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Miscarriage of Justice Nick Rose has Passed – Mother Vows to Continue Fight to Clear his Name

Paul Greaves, Devon Live: The mother of convicted murderer Nicholas Rose says the family will continue the fight to clear his name, despite his death in prison. Rose, serving life for killing 16-year-old Charlotte Pinkney in 2004, died on Sunday 19th May 2019, at HMP Guys Marsh in Dorset. He had maintained his innocence throughout the trial in 2005, saying he had last seen Charlotte alive and well outside a community centre in Ilfracombe after giving her a lift from a party. But the jury convicted him of murder after hearing that Charlotte's blood was found on his shoes and in the car. Her body has never been found. A subsequent appeal, in which witnesses claimed to have seen Charlotte in the town after Rose was accused of killing her, was rejected. Judges said the evidence against him was 'formidable'. In 2011 a supporters' group offered a £60,000 reward for information that resulted in his release Rose, 22 at the time of Charlotte's death, was more than halfway through his minimum 20-year sentence when he died. The Ministry of Justice has confirmed the cause of his death. Rose was convicted of murder at Exeter Crown Court in February 2005. It was said he killed Charlotte in the early hours of February 28, 2004 after she spurned his sexual advances.

But aspects of the case remain a mystery. Charlotte's body was never found and Rose maintained his innocence. Much of the crucial evidence focused on the discovery of traces of Charlotte's blood. Her blood was found in the car Rose was driving, on the jump leads, the roof and one of his trainers. A button of the type used on her trousers was found in the vacuum he used to clean the car and black elastic consistent with a thong Charlotte was wearing was found under the passenger seat. Rose said he had dropped Charlotte off close to the party and was not responsible for her death.

In 2006 he lost an appeal against his conviction. He claimed a number of witnesses had seen Charlotte in Ilfracombe after he was supposed to have murdered her. They also rejected his claims the judge had allowed prejudicial evidence. In 2009 the Independent Criminal Review Commission said it was also satisfied with the case.

I Served in Northern Ireland. It's Clear That There Should Be No Amnesty For Veterans

Legal responsibility underpins everything our armed forces do. To depart from this is to forget Amritsar and Bloody Sunday. Colonel David Benest commanding officer Paras, 1994/97.

I had very little understanding of events in Northern Ireland while studying for my A-levels at a state grammar school in Guildford in 1972. My subsequent time at Sandhurst left me none the wiser. Entering military academy later that year, I assumed that I was embarking on a well-worn trail in the relationship between ethics and military duty. Of this I was quickly disabused.

As officer cadets we trained in internal security drills, which usually ended with direction to shoot dead the "demo" Gurkha soldier, ringleader of a rioting mob – conveniently wearing a red T-shirt. This was taught doctrine at that time and was repeated in later training. Small wonder, perhaps, that some soldiers may have been under the impression that killing rioters was accepted army doctrine.

My first tour of Northern Ireland as a second lieutenant with 2 Para (2nd Battalion, Parachute Regiment) in June 1973 was quite an eye-opener. As a young officer I swallowed whole the regimental line that soldiers from our first battalion had been under attack during a civil rights march in Derry in 1972, on what became known as Bloody Sunday, and responded accordingly with lethal force. I had no knowledge at all of a previous incident in Ballymurphy in August 1971 – later referred to as a massacre – in which 10 civilians were shot dead allegedly by paratroopers in the small west Belfast neighbourhood during disturbances prompted by the introduction of internment without trial.

In more recent times these events have been the focus of greater media and judicial interest. I have read both the Widgery and the Saville reports into Bloody Sunday, and for reasons not well explained the responsibility of the army chain of command seems wholly absent.

In fairness to the army, most officers and soldiers, for most of the time, have performed commendably in very difficult circumstance between 1969 and 2007 – the formal end of British forces' operations in Northern Ireland. Some have not. And in the event that a command ethos of brutality and murder takes over, we should not be all that surprised at the consequences. This to me is the essence of Bloody Sunday, where specific orders were ignored, an officer opened fire above Rossville Flats – contrary to law – and then the "Derry effect" of those gunshot echoes probably convinced other soldiers that they were indeed under fire. I am not blaming the then commanding officer, alone, for this insubordination .

As a young officer, having got quite a lot of Northern Ireland experience under my belt, I decided, in the absence of any guidance, on my own "doctrine": I talked to my various platoons, my company and then, from 1994-1997, my battalion, about ethics and military duty. At each level I attempted to make clear that the authority and power in the use of lethal force, at just 18 years old, was awesome. In situations where life was endangered or lost, a young "tom" was in effect a witness, a prosecutor, jury, judge and, if required, executioner, all in a matter of a split second.

In recent times quite a few veterans, especially from the Parachute Regiment, have argued that their actions under duress should not be subject to legal scrutiny. The usual line is about their age, memory, time, witness reliability – if still alive – and that these issues are best left in the past. I do not share that view – and the government has rejected previous claims of amnesty.

Charles Townshend, a leading historian on British counterinsurgency, writes in Britain's Civil Wars (1986) that the country has never accepted anything other than that complete legal responsibility at all times underpins the morale and discipline of our armed forces. Take this away in the context of operations in Iraq and Afghanistan, and it would be akin to the US forces in Vietnam. That we should not go down such a hazardous road is, to me, all too obvious. This year we are commemorating the centenary of Amritsar, where so clearly Colonel Reginald Dyer did in every respect abandon our common-law heritage. We can never, ever, risk such a repetition.

The recent government white paper on these issues seems to me to cloud all this – offering the notion that legal accountability can be applied in Northern Ireland but nowhere else. The connection between Bloody Sunday, the Falklands war and Afghanistan is the extent to which senior officers did their best to cover up incidents of serious crime when committed by soldiers – a manifest failure of legal and ethical standards expected of serving officers of all ranks. "Put up, shut up, cover up," is the unofficial doctrine.

The defence secretary, Penny Mordaunt, is attempting to strengthen legal protections for troops facing investigation over alleged historical offences – but veterans of Northern Ireland won't be covered by this. General Lord Dannatt claims he is serving the interests of the army by challenging the plan in the House of Lords: he argues that Northern Ireland should also be exempt from the law because all theatres of war need to be treated the same. Surely the argument of a former chief of the general staff should be that all cases of serious crime commit-

ted by our soldiers be investigated and, if need be, prosecuted – without exception. Only on this basis can high morale and good discipline be ensured.

A comparison with supposed amnesties regarding terrorists is simply missing an obvious point: the armed forces are intended to represent the law in situations where law has been absent through usual means. The problem here is that a prevalent ethos of "regimental loyalty" can supersede all other considerations, and that exposing wrongdoing is thus disloyal – historical accounts of the British army during the Troubles have made this clear. This can only be countered by investing in an ethical education for all ranks of the armed forces. Defence humanists can only agree with this cause.

Colonel David Benest was commanding officer 2nd Battalion, Paras, 1994 to 1997

Information Disclosure: Pre-trial Abuse of Process Hearings

Dame Cheryl Gillan (Chesham and Amersham) (Con): That this House considers the disclosure of information in pre-trial abuse of process hearings. The Minister will be aware of the problems arising from failures of disclosure that continue to confront the criminal justice system. Those problems received the attention of the Attorney General in his 11 December 2017 review, which reported on 15 November last year. One of the worst cases, which was reported in The Times on 21 May last year, concerned five defendants who spent seven years in jail after being wrongly convicted of the murder of Mohammed Afsar. Unfortunately, there is another aspect to that disclosure problem, which, despite repeated requests from my constituent, the Attorney General has so far refused to examine to his satisfaction. I applied for this debate to try elicit a response to the concerns of my constituent, who is in the Public Gallery.

Although my constituent's case is long since over, the abiding issue is the dual and interconnected problem of a non-disclosure by the defence in criminal proceedings in situations where a duty of disclosure rests on the defendant and his or her legal team, and the apparent impossibility of procuring corrections by solicitors and counsel of such failures of disclosure and of erroneous submissions consequently made by them to the court. The procurement of such corrections is part of the professional disclosure obligations that counsel must make to prevent the possibility of a court being misled.

Generally, in criminal proceedings, the duty of disclosure rests not on the defendant but on the prosecution. Exceptionally, however, in cases where the defendant wishes to make an application for an indictment against him to be stayed on permissible grounds under our criminal law and procedure—principally, that to allow the indictment to proceed to trial would amount to an abuse of process—a duty of disclosure rests on the defendant and their legal team to make a full disclosure of all relevant matters, whether or not they are entitled to such an order being made for their benefit.

One class of case in which that frequently occurs is that of non-recent child abuse. Applications for stay indictments in those cases are most often heard in non-evidential proceedings, in which oral submissions are made to the judge only, without any evidence actually being given. As the judge is wholly dependent on the oral submissions made to him, the absence of the production of evidence makes it easier to mislead a court than would otherwise be the case. I am told that there is growing evidence of malpractice arising from this procedure.

Jim Shannon (Strangford) (DUP): I thank the right hon. Lady for giving way—I spoke to her beforehand to seek her permission to intervene. Does she agree that, although the courts have an overriding duty to promote justice and prevent injustice, the duty to stay an indictment must be used only in extreme and clear circumstances, to ensure that there is no abuse of the judicial process?

Dame Cheryl Gillan: In the context of the debate, the hon. Gentleman makes a very valid point. My constituent, Mr Perry, was heavily involved in the case of Caldicott School, which was heard in Aylesbury Crown court. As a pupil there in the '60s, he and many other boys suffered very considerable and grave child abuse that has been the subject of criminal proceedings. The Minister may recall that in that case, the defendant, former headmaster Mr Wright, was eventually tried and convicted on 17 December 2013, and was sentenced to 8 years imprisonment on 6 February 2014. I say "eventually", because there were two indictments brought in this case. The first was in 2003 and the second in 2012—tried in May and June 2013 and re-tried in November 2013. Of the two indictments, only the second proceeded to trial. The first was stayed by an order made by his honour Judge Connor, following the application of the defendant and his legal team, at a non-evidential pre-trial abuse of process hearing in Aylesbury Crown court on 26 September 2003.

In criminal proceedings, an order to stay an indictment results in the termination of that indictment. The counts that related to the extensive abuse suffered at Caldicott School by my constituent, as well as by four other former pupils, were contained in the first indictment, which was stayed. That meant that the history of abuse suffered at the school by my constituent and the other former pupils was never heard in open court. Not unnaturally, my constituent and the other former pupils were deeply unhappy with that outcome.

My constituent was even more unhappy about that negative outcome because it later emerged that the court had been gravely misled by the failure of the defence, which applied for the stay, to disclose relevant information to the court. With that information, his honour Judge Connor might not have considered the stay of the indictment justified. My constituent tells me that all the details of that were set out in correspondence with the Crown Prosecution Service at the time and copied to the office of the Attorney General.

It emerged in particular that before the hearing in September 2003, the defence solicitors, Blaser Mills, had engaged in private correspondence with the school on the subject of the availability of the school pupil records to the defence. Had that correspondence been disclosed to the court, it could have assisted the prosecution in opposing the application for the stay and, in all probability, would have undermined the grounds of the application to stay the proceedings on the indictment. However, neither the judge nor the prosecuting counsel ever saw the correspondence because it was never produced in open court, even though, according to the transcript of the proceedings, the counsel for the defendant, AJ Bright, QC, had it with him in court and was aware of its contents.

The contents of the hidden correspondence only became known publicly five years later, when in November 2008, the school released it into the public domain. It then became apparent to everyone involved in those proceedings how the non-disclosure meant that the court had been misled and, in effect, deceived into making the order for the stay of the original indictment. That situation was bad enough, but according to my constituent, what followed was arguably worse still.

With the trial on the second indictment looming, my constituent and his co-complainants, who had resigned themselves to the impossibility of their cases ever being heard in open court, were naturally concerned about the position of the other five former pupils whose abuse at Caldicott School was the subject of the second indictment. Their concerns grew when it became known that the defence intended to argue that the second indictment should be stayed on the same grounds as had applied to the first indictment. Accordingly, they repeatedly pressed the CPS to ensure that those submissions made to the judge and accepted by him in the September

2003 abuse of process hearing should be formally corrected to the court.

Their argument was that those submissions, which the defence already knew to be false at the 2003 hearing, were now known to be wrong by all parties and the public at large following the release into the public domain of the correspondence between Caldicott School and the defence solicitors, Blaser Mills. Formal correction of those false submissions was needed to prevent the possibility of the court being misled in the same way that it had been in 2003.

Attention was drawn to the explicit wording of both the Solicitors Regulation Authority handbook and the Bar Standards Board handbook—I have made the relevant sections of both available to the Minister—and to the professional obligation resting on all solicitors and counsel, as officers of the court, to correct submissions of fact made to the court once they are known to be erroneous, to prevent the court from being misled further. It was noted that no one, not even those responsible for making the wrongful submissions in the first place, has been heard to deny that false submissions had been made at the September 2003 hearing or that the effect of that was that the court was misled and proceeded to rule on the basis of false information.

To my constituent's complete and abiding astonishment, the CPS did absolutely nothing. While not disagreeing that the defence had acted improperly by telling the judge that the pupil records could not be obtained from the school, or even tacitly accepting that the court had been misled by that, it took no action at all. However, not only were the records available but, in the hidden correspondence that the judge never saw, the defence had actually relinquished its request to be given them.

In addition, the Solicitors Regulation Authority and the Bar Standards Board took no action. Likewise, the Office of the Attorney General, from which at least my constituent might have expected some intervention, given the failure of the regulatory bodies to deal with the situation, did nothing. Only at a much later stage, when the defendant, following his conviction and sentence, applied for leave to appeal to the Court of Appeal, did the CPS finally agree with the complainants that, if leave to appeal conviction were granted and if the defence were to argue that the grounds of the imposition of the stay of the indictment in September 2003 were relevant to the appeal—in fact, it transpired that the defence did intend to argue exactly that—it would finally take action. It would require corrections to be made to the false submissions made in 2003 by counsel and solicitors for the defence in order to ensure that the Court of Appeal would not be misled in 2014. However, the appeal did not proceed and in the event, therefore, those corrections were never made.

At the request of my constituent, I have referred to what he considers—as I do—the embarrassing irregularities that unexpectedly and unusually came to light in the Caldicott School case, and those have a public profile. I have been led to believe, however, that similar problems were experienced in a number of other cases of lesser profile. My constituent has generously offered to provide the Minister with the details, if she so wishes.

It is too late now for the complainants in the Caldicott School case to be accorded the simple justice of the correction of known false submissions that were made to the court, that derailed the first indictment and that they believe denied them justice in 2003.

Dame Cheryl Gillan: I would like to make progress. The abiding concern of those complainants, however, is that to their knowledge nothing has been done to prevent the distressing situation in which they found themselves recurring in other cases, concerning other abused children. The men involved feel rightly aggrieved about the wrongfulness of the Law Society and the Bar, and their respective regulators, holding out to the public the existence of certain published professional standards intended for the protection of the public, while at the same time appearing in this case to

have had no intention of taking any action at all, even when the published professional standards were found unarguably to have been breached. Throughout this case, those men have felt that they have been stonewalled. They have now lost faith in the so-called professional standards.

Such matters are the responsibility of the Office of the Attorney General. That can be seen clearly in the "Protocol between the Attorney General and the Prosecuting Departments", at page 7, under the heading "4(d) Superintendence of casework": "The Attorney General's responsibilities for superintendence and accountability to Parliament mean that he or she, acting in the wider public interest, needs occasionally to engage with a Director"— the Director of Public Prosecutions— "about a case because it…has implications for prosecution or criminal justice policy or practice; and/or reveals some systemic issues for the framework of the law, or the operation of the criminal justice system."

In the Minister's response, I trust that she will provide the reassurance that is sought by my constituent, together with many of his former school colleagues, who were the subject of such appalling abuse at Caldicott School. I trust that she will now agree to include in her review the dual problem: first, non-disclosure of relevant facts and matters by the defence in criminal proceedings in situations in which a duty of disclosure rests on the defendant and his legal team; and, secondly, the apparent impossibility my constituent faced in attempting to procure corrections of the records of the court to solicitors and counsel, and the refusal of the Solicitors Regulation Authority and the Bar Standards Board to assist him in any way.

I look forward to hearing the Minister's comments on those failures to disclose and on the misleading of the court consequent to the erroneous submissions made to it. The formal confirmation of the Minister is needed to reassure my constituent that solicitors and counsel are professionally obligated to make such corrections as soon as possible, and that in future, where necessary, robust and firm action will be taken by the Solicitors Regulation Authority and the Bar Standards Board in order to prevent the possibility of any court being misled in that way in the future.

I hope that the Minister, in responding, will bear in mind that I have known my constituent, Mr Perry, for 20 years. I have been dealing with his case and other matters pertaining to him for a long time. He is a man of great honour and integrity, and he has come forward to speak out in public about some horrendous abuse he suffered in childhood, thereby hoping to prevent something similar happening to other children in the future. This is just part of that pattern. I hope that the Minister will give a positive response in this debate.

The Solicitor General (Lucy Frazer): I thank my right hon. Friend the Member for Chesham and Amersham (Dame Cheryl Gillan) for raising these important issues. I acknowledge the hurt and anger of her constituent, and how he feels as a result of what happened to him at school many years ago. Sexual abuse of children by those in positions of authority or power who abuse their position of trust is a devastating crime.

I cannot imagine what Mr Perry has been through, but I commend him—as my right hon. Friend has done —for his courage in continuing to speak out about his experiences so as to contribute to the debate on how we improve the criminal justice system for victims. I also understand what she says about her relationship with him, and I am pleased that he has been able to contribute to improvements and to the future of those who have suffered as he has. I am pleased that we have the opportunity today to discuss the concerns expressed by my right hon. Friend about disclosure of information in pre-trial abuse of process hearings.

My right hon. Friend the Member for Chesham and Amersham spoke about the broader issues

in relation to disclosure. Like her, we are concerned about the broad issue. It is imperative that disclosure in a case is made properly. She correctly identified the fact that last year the Attorney General published a review of disclosure, and will be publishing further guidelines in due course.

My right hon. Friend referred in some detail to the case of her constituent, Mr Perry. As she knows, it is not appropriate for me as Solicitor General to comment on decisions made by members of the independent judiciary in the two prosecutions of Peter Wright. I understand, however, that the allegations made about the conduct of those representing Peter Wright during the original criminal proceedings in 2003 have been considered by the police, as she said, the Bar Standards Board and the Solicitors Regulation Authority. Those are the correct bodies to look at allegations of that nature.

Furthermore, in 2012, one of my predecessors as Solicitor General personally considered whether to bring contempt proceedings arising from what the judge was told in 2003, but he concluded that there was insufficient evidence to do so. I understand that the trial judge in the proceedings that led to Peter Wright's conviction in 2013, as my right hon. Friend said, also considered the arguments that had been employed in the abuse of process application in 2003 but declined to lift the stay on proceedings.

I am not aware of any adverse findings made against any lawyers involved in the criminal proceedings arising out of the abuse at Caldicott School between 1959 and 1970. None of that is in any way designed to diminish the profound effect that those crimes must have had on Mr Perry's life, or to detract from our commitment as Law Officers superintending the prosecuting departments to promote best practice in the care that victims of sexual abuse receive from the criminal justice system. However, the issues that Mr Perry continues to raise have not been ignored and have received serious consideration in the past.

As Members know, it is open to a defendant to argue that a prosecution is an abuse of process—for example, because of the effect of delay on the fairness of the trial—and that proceedings should therefore be stayed. That arises from the overriding duty on courts to promote justice and to prevent injustice. In these cases, the burden lies on the defendant to prove on the balance of probabilities that there has been an abuse and that a fair trial is no longer possible.

There is clear authority from the Court of Appeal that there is a strong public interest in the prosecution of crime, and that ordering a stay of proceedings is a remedy of last resort, even where there has been significant delay in bringing proceedings. As the hon. Member for Strangford (Jim Shannon) pointed out, the bar for a stay is very high. Even when a judge imposes a stay of proceedings, the prosecution can apply to lift the stay in future. As my right hon. Friend the Member for Chesham and Amersham mentioned, such an application was made in Mr Perry's case in 2012. Although the judge declined the prosecution application to lift the stay on the 2003 proceedings, she allowed the fresh allegations against Peter Wright to be tried by a jury, and also allowed details of the abuse that Mr Perry suffered to be admitted as bad character evidence during the trial. As a result, the jury found Peter Wright guilty of abusing five pupils during the 1960s and he was sentenced to 8 years' imprisonment.

My right hon. Friend makes some important observations about disclosure in the criminal justice system. Hon. Members will be aware that the Attorney General recently carried out a review of disclosure and made recommendations to improve performance across the criminal justice system. In our criminal justice system there is a statutory duty on prosecutors to disclose to the defence any material or information that may assist the defence or undermine the prosecution case. That duty applies to abuse of process hearings as well as trials. There

is also a residual duty on the prosecution at common law to disclose any information that would assist the accused in the preparation of the defence case. That duty applies from the outset in criminal proceedings and requires the disclosure of material that might enable an accused to make an early application to stay the proceedings as an abuse of process.

Alex Chalk: The Minister is quite properly setting out the duties on the prosecution entirely accurately and fairly. Does she agree that there is a duty, however, on all parties to ensure that what they submit does not in any way mislead the court, and that applies to the defence just as it does to the Crown?

The Solicitor General: My hon. Friend makes an important point that I will come on to. It is absolutely right that counsel or solicitor must not mislead the court, as officers of the court with a primary duty to the court and not to their client, but the disclosure of evidence is a different obligation on the defence. There is no corresponding legal duty on the defence to disclose information that is harmful to its case, because that is consistent with the fundamental principle that it is for the prosecution to prove its case and not for a defendant to prove their innocence.

As my right hon. Friend the Member for Chesham and Amersham rightly identified, there is an important duty on counsel and barristers; they have a professional code of conduct that includes the requirement to act ethically and with integrity at all times. That includes a prohibition on knowingly or recklessly misleading anyone, including a court, and a positive duty to behave in a way that maintains public trust and confidence in the proper administration of justice. My right hon. Friend mentioned that her constituent may have details of other cases where a court has been misled; I strongly encourage her to share those details with the CPS and the professional bodies responsible for barristers and solicitors.

Dame Cheryl Gillan: I am grateful to the Minister for the way in which she is responding. She mentioned that it is important to maintain trust in the regulatory bodies. In the light of the circumstances of this case, does she agreed that trust has been shaken? I will provide her with those details once my constituent provides them, so she may pass them on to the relevant authorities or look at them herself, because it is from her office that I believe my constituent wishes to have a response.

The Solicitor General: I appreciate that my right hon. Friend's constituent feels that trust in the criminal justice system has been shaken. That is of concern. I reiterate that as far as I am aware no misconduct has been found by the Bar Standards Board in relation to the case, but I would be very happy—as I am sure it would—to receive any further information that she can provide.

I would like to underline the additional safeguards that exist for defendants and victims when a stay application is brought. There are a number of rules and regulations that ensure that the hearing should be conducted with due notice and in the interests of justice. The Criminal Procedure Rules 2015 set out clearly the timetable that the defence and prosecution should adhere to when preparing for the hearing. For example, the defence application must be in writing and provided to the prosecution and court as soon as practicable after becoming aware of the grounds for applying. The application must include or identify all supporting material, specify all relevant events and identify any witnesses the defendant wishes to call in support of the application. The prosecution must do likewise within 14 days of receiving the application. Both parties must serve skeleton arguments on each other and the court in advance of the actual hearing, so that everyone knows the issues to be determined at the hearing.

Victim care is important in cases of sexual abuse. Mr Perry's experience demonstrates why it is so important that we continue to make victim care priority in our criminal justice system.

Dame Cheryl Gillan: I agree with the Minister that victims should have priority in our criminal justice system—that is most important. She mentioned at the beginning of her

response that she is working on new guidelines that will come out shortly. Could she give us a greater indication of when we can expect those new guidelines? Would there be any possibility of looking at the draft guidelines before they are finalised and published?

The Solicitor General: A review of disclosure has already taken place. Further guidance will come out in due course. I am happy to update my right hon. Friend on any further details on that and will take on board any points that she might like to make. We are not just focusing on disclosure, although that is very important. The CPS has almost doubled the number of specialist prosecutors in its dedicated rape and serious sexual offence units, and is working with the Ministry of Justice and the Home Office to revise the victims code, to improve the support and care offered to victims. It is important to remember that these issues do not just affect the Attorney General's office but are cross-departmental, and we are working together with Departments on those. Debates on this area make an important contribution to the ongoing work to improve the experience of victims in the criminal justice system. I thank my right hon. Friend the Member for Chesham and Amersham and her constituent for raising important issues that affect our criminal justice system.

Kyle Major's Claim Against Violent Prison Officer - Upheld by Ombudsman

On 12 December 2017, Mr Kyle Major submitted a complaint to the Prisons and Probation Ombudsman saying that on 30 August 2017, at HMP Lindholme, Officer Peter Kelly used unnecessary force against him. Mr Major alleged that Officer Kelly assaulted him by striking him against the throat.

Mr Major submitted three formal complaints, via the confidential process using form COMP 2, regarding his allegation that Officer Kelly had assaulted him. These complaints were dated, 30 August (LHC 2081), 5 September (LHC 2099) and 6 September (LHC 2146). Mr Major requested an independent investigation and for CCTV footage to be viewed and retained, and that he wanted Officer Kelly arrested for attempted murder.

South Yorkshire Police investigated Mr Major's allegations, and interviewed Mr Major, Officer Kelly, Officer Fitzpatrick and CM Rowley. On 28 November, the police concluded the case did not meet the threshold for Crown Prosecution Service (CPS) advice. South Yorkshire Police informed Mr Major that they were not pursuing a criminal investigation.

Kyle totaly unhappy with this wrote to the Ombudsman asking them to investigate his complaint, the Ombudsman agrred to do so and allocated an investgator on the 23rd March 2018.

Ombudsman's, Conclusion and Recommendations

We have concluded that the use of force used by Officer Kelly on Mr Major on 30 August 2017 was not necessary, reasonable or proportionate. Mr Major's complaint is upheld.

In particular, we consider that: • Officer Kelly informed the police and the investigator Mr Major had threatened to 'put him on his arse'. Officer Kelly said because of this threat he was fearful for his safety, but he has not recorded this detail on either the Use of Force form, Annex A or PNMOIS entry. • Officer Kelly linked Mr Major refusing a lawful order in his PNOMIS entry as justification for using personal protection techniques. Refusal to obey a direct order would not in itself have justified the use of force at this point. • Officer Kelly made no reasonable attempt to de-escalate the situation, as outlined in PSO 1600. • Mr Major had his arms by his sides throughout their exchange, which lasted in total only six seconds. • Mr Major was not given sufficient time to comply with any instruction before Officer Kelly used unnecessary force. • The level of force used was unreasonable and disproportionate. • Officer Kelly used both hands, with force, which struck Mr Major on the throat.

We found that Officer Kelly and Officer Fitzpatrick failed to complete their Annex As within the timescale required by the PSI. Therefore, we make the following recommendations.

Within four weeks of the date of this report, the Governor should: • Commission an investigation under the terms of PSI 06/2010 & AI 05/2010, Conduct and Discipline, into the use of force used by Officer Peter Kelly. • Issue a letter of apology to Mr Major, in view of our findings. • Issue a communication to remind all staff of the importance of submitting Annex As within 72 hours as per PSI 30/2015 and ensure there is a robust process in place to check all Annex As have been submitted; this should be completed within four weeks of the date of this report. We have also concluded that liaison arrangements between Lindholme and the Ombudsman's office need to improve.

HMP Lindholme stated that they accepted the report and our recommendations in full.

Kyle is currently pursuing a claim for damages against the Prison Service.

25 Dead in Clashes at Venezuelan Prison

At least 25 inmates have died after clashes broke out at a jail inside a Venezuelan police station, according to a rights group. At least 20 police officers were wounded, Una Ventana a la Libertad said. The jail, in Acarigua, is designed to hold 250 people but currently has around 540 inmates, the Venezuelan Prison Observatory said. Police said grenades were detonated during the incident. Oscar Valero, citizen security officer for Portuguesa state, told reporters that there was an "attempted escape" and a fight "among rival gangs". Humberto Prado from the Venezuelan Prisons Observatory rights group told Reuters news agency: "How is it that there was a confrontation between prisoners and police, but there are only dead prisoners? And if the prisoners had weapons, how did those weapons get in?" Mr Prado said that the violence broke out when authorities entered the block to carry out searches and remove female visitors. Venezuela has had a number of violent prison clashes in recent years. In March 2018, 68 inmates died in a fire at a police jail. In August 2017, at least 37 people were killed when a riot broke out in a prison in southern Venezuela.

Evidence Obtained From 'Paedophile Hunters' Inadmissible as Conduct Amounted to 'Fraud'

Scottish Legal News: A man accused of "sexting" people he believed to be children has successfully challenged the Crown's bid to lead evidence gathered by a pair of so-called "paedophile hunters". A sheriff ruled that the evidence was "inadmissible" because the means used to induce the accused into engaging in an exchange of messages amounted to "fraud". Dundee Sheriff Court heard that the accused "PHP" was charged with attempted contraventions of sections 34(1) and 24(1) of the Sexual Offences (Scotland) Act 2009 by sending sexual messages via social media to persons he believed to be children aged respectively 14 and 12, but no such children existed.

The accused was, unknown to him, alleged to be exchanging messages with "JRU" and "CW", both adults living in England, who were involved in a scheme in which they pretended to be children in the hope of, in their words, "catching predators" by getting them to engage in sexual messaging. They then travelled to Dundee to confront the accused, who had to be taken into custody for his own protection, the court was told. Three minutes were lodged on behalf of PHP, challenging the competency of the prosecution and the admissibility of the evidence obtained.

The compatibility issue minute stated that the activities of Mr U and Ms W interfered with the accused's privacy rights under Article 8 of the European Convention on Human Rights, and that admitting their evidence at trial would involve the court acting "incompatibly" with his human rights. The minute based on the provisions of the Regulation of Investigatory

Powers (Scotland) Act 2000 (RIPSA) objected to the admissibility of "all of the Crown evidence" intended to be led against the accused on the basis that, in the absence of an authorisation under RIPSA for the use of Mr U and Ms W as "covert human intelligence sources", their evidence had been "unlawfully obtained" and should be deemed "inadmissible".

The plea in bar of trial was to the effect that the ingathering of such evidence by covert means was entrapment in a factual if not strictly legal sense, and that reliance on that evidence by the police and the Crown, which would be deemed oppressive had they gathered the evidence themselves, was "oppressive", would offend the public conscience and be an "affront to the justice system".

Sheriff Alastair Brown rejected that arguments based on Article 8 ECHR and RIPSA, but ruled that the evidence gathered by Mr U and Ms W was "inadmissible". In a written note, Sheriff Brown said: "I have reached the conclusion that the scheme operated by Mr U and Ms W was unlawful at all stages and, hence, that its results are inadmissible in evidence unless the irregularity involved is excused. I have not been persuaded that it ought to be excused. "Put shortly, what Mr U and Ms W did was fraud. They made a false pretence (about the identity and characteristics of the person operating the account), knowingly (and, accordingly, dishonestly) in order to bring about a practical result (namely, to induce persons open to temptation to engage in messaging). Their conduct therefore contained all of the elements of the crime of fraud. Having induced the person alleged to be the Minuter to exchange electronic messages, they then set out to induce him to continue with the exchange of messages until he had, in their view, conducted himself in a way which was likely to result in a substantial prison sentence. That they did by maintaining the false pretence and by wheedling him to continue."

The sheriff described their conduct as "calculated and manipulative". He continued: "Mr U then travelled to Dundee, with two other men, to confront the Minuter and that made it necessary for the police to take him to a police station for his own safety. Such confrontations have the potential for serious public disorder and will, in some circumstances, constitute the crime of breach of the peace. "It was Mr U's wish to get a photograph, which he would post on the internet with a caption stating that the Minuter had been arrested for suspected child sex offences. Since an arrested person is likely to appear in court the next day, the publication of such a photograph and caption risks interfering with the administration of justice and might sometimes amount to contempt of court."

Sheriff Brown also dismissed the suggestion that the pair were acting in "good faith". "Moreover," he added, "in my opinion there are strong public policy considerations which militate against excusing the impropriety involved in this kind of case. To be sure, internet crime is a serious issue, though it is far more complex than Mr U and Ms W appeared to recognise. Police Scotland take it seriously. But policing is a skilled, professional activity which ought to be left to the police. Police officers work within a careful scheme of regulation and inspection and they are democratically accountable. When it comes to covert policing, they operate within a carefully constructed regulatory framework which exists for the protection of the public as a whole. To excuse the improprieties in what happens in such cases would be to encourage those who are inclined to pursue such action to think that they can operate outside any regulatory structure, to think that they can operate outside the law, to think that they can operate without having to observe the carefully considered limits which the legislature has applied to the police (whom they claim to be helping) and to think that they can manipulate the courts into imposing condign sentences. That would be contrary to the wider public interest in the rule of law. I have, accordingly, decided to sustain the objection to the admissibility of evidence to the extent of excluding the evidence of Mr U and Ms W as inadmissible."

Single Offender Jailed Nearly 200 Times

Jamie Grierson, Guardian: A single offender has been sentenced to almost 200 jail terms of less than six months in their lifetime, new figures reveal, renewing calls for an overhaul of the justice system to curb the use of ineffective short sentences. The highest number of previous immediate prison sentences of under six months given to an offender sentenced in 2018 in England and Wales was 198, according to a response to a freedom of information request submitted by the charity Revolving Doors.

Since 2017, 339 people being sentenced had received a total of 20 or more short prison terms, while 20 people had received 50 or more, the answer to a written question by the MP Kevan Jones shows. About 82% of people convicted of theft who are sentenced to less than six months in prison are convicted again within a year of release, according to analysis of 2016 figures by Revolving Doors. There is no legal minimum for a sentence but in practice magistrates rarely sentence below five days. The Guardian has spoken to offenders who have received successive sentences of two to three weeks.

The disclosures come as ministers weigh up scrapping short prison sentences for non-violent offences and replacing them with community punishments. This year, the justice secretary, David Gauke, said: "If we can find effective alternatives to short sentences, it is not a question of pursuing a soft-justice approach, but rather a case of pursuing smart justice that is effective at reducing reoffending and crime." Reducing the use of short sentences has been given the backing of the justice select committee, which has urged the government to consider abolishing sentences of under 12 months. The Scottish government is to extend a presumption against short prison sentences of less than three months to sentences of up to year, prompting calls for a similar move in England and Wales.

Revolving Doors is urging the new prisons and probation minister, Robert Buckland, to introduce a presumption against short prison sentences of less than six months in England and Wales. The charity's chief executive, Christina Marriott, said: "To give people another short prison sentence, sometimes for the 50th or 100th time, is evidentially short-sighted. It is obvious why short spells in custody cannot work as effectively as community sentences: being sent to prison damages the lives of both offenders and their children, they drive reoffending, creating more crimes and more victims. "Short jail terms contribute to prison churn and chaos, making it harder to rehabilitate the people who do need to be there. The 82% reconviction rate for people sent to prison for theft represents huge systemic failure."

Marriott said the Scottish government had used a presumption against short sentences alongside other measures "to improve public safety and save lives". "It is time our government grasped the nettle. The new minister has a golden opportunity in his time in office to use evidence to drive sensible reform," she said. The charity has argued in support of investment in drug treatment in the community, and says the government should ensure people with addictions are not sent to prison for theft when alternatives can be more effective at breaking the cycle. More than half of the 86,275 offenders sentenced to immediate custody in England and Wales in 2017 were handed sentences of six months or less, according to a parliamentary response to the shadow justice secretary, Richard Burgon, last month.

Responding to the latest figures, Burgon said: "We need an end to the revolving door where people are in and out of prison after receiving super-short sentences that simply don't work. Ineffective short sentences not only fail to reduce reoffending, and so leave our communities less safe, but are an incredibly expensive option, placing great strain on an already overstretched

justice system. “We need to replace ineffective short sentences with robust community alternatives that the evidence shows would actually help people turn their lives around, lower reoffending and improve public safety. That is yet another reason why we need to fix our broken probation system. Labour is currently carrying out a consultation on how in government we can best put an end to such wasteful short sentences.” In 2010, the Scottish government legislated for a presumption against sentences of less than three months, which it says led to a reduction in the reconviction rate from 29.6% to 27% between 2011-12 and 2015-16, while the number of short custodial sentences fell by 31% between 2011-12 and 2017-18. This month, ministers at Holyrood published an order to extend the measure to cover sentences of up to a year.

A Ministry of Justice spokesperson said: “This evidence shows that short sentences are often ineffective and we should not spend taxpayers’ money on what we know doesn’t work. Almost two-thirds of prisoners on short sentences go on to reoffend soon after release, meaning we are less safe than we could be and more likely to be a victim of crime. “That is why we have announced a comprehensive reform of our probation system that will ensure stringent and enforceable community sentences, and which evidence shows will help these repeat offenders turn away from crime for good.”

At Least 42 Prisoners Found Strangled In Brazil Jail Clashes

At least 42 prisoners in Brazil were found strangled on Monday 27th May 2019 in four jails in the Amazon jungle city of Manaus, where a fight between rival prison gangs resulted in 15 dead the day before, authorities said. A federal taskforce is being sent to Manaus in an effort to halt the violence. Prison clashes often spread rapidly in Brazil, where drug gangs have de facto control over nearly all jails. In January 2017, nearly 150 prisoners died during three weeks of violence in north and north-eastern Brazil, as local gangs backed by Brazil’s two largest drug factions – the First Capital Command and the Red Command – butchered one another. A statement from the Amazonas state penitentiary department confirmed the number of deaths that took place on Monday and said authorities had regained control of the four prisons. No other details were provided.

Crown Disclosure Failing Saw Attempted Murder Trial Collapse

Scottish Legal News: The Lord Advocate has been told to explain the “abject failure” of the Crown to disclose vital evidence to defence lawyers, The Courier reports. Prosecutors' failure to disclose information resulted in the collapse of an attempted murder trial last week in the High Court of Justiciary. James Wolffe QC has now been ordered to explain why the Crown gave the task of gathering crucial evidence to another department, without adequate supervision – a practice that has now been brought to an end.

The High Court in Livingston heard that there had been a sharp increase in serious and organised crime prosecutions as well as staff absences. The result was that the £12,000 per day trial had to be abandoned after three days. The accused was on trial for violently attacking a 62-year-old man to his severe injury, permanent disfigurement and danger of life. George Wright, 38, denied attempted murder and other offences. Prosecutors will now have to ensure all evidence is available before deciding whether to re-indict the case against Mr Wright.

Lady Scott said she demanded a full explanation for the “apparent failure of the Crown in their statutory duty to disclose that information. The explanation for this delay which has been given to the court was essentially that the outsourcing of the preparation of this case had taken place and failures had resulted from that process,” she said. “I was also told that there had been changes

in practice since. I am not satisfied that this is a satisfactory explanation and I will be writing to the lord advocate. As a result of this abject failure by the Crown, and the absence of proper assurance that the obligation for disclosure has been met – and no date can be given to the court for the assurances to be given – I consider that the only remedy at this stage is to desert the trial.”

A Crown Office spokesman said: “We note the decision of the court. We will carefully review the issues raised by the court in this case to identify any opportunities to improve our working practices and the service we deliver for the people of Scotland. In the meantime, we will take steps to bring this case back before the court as soon as possible.”

Bid To Silence Evidence In Press Freedom Case

Sean O’Neill, The Times: Ministers have applied for secrecy orders to suppress evidence in a court challenge to the legality of armed police searches at the homes of two journalists. John Penrose, the Northern Ireland minister, is seeking public interest immunity (PII) certificates in the case before the High Court in Belfast which is seen as a major test of press freedom. The case is a potential embarrassment to the government at a time when Jeremy Hunt, the foreign secretary, has asked Amal Clooney, the human rights lawyer, to head a review into threats to media freedom around the world. The journalists, Barry McCaffrey and Trevor Birney, are taking judicial review proceedings over the raids on their homes and offices carried out because of their involvement in a documentary, No Stone Unturned, exposing police collusion in the Loughinisland murders in 1994. It alleged that failures to investigate the sectarian murders of six Roman Catholic men were connected to the likelihood that one of the killers was a police informant. The 7am searches of the men’s homes last August were a departure from normal practice. Police usually serve a production order asking journalists to disclose information. The search warrants were granted to police after a private hearing before a judge. The PII certificates are viewed as an attempt by the government to prevent the police’s justification for the searches being disclosed in open court. Michelle Stanistreet, general secretary of the National Union of Journalists, said: “Journalists should never be targeted for simply doing their jobs.”

HMP Chelmsford - Significant Drugs Problems Remain

Inspectors were deeply troubled last year by high levels of drug-fuelled violence and self-harm – In April 2019, inspectors found that serious violent incidents had been reduced by more than 50%, care for vulnerable prisoners was improving and living conditions were better. However, Peter Clarke, HM Chief Inspector of Prisons, warned that the failure since 2018 to make sufficient progress in tackling drugs in HMP Chelmsford, which holds many members of organised crime gangs, risked undermining other progress. After a full inspection in May and June 2018 Mr Clarke said he had narrowly decided not to invoke the rarely-used Urgent Notification Protocol. At that time, Mr Clarke had some confidence that the then-new governor would make progress.

IRPs are designed to test progress against key recommendations for improvement in troubled prisons. There were nine recommendations for Chelmsford. In April 2019, Mr Clarke said, “levels of violence had continued to increase since last year, but it was clear that action taken by the prison had led to a reduction in serious incidents.” There was also a clearer understanding of the causes of violence. The number of deaths through suicide and the suspected use of illicit drugs remained worrying, but there had been reasonable progress in improving the quality of care for prisoners in crisis or at risk of self-harm. The prison had made good progress in improving living conditions, though inspectors were concerned that a planned increase in the population would return the jail to the unacceptable overcrowding seen in 2018. There had also been reasonable progress in the provision of health care.

Mr Clarke found insufficient progress in five areas: The rate of positive drugs tests had fallen, though it was still high, and there was a reduction in contraband thrown over the wall. “However, it was inexcusable that HM Prison and Probation Service (HMPPS) had still not equipped the prison with more up-to-date drug detection equipment. Chelmsford needed to make further reductions in the supply of drugs a priority to safeguard prisoners’ health and well-being, as well as making the prison safer by reducing violence and debts.” Consultation with prisoners had improved but the prison had not addressed the fundamental weaknesses in the application and complaints processes sufficiently well. Time out of cell, although more predictable across the prison, remained very limited. Despite the governor’s aspiration to provide at least one hour a day for outdoor exercise, most prisoners still only had 30 minutes, which was not enough. In rehabilitation and release planning, Mr Clarke said he had concerns about the delivery of the Community Rehabilitation Company (CRC) contract, and some key weakness in offender management arrangements.

Overall, Mr Clarke said: “Last year, I clearly noted my confidence in the prison’s capacity for change and improvement, and this was well-founded. The governor continued to set a clear vision for the prison and had retained the support of those around her. We have identified good or reasonable progress in four key areas, and this report makes clear what needs to be done to make advances in the remaining weak areas. While additional regional and national resources had been used to good effect, the lack of more sophisticated drug detection equipment was indefensible, and the easy availability of drugs continued to undermine other progress made.”

Prisoners to Get More Work Opportunities as Government Eases Rules

Ministers said the move would give inmates more opportunities to work and train while serving their sentence, boosting their chances of securing immediate employment on release. The Ministry of Justice announced that inmates at open or women’s prisons would be eligible to do paid work on day release after they had passed a risk assessment. Previously this was only allowed if an inmate was within 12 months of being released. The changes to the release on temporary licence (ROTL) scheme are part of government efforts to reduce reoffending rates, estimated to cost the UK £15bn a year. ROTL rules were tightened after a review by the then justice secretary, Christopher Grayling, after the convicted killer Ian McLoughlin murdered a man in 2013 while on day release from HMP Spring Hill in Buckinghamshire.

Responding to concerns about the rule changes, the justice secretary, David Gauke, said on Tuesday: “Well over 99% of all releases occur without any breach whatsoever, and where there are breaches, overwhelmingly they’re things like people being late. So it’s not about serious offences. We believe we can put in place a thorough risk assessment – that’s what’s working at the moment and I think we can continue with that.” He told the BBC Radio 4 Today programme: “If we want prisoners not to reoffend, we need to rehabilitate them. The evidence and common sense suggests that prisoners who go into work after they leave prison are less likely to reoffend. “And … if prisoners have had the opportunity to go to work on a daily basis then return to prison, and so at the point of their final release from prison they are acclimatised to work, then the evidence shows that they’re more likely to be in work. This is about reducing crime because it will reduce reoffending.”

Under the changes, a restriction on ROTL in the first three months after transferring to open conditions would be lifted, and overnight release from open prisons could be considered at an earlier stage. There were 366,868 releases on temporary licence in England and Wales last year, involving 7,724 people. The 2018 figures were up year-on-year but remained below those for 2013, when there were more than half a million ROTLs involving more than 11,000 prisoners. Plans to expand the use of workplace ROTL were set out in the MoJ’s education and employment strategy last year. The department said 230 more businesses had joined its flagship offender work-placement scheme. Peter Dawson, the director of the Prison Reform Trust, welcomed the ROTL changes. “More than three years after it was first promised, the government has finally delivered a significant shift towards the greater use of temporary release, recognising its proven benefits in terms of preparing prisoners for a crime-free life,” he said. Prisoners, employers, families and the public at large will all benefit from these changes, building on an exceptional track record of success. There is much further to go – prisoners are serving longer sentences than ever before, and these changes will mainly benefit only the minority who have managed to get to an open prison towards the very end of their time inside. Ministers should not wait a further three years before taking the next step.”

Failure to Prosecute in 2014 Renders Extradition Disproportionate

Doughty Street Chambers: The High Court has allowed the appeal against extradition of a Polish man, convicted of drugs offences committed in 2008 on the grounds of delay, proportionality and his right to private and family life. The Appellant was wanted to serve a 2-year, 2-month sentence for two offences: the supply of 19 grammes of amphetamines; and simple possession of MDMA, amphetamine and cannabis. Represented by Malcolm Hawkes, the Appellant had in fact already been extradited from the UK to Poland in 2014 for the same offences but before his conviction; that warrant was also issue to secure his return to serve a 2 year sentence for other matters. However, despite being in Polish custody, the authorities failed to prosecute him at all for the accusation matters. The Appellant was even released from prison early and granted permission by the court to move back to the UK in 2015. Even so, his trial didn’t take place, in his absence, until March 2017. The Polish authorities offered no explanation as to why they failed to prosecute the Appellant while he was in their custody, why they permitted him to return to the UK and why his conviction and appeal process took so long to conclude. Since moving to the UK in 2008, the Appellant had completely reformed: he has committed no further offences, has set-up his own business and is fully settled in this country with his wife and son. The High Court held that the district judge fell into a series of significant errors in her judgment, by over-stating the gravity of the conduct. She called the offences ‘extremely serious’ when it was clear the conduct was lower on the scale. The district judge also was wrong to find that his son, who was badly affected by his father’s extradition in 2014 when aged 4, would somehow be better able to cope with the trauma of separation a second time at the age of 9; the cumulative effect of the repeated, traumatic separation of a child from its parents would mean that each separation causes more harm than the last. Finally, the judge wrongly ascribed the blame for all of the delay to the Appellant, when he could not be blamed for the delay from 2014-to date In a case which he described as ‘finely balanced’, Mr. Justice Holman concluded that the Article 8 rights of the Appellant, his wife and their son outweighed any public and international interest in his extradition in 2019 for such historic conduct.

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.