffe, who had a tariff of seven years and has now served 31 years. Is it not time for the Ministry of Justice, with the Parole Board, to put in place rehabilitation facilities that allow people who have served that kind of sentence to transition from existing prison facilities back into normal life?

Lord Keen of Elie: The Government are of course concerned that the Parole Board should have the opportunity to consider even these extreme cases, and it does so regularly. Regrettably, there are prisoners who have not responded to any of the regimes available to them while in prison, and in those circumstances provision is made for what are termed progression regimes, in which prisoners serving an indeterminate sentence have, for example, even been excluded from a move to an open prison because of their behaviour. In addition, psychological assistance is given to those prisoners, in the hope that they can progress towards release. However, I remind noble Lords that we must have regard to the fact that some of them have committed very serious violent and sexual offences, and as long as they remain a real risk to the public, their release has to be the subject of clear and careful consideration.

Lord Reid of Cardowan (Lab): I hesitate to take issue with the noble and learned Lord, Lord Brown—even more so when it means also taking issue with my noble friend Lord Blunkett—but the key thing here is that this is not an extended punishment; it is a regime to protect the public. I never understood the principle referred to in the Question today, which is that for subsequent parole reviews we must show that the prisoner is clearly more dangerous than he —it is normally a man—was the last time parole was considered. If someone is a clear and present danger to the public, particularly because of terrible violent or sexual crimes, it is justifiable, after due consideration by the Parole Board, to extend that until such time as he or she is no longer a clear and present danger to the public.

Lord Keen of Elie: I emphasise that the number of prisoners held under IPP sentences continues to decrease at an accelerating rate. However, I regret to observe that that leaves behind a serious core of sometimes incorrigible individuals, which presents real difficulties for the Parole Board when it addresses the question of release. Indeed, it is noticeable that as we have increased the rate of release of IPP prisoners, the rate of those being recalled under licence for serious breaches of it has also increased.

Lord Marks of Henley-on-Thames (LD): We abolished these sentences under LAPSO. The continuing rate of release is extremely low. This injustice cries out to be cured, and that can be done by changing the test under Section 128 of LASPO, as was always intended. Does the noble and learned Lord appreciate that the number of incidents of self-harm among IPP prisoners is more than double that for the rest of the prison population? Is that not evidence of the despair these sentences cause?

Lord Keen of Elie: It is regrettable that the number of incidents of self-harm is both as high as it is and higher for IPP prisoners. However, many of these prisoners suffer from serious psychological issues, which is one reason for that unfortunate statistic. There is no intention at present to change the onus under Section 128 of the Act, but as the Supreme Court observed in a recent decision: “Although the default position is that detention will continue ‘unless … the Board is satisfied that it is no longer necessary’, the Parole Board is an investigative body which will make up its own mind on all the material before it”.

Guildford Four's Paddy Armstrong in Plea to Pub Bomb Coroner

One of the Guildford Four, Paddy Armstrong, has said a coroner could end the "secrecy" over pub bombings that killed five people in 1974. A pre-inquest review is being held to look at resuming a full inquest, after original proceedings never concluded. A further 65 people were injured when the IRA blew up two pubs in Guildford. Mr Armstrong said he would be there on behalf of the wrongly-convicted Four. He said they were kept in jail for 15 years and still wanted to know why. Soldiers Ann Hamilton, 19, Caroline Slater, 18, William Forsyth, 18, and John Hunter, 17, died following the first blast at the Horse and Groom on 5 October, with plasterer Paul Craig, 21. A four-man IRA unit known as the "Balcombe Street gang" claimed responsibility in 1976 but were not charged. Over the years it has been disputed how many members were in the unit - a court transcript suggested up to 20. The case of the Guildford Four became known as one of Britain's biggest miscarriages of justice. "I want to know why I was in prison for 15 years when those who did it were never charged with it," Mr Armstrong, 68, said. "We had been in prison a year when the Balcombe Street gang admitted it and said innocent people were in jail... What are they hiding?" He said he believed an inquiry by Surrey coroner Richard Travers "might get some answers". Mr Armstrong's comments coincided with a decision that a file thought to contain evidence from former police chief Lord Peter Imbert should remain closed at The National Archives.The file contains evidence given on 7 June 1993 - the day Lord Imbert, then Sir Peter, gave an account of how the Balcombe Street admissions were dealt with to former judge Sir John May during a five-year inquiry. Several hundred files from Sir John's inquiry remain closed at Kew - Mr Armstrong has repeatedly made calls for their release.

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.