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MOJUK: Newsletter 'Inside Out' 1016 (21/07/2024) - Cost £1

Former Royal Marine Settles Claim For False Imprisonment For £30,000

A former Royal Marine with a distinguished record of elite military service has settled his claim for false imprisonment against West Yorkshire Police for £30,000 plus legal costs. The Claimant ('TJM') who cannot be named, claimed for (i) unlawful arrest; (ii) 7 hours' unlawful detention in a police cell and subsequent bail conditions that were disproportionate, oppressive and of inordinate duration (16.5 months). TJM claimed that the police officers responsible had shown no interest in any objective assessment of an allegation made against him. Instead, they uncritically and unlawfully sided with his accuser, causing him significant detriment in ongoing Court proceedings. TJM's case was that West Yorkshire Police would not have treated a white male serviceman with the same scepticism, unfairness and lack of objectivity as they treated TJM (who is black). TJM was represented by Nick Stanage on direct access. The settlement sum was six times greater than that which West Yorkshire Police had offered when TJM had been acting as a litigant in person.

Prison Reform Trust - Comment: HMP Wandsworth

Commenting on the findings of conditions at HMP Wandsworth by HM Inspectorate of Prisons today Pia Sinha, chief executive of the Prison Reform Trust, said: "Wandsworth is emblematic of a system that has been running on fumes for many years, through our overuse of prison and chronic underinvestment in the prisons estate. Too many of our local inner-city prisons are afflicted with similar problems, including too few staff, and prisoners held in overcrowded and squalid conditions which are contributing to very high rates of violence, self-harm and self-inflicted death. Most worryingly, the government has inherited a prison system which is rapidly running out of effective options to respond. Previously, the first thing a prisons minister would consider was to rapidly decant a large number of people from the prison to give staff much needed breathing space to address concerns. But with prisons in the midst of a capacity crisis; a huge courts backlog; and an anticipated influx of far-right rioters, there is simply no give in the system to do this. These will be deeply worrying times for those who live and work in our prisons."

Double Standards on Just Stop Oil Protests

David Redshaw argues that farmers and truckers who protested in 2000 we treated differently, while Cath Attlee says peaceful protests are largely ignored by the media, and Nick Odell says a standstill on the M62 isn't unusual It's interesting to contrast the indignation of those who object to the Just Stop Oil protesters (Letters, 26 July) with what happened in 2000 when truckers and farmers brought the whole country to a halt by using their rigs and tractors to block our highways and petrol stations and cause problems for key workers, along with the cancellation of NHS operations. The Tory party started it off by encouraging a day of protest (which turned out to be much longer) and the Tory press roared its support. I always saw it as an opportunity for the right to take a whack at a hitherto popular Labour party with any stick that became handy. And it's funny that I don't remember a single report of a trucker or farmer being arrested, let alone jailed. Some of your correspondents are objecting to protesters causing disruption because of their opinions. Climate change is a scientific fact, not an opinion.

Compensation For Claimant Who Had Throat Cut by Dangerous Prisoner

Matthew Turner has successfully secured compensation for his client in a claim against the Ministry of Justice, after he was attacked and had his throat slit by a dangerous prisoner. At the time of the attack, the Claimant was a prisoner in a Category B prison. He had attended the medications hatch to collect his medication when he was attacked by another prisoner, 'Prisoner X', who had been released from the segregation unit just two days earlier. There were no prison officers stationed at the medications hatch at the time, and CCTV footage showed Prisoner X walking up and down the corridor, and pacing back and forth, for eight minutes before the attack. The Claimant was attended to by prison staff and paramedics, and taken to hospital where he underwent life-saving surgery. He was lucky to have survived, but suffered extensive blood loss and was left with significant physical and psychiatric injuries.

The prison records showed that Prisoner X had become increasingly violent and threatening in the weeks and months leading up to the attack. He had attacked other prisoners, threatened to assault both prisoners and officers, and told prison staff that he was thinking of killing someone. However, the prison did not take any action in response to this escalating behaviour. No risk assessment carried out, and no safeguards were put in place to manage his behaviour. Instead, he was simply released from the segregation unit back into the general prison population.

The claim settled after the Ministry of Justice made a last-minute offer on the eve of trial and after receiving the Claimant's skeleton argument. A few weeks earlier, the Ministry of Justice had sought to raise a suite of new legal defences, including Ex Turpi Causa, Volenti non fit Injuria, Contributory Negligence, and Fundamental Dishonesty. However, in the pre-trial review, Matthew successfully argued that these defences had been raised too late in the day and would prejudice the Claimant and cause the trial to be vacated. The judge refused permission for the Defendant to rely on these arguments.

Bamber: 'Significant' New Evidence Revealed in Whitehouse Farms Murders

Sam Dulieu and Jon Robins, Justice Gap: A fresh investigation into the case of Jeremy Bamber, convicted of murdering his family in 1985, has revealed 'significant evidence' and police failings that may indicate he was wrongly convicted. A 17,000 word article published this week in the New Yorker by Heidi Blake (Did the U.K.'s Most Infamous Family Massacre End in a Wrongful Conviction?) has uncovered new findings after an eight-month probe into the notorious case. These include evidence that police officers interfered with the crime scene at Whitehouse farm where the murders took place, including moving a Bible found next to Sheila Caffell, Bamber's sister who was originally suspected of having committed the murders and taken her own life. Firearms officers who were first on the scene apparently confirmed that photos of the crime scene looked different to what they saw when they first arrived.

This is the second major investigation by the New Yorker raising concerns about the safety of a conviction on this side of the Atlantic in recent months – New Yorker staffer Rachel Aviv was the first journalist to raise serious concerns from experts about the Lucy Letby case in a 13,000 word investigation. That investigation led to the former government minister Sir David Davis MP raising the concerns in parliament and calling on the Lord Chancellor to end the Draconian media restrictions that until recently presented the UK press raising concerns – see here. Both New Yorker articles highlight problematic systemic issues at the heart of our justice system. Heidi Blake focuses on the crisis-hit miscarriage of justice watchdog, the Criminal

Cases Review Commission, which (she reveals) has only managed to review three of nine potential grounds of appeal identified by Bamber's lawyer Mark Newby since an application as made in 2021. 'At that pace, its could six more year before the review its finished,' Blake writes. By then, she adds, Bamber would be almost 70 years old.

Mark Newby welcomed the New Yorker investigation into troubling case which he told the Justice Gap identified 'significant further fresh evidence' and, in particular, interference with evidence. 'According to Ms Blake's investigations we have the clearest evidence that the crime scene was interfered with by senior officers and this adds to evidence which we have already supplied to the CCRC,' Newby said. 'In addition, there is also evidence over a call from within Whitehouse farm at 6.09am which supports the fact that something was occurring within Whitehouse Farm at a time when Jeremy Bamber was not present.'

Heidi Blake highlights recent criticisms of the CCRC and argues that the statutory 'real possibility' test (the CCRC can only refer cases back to the Court of Appeal where it believes there is the real possibility that the court will overturn a conviction) 'forces its caseworkers to think like judges, rather than like investigators'. The Law Commission is presently reviewing our system of criminal appeals including concerns over the 'real possibility' test which has been criticised for leading to an overly 'deferential' CCRC . She also focuses on how the Coalition government's austerity cuts have impacted on the watchdog body. She writes: 'After 2010, the CCRC lost more than a third of its funding. Yet it's commissioners – who now mostly work one day a week from home – have seen caseloads double.'

Speaking to the Justice Gap, Blake explained her interest in the Bamber case which she said she had followed 'for a while – but it was the revelations about the CCRC's failings in the Malkinson and Nealon cases that prompted me to dive into the evidence now'. 'I think perhaps the British media has been too willing to accept that the CCRC is functioning effectively as a check on miscarriages of justice,' she commented. 'When I understood just how flawed the organisation's rulings could be, I wanted to look deeper into the discrepancies in the Bamber case that the CCRC has brushed aside for so long, as well as to hunt for fresh evidence that could send genuinely new light on the case.'

Newby is 'deeply concerned' at the lack of progress of the CCRC review into the Bamber case which had 'already taken over three and a half years to this point' and called into question its ability 'to actually do justice to the evidence'. 'This is of no surprise to us in view of the general malaise in the CCRC and concerns over its leadership,' he said referencing the recent scathing Henley review following the exoneration of Andrew Malkinson. 'We support the need for a root and branch review of the CCRC and how it investigates cases which seems generally rooted in reactive desktop reviews with little ambition or drive to be bold in advancing cases to the Court of Appeal.'

The solicitor also highlights the New Yorker's revelation of 'the potential presence of DNA in the moderator' or silencer – the finding of a silencer in a cupboard at the White House farm three days after the murders was vital in persuading the jury of his guilt and subsequently became key to attempts to overturn his conviction. The prosecution argued that it was attached to the rifle during the killings which would have made it too long for Caffell to have shot herself. Blake records that jurors asked the judge to clarify whether blood on the silencer was 'a perfect match' for Shelia. 'The judge assured them that it did not match anyone else,' Blake says. 'They returned their verdict 21 minutes later.'

The New Yorker raise a number of concerns about the mishandling of the silencer casting doubt on the value of the blood as evidence. 'Taken as a whole this thorough investigation adds considerable weight to the detailed and substantial concerns which have already been put before the Commission,' Newby said.

Marriage Ban for Prisoners Serving Whole-Life Orders

Law Gazette: Prisoners serving whole-life orders will no longer have the right to get married under a measure signed into law by the lord chancellor. The measure, in the Victims and Prisoners Act 2024, was pledged by former justice secretary Dominic Raab in March last year. This followed widespread anger over a bid by serial killer Levi Bellfield to challenge a decision blocking him from marrying in prison. The Victims and Prisoners Act 2024 comes into force Friday 2nd Augst 2024.

Announcing the marriage ban, lord chancellor Shabana Mahmood said: 'Victims should not be tormented by seeing those who commit the most depraved crimes enjoy the moments in life that were stolen from their loved ones. That is why I have acted as soon as possible to stop these marriages and give victims the support they deserve.' Under the new law, the lord chancellor will retain the right to permit ceremonies in the most exceptional circumstances. It has been suggested that the ban on prisoners marrying could breach the European Convention on Human Rights, which contains a right to marriage under Article 12.

Exceptional Facts Justified Refusal to Extradite

Doughty Street Chambers: The High Court has overturned the extradition of an Albanian national, wanted to serve a prison sentence for the supply of drugs. The court accepted the submissions of Mary Westcott that to extradite would result in exceptionally severe consequences for the Appellant's wife ('AD') and her unborn child. AD had been abducted from Albania and forced into sexual slavery where she was repeatedly raped. In her evidence, AD described being moved from country-to-country and held in a drug-induced stupor to prevent her escape. Eventually, her captors forgot to readminister the drugs and she was able to flee to the UK where she was granted asylum. AD was so traumatised by her experience, that once in the UK, she was too afraid even to leave her room alone. An expert psychologist, who found AD suffered from severe PTSD, concluded that her relationship with the Appellant was a lifeline of support and security, without which she would be at very high risk of serious self-harm, including suicide. Moreover, given her traffickers' links to Albania, there were no circumstances whatsoever in which AD would consider ever returning to that country, even to visit her husband in prison.

During the appeal case, AD became pregnant which added a further layer of vulnerability and increased her reliance upon her husband. Following full argument, the Court agreed with Mary Westcott's submissions about a) errors made at first instance [58-63] and b) the decisive nature of fresh appeal material [64-68]. District Judge Zani had been wrong to overlook the expert psychologist's clear view about how 'devastating' extradition would be for AD; his reasoning suggested a failure to properly consider the expert's answers during cross examination. AD was mostly estranged from her family, who, upon learning of her being trafficked into sexual slavery, had cut all ties. Her main UK-based family was a cousin. Yet his children had been placed into foster care following his conviction and imprisonment for child cruelty. In any case, the expert evidence was clear that AD's PTSD therapy would be ineffective in an unstable environment, while there were serious concerns for the welfare of her unborn baby.

In allowing the appeal, Julian Knowles J found that whatever family support for AD there may be, 'this can be no substitute for the support that only a loving spouse or partner can bring, and certainly not in the case of someone who is as vulnerable as AD plainly is' [63]. The judge also agreed that whatever the circumstances of conception, the Appellant's unborn child was still 'a primary consideration' who would be 'significantly affected' if AD were a single parent given 'her serious and ongoing mental health difficulties' [68].

Compensation Scheme for Patients Sedated/Abused at Youth Psychiatric Facility

Leigh Day: A compensation scheme has been agreed on behalf of around 90 former patients at a youth psychiatric facility in Hertfordshire who say they were unlawfully sedated and subjected to physical and sexual abuse over more than two and half decades.

Hill End Adolescent Unit was a residential psychiatric treatment facility in St Albans for adolescents under 16. It was operational between 1969 and 1995 and took referrals from Northwest Thames Regional Health Authority which covered Hertfordshire, Bedfordshire and several north and west London Boroughs. Hill End was managed by Dr Peter Bruggen, a child psychiatrist, now deceased, who was known at the time for his unconventional approach to treating behavioural issues in children.

Records from the facility confirm that high doses of the antipsychotic drugs Largactil (chlorpromazine) and chloral hydrate were prescribed routinely and administered frequently to patients. The drugs were sometimes topped up multiple times causing painful and distressing side effects and rendering patients unconscious for hours or days at a time. Records also confirm that sedation was used as a method of control and punishment and to reduce staff anxiety rather than for therapeutic purposes.

In 2017, the law firm Leigh Day was approached by a group of former patients who reported being abused and mistreated at Hill End. Their testimony included allegations of excessive sedation, violent restraint, sexual abuse and physical assault. Leigh Day partner Emma Jones took the matter to Hertfordshire Constabulary which conducted a three-year investigation into the allegations called 'Operation Meadow'. The investigation did not result in any arrests or criminal prosecutions, but the police did find that the use of sedation at Hill End did not meet the standards of the day and that children were repeatedly sedated and given adult doses of the drugs. Following Operation Meadow, Leigh Day launched its own investigation into the allegations of abuse at Hill End. Leigh Day's lawyers heard multiple accounts of sexual assault and rape of patients by staff members while under the effect of sedation and of patients being removed from the dormitories at night to be sexually abused.

Although Hill End was not a secure unit, former patients told Leigh Day that doors and windows usually remained locked and attempts to run away were often punished with sedation and solitary confinement. The patients, some of whom were victims of sexual abuse previously, say they were made to participate in inappropriate touch therapy and humiliating group meetings, with disruptive or unwilling participants often being punished with sedation and exclusion. Most of Leigh Day's clients were already vulnerable at the time of their admission, in many cases subject to care orders or on the child protection register. Some suffered from severe mental health or psychiatric conditions while others were deemed unmanageable or unwanted by their parents or carers.

After putting its clients' claims to lawyers representing Hertfordshire Partnership University NHS Foundation Trust and the Secretary of State for Health and Social Care, Leigh Day has negotiated a compensation scheme for the resolution of claims of sedation and abuse. The Secretary of State for Health and Social Care has also offered an apology for what Leigh Day clients experienced at Hill End. The Hill End Compensation Scheme will compensate those who were unlawfully sedated and/or subject to physical or sexual abuse or mistreatment at the unit between 1969 and 1995. Where a claim is accepted and settled under the scheme there will be a payment of damages and legal costs by the relevant Defendant (either the Trust or the Secretary of State for Health and Social Care) in accordance with the terms of the scheme.

The scheme, which came into effect on 3 July 2024, is open to all former patients of Hill End

Adolescent Unit. Anyone who believes they may be eligible to make a claim under the scheme, should contact Leigh Day's Hill End team at Hillend@leighday.co.uk

Saoirse Kerrigan, a senior solicitor at Leigh Day leading on the negotiation of the scheme said the following: "The descriptions our clients have provided of Hill End Adolescent Unit are of a brutal and dark place. The evidence we have seen shows that for many years children who went through the unit were routinely sedated as a form of punishment and control, often rendering them unconscious and vulnerable to abuse, and leaving them traumatised for many years to come. We hope that the compensation scheme we have been able to agree will make our clients feel that they are finally being heard and give them some sense of accountability and closure. We also hope that many more will be able to benefit from the scheme."

Former patient and Leigh Day client, Laurence Allen said: "The scheme for me, and I'm sure for others, is the start of a journey towards acknowledgement and closure. It is a recognition that what we went through as children happened, that it was wrong and that it has caused unimaginable damage. When we were children, we had no voice. Finally, after all these years, we have been listened to and given a voice. I am hoping this settlement will allow me to accept that what happened, put the past behind me once and for all, and become the best version of myself."

Another former patient and Leigh Day client, Stan Burridge said: "Most of us have been dragging around the burden of hurt caused by Hill End Adolescent Unit for many decades. I hope our experiences can be used as a catalyst for change and that the focus will now be on addressing the failings of a system that allowed a place like Hill End to exist for so long, and on ensuring that the already damaged lives of children in the care system are not further damaged by those responsible for their care. I sincerely hope that this scheme will ease at least some of pain for those of us who have survived and stand as a deserved and lasting tribute to the countless others who aren't here to see this day finally arrive."

QX (Respondent) v Secretary of State for the Home Department (Appellant)

This appeal relates to the statutory regime of Temporary Exclusion Orders introduced in Part 1 of the Counter-Terrorism and Security Act 2015 ("CTSA"). Under s.2(2) CTSA, SSHD has the power to impose TEOs but she can only lawfully do so if, among other things, she "reasonably suspects that the individual is, or has been, involved in terrorism-related activity outside the UK" ("Condition A", contained in s.2(3) CTSA). QX was the subject of a TEO imposed by the SSHD on 26 November 2018. During the currency of the TEO, the SSHD imposed various obligations on QX under the TEO pursuant to her powers under s.9 CTSA. In these proceedings, QX challenges the SSHD's decision (i) to impose and maintain the TEO and (ii) to impose particular obligations under the TEO.

The issue is: 1) Does Article 6(1) ECHR apply to QX's challenge to the Temporary Exclusion Order ("TEO") placed upon him by the SSHD? Did the first instance Judge err in law in holding that QX was not entitled to disclosure of the kind described in AF (No 3) v Secretary of State for the Home Department [2009] UKHL 28; [2012] 2 AC 269 ("AF No. 3") in relation to his challenge to the SSHD's determination of Conditions A and B when imposing the TEO? 2) What is the role of the Court in determining a challenge to the SSHD's decision to impose a TEO? Does the Court of Appeal have the power to make the factual assessment of terrorist-related activity for itself, or is it limited to an administrative review of the decision made by the SSHD?

The Supreme Court unanimously dismisses the Home Secretary's appeal.

This appeal arises out of QX's application for review of the Home Secretary's decisions relating to the imposition of a temporary exclusion order ("TEO") under the CounterTerrorism and Security

Act 2015 ("the 2015 Act"). The purpose of a TEO is to protect the public in the United Kingdom from the risk of terrorism posed by the person who is subject to the order. The TEO controls the timing and manner of the person's return to the United Kingdom. It also enables the Home Secretary to impose suitable obligations on them when they return.

QX is a British citizen who lived in Syria between 2014 and 2018. On 26 November 2018, the Home Secretary applied to the High Court for permission to impose a TEO on QX, alleging that that he had travelled to Syria and was, or had been, aligned with an al-Qaeda aligned group ("the Syria allegation"). The High Court granted permission and the Home Secretary imposed the TEO. QX was at that stage facing deportation from Turkey to the United Kingdom. He returned to the United Kingdom on 9 January 2019, in accordance with the terms of a permit issued by the Home Secretary.

On his return, QX was served with the TEO and notice of the related obligations imposed on him by the Home Secretary. These included obligations to report at a specified police station at a particular time every day ("the reporting obligation") and to attend two two-hour appointments every week ("the appointments obligation"). The TEO expired on 25 November 2020 and the obligations then came to an end. On 24 March 2021, QX was convicted of breaching the reporting obligation because he had failed to report at the specified police station on three occasions. He received a suspended sentence of 42 days' imprisonment. In November 2019, QX applied to the High Court for review of the Home Secretary's decision to impose the reporting and appointments obligations ("the obligations review"). He later also sought review of the Home Secretary's decision to impose the TEO and to maintain it in force ("the imposition review"). A dispute then arose between the parties as to whether QX is entitled, by reason of the right to a fair hearing guaranteed by article 6(1) of the European Convention on Human Rights ("the Convention") and implemented in domestic law by the Human Rights Act 1998, to disclosure of the evidence relied on by the Home Secretary in support of the Syria allegation. That is the issue the Supreme Court is asked to decide in this appeal.

The High Court held that article 6(1) applied to the obligations review, but not to the imposition review. It followed that, in the obligations review, QX was entitled to disclosure of any evidence relating to the Syria allegation which was relied on by the Home Secretary in support of the decision to impose the reporting and appointments obligations, to the extent required by article 6(1) of the Convention. However, he was not entitled to disclosure of any other evidence relating to the Syria allegation which was relied on by the Home Secretary in the imposition review, in support of the decision to impose the TEO. The Court of Appeal allowed QX's appeal on this issue. It held that article 6(1) applied to the imposition review because it would be directly determinative of QX's civil rights. QX was therefore entitled to a level of disclosure in the imposition review which complied with article 6(1). The Home Secretary appeals to the Supreme Court.

Judgment: The Supreme Court unanimously dismisses the Home Secretary's appeal. It holds that the right to a fair hearing guaranteed by article 6(1) of the Convention applies to the imposition review. This means that the Home Secretary must provide QX with article 6(1) compliant disclosure of the evidence relied on in support of the Syria allegation in both the imposition review and the obligations review. Lord Reed gives the judgment, with which the other members of the Court agree.

Reasons for the Judgment: The right to a fair hearing guaranteed by article 6(1) of the Convention is a key human right, both because access to justice is a pillar of the rule of law and because it enables a wide range of other human rights to be enforced. The right to a fair trial is also fundamental under our domestic law, though the appeal is not argued on this basis. Article 6(1) applies to "the determination … of civil rights and obligations or of any criminal charge". In broad terms, proceedings will concern the determination of civil rights and obligations if: (i) there is a legal dispute in which (ii) a civil right or obligation is in issue that (iii) will be directly determined by the outcome of the dispute [53], [60]-[62].

In the present case, it is clear that there is a legal dispute, but the question whether a challenge to the imposition of a TEO concerns the determination of a civil right or obligation is more complex. QX argues that both conditions (ii) and (iii) are met because the imposition review will directly determine both his right of abode in the United Kingdom and his rights under article 8 of the Convention, which guarantees respect for private and family life. However, the Supreme Court rejects QX's arguments based on the right of abode. It finds that this right does not satisfy condition (ii) because it is not a civil right within the meaning of article 6(1). It follows that the right of abode cannot provide a basis for holding that article 6(1) applies to the imposition review [63]-[86].

Turning to the arguments based on article 8, the parties agree that the reporting and appointments obligations were sufficiently intrusive to interfere with QX's article 8 rights. They also agree that those article 8 rights are civil rights for the purposes of article 6(1). Since the obligations review will determine whether the interference with QX's article 8 rights was lawful, it is common ground that article 6(1) applies to the obligations review. QX submits that article 6(1) also applies to the imposition review because the Home Secretary's power to impose the obligations is contingent on the validity of the TEO. This means that, if the imposition review results in the TEO being quashed, the obligations will also be quashed. In response, the Home Secretary argues that, if the TEO is upheld, the obligations will be unaffected pending the outcome of the obligations review. The imposition review is therefore only potentially decisive of QX's civil rights. It is not directly determinative of them, so condition (iii) is not met and article 6(1) does not apply [87]-[91].

The Supreme Court rejects the Home Secretary's argument, which gives too much weight to matters of form [119]. The Court holds that, where there are two distinct sets of proceedings and only one of them is immediately concerned with civil rights, article 6(1) can apply to both sets of proceedings provided they are sufficiently closely linked [92]-[102]. This test is satisfied in QX's case. To begin with, although the decision to impose the TEO and the decision to impose the obligations are made under different provisions of the 2015 Act, they are in reality two component parts of a single mechanism for protecting the public in the United Kingdom from the risk of terrorism posed by the person who is subject to the TEO. Similarly, although the imposition review and the obligations review are brought under different subsections of section 11 of the 2015 Act, they are less distinct than the legislation might suggest for the following reasons [26], [103]-[106].

First, it is common for an obligations review to be accompanied by and to overlap substantively with an imposition review. This happens because a person can only apply for a review once they are in the United Kingdom. It follows that their main motivation for doing so will normally be to terminate the obligations imposed following the TEO because, by that stage, only the obligations will significantly restrict their activities. In the present case, QX's only reason for pursuing the imposition review is to quash the obligations and, therefore, his conviction for breaching them. Secondly, there will often be substantial evidential overlap between the two sets of proceedings. Here, QX disputes the Syria allegation in both the imposition review and the obligations review, meaning that the same evidence is likely to be relevant to both sets of proceedings. Thirdly, it follows from the high level of substantive and evidential overlap that the issues in both reviews will likely be heard together at the same time by the same judge, as they have been in QX's case to date [107]-[111].

Considered as a whole, the imposition review and the obligations review are so closely interrelated that to deal with them separately would significantly weaken the protection given to QX's right to a fair hearing. Article 6(1) must therefore apply to the imposition review. Otherwise,

the Home Secretary would be able to defend the decision to impose the TEO, which provides the legal basis for the obligations, on the basis of evidence that would not be disclosed to QX and which he would not be able to dispute or explain. The court would not thereafter be able to undertake the obligations review with a clean slate. Rather, it would be required to review the Home Secretary's decision to impose and maintain the obligations against the background of the findings made in the imposition review. QX would not, then, be given a fair opportunity to challenge the underlying basis for imposing the obligations [112]-[120].

Deportation and Removal of Foreign National Offenders Latest Update

The House of Commons Library has updated its research briefing on the deportation of foreign national offenders (FNOs). If provides concise, reliable and factual information about the Government's power and duty to deport FNOs, and the numbers that are being deported or removed. From 2010 to 2019, the number of FNOs removed from the UK averaged 5,500 per year. This declined to a low of 2,706 in 2021 during the Coivd-19 pandemic. By 2023, the figure had increased to 3,936. The briefing also considers how FNOs can appeal against a deportation order, with the most common way being a human rights appeal invoking Article 8 of the European Convention of Human Rights (ECHR). As the briefing notes, the new Labour government has said it will set up a returns and enforcement unit with 1,000 additional staff to more effectively remove people with no right to remain in the UK. While it is not clear how much of the new unit's focus will be on deportation of offenders, Yvette Cooper said before the election that the unit would start with "convicted foreign offenders who have been allowed to stay in the community for far too long".

IRR: Calendar of Racism and Resistance (23 July – 6 August 2024)

Anti-Fascism and the Far Right
Racial Violence / HarassmentAsylum / Migration / Borders / Citizenship / Deportations
Policing / Prisons / Criminal Justice System
Counter-Terrorism and National Security
Electoral Politics / Government Policy
Education /Housing / Poverty / Welfare / Health and Social Care
Employment / Exploitation / Industrial Action
Culture / Media / Sport

[**Stop Changing The Subject – The Problem Is Fascism**

These far-right riots and the ensuing racist and Islamophobic violence are unparalleled. Yet the government's response is to focus on 'violent disorder across the ideological spectrum'. This dissimulation cannot go unchallenged.

Policing I Prisons I Criminal Justice System

22 July: For the first time, a Slovakian court in Bratislava finds the police guilty of race discrimination against Romani communities, in a groundbreaking civil case brought against the interior ministry by a victim of police brutality in Vrbnica. The court orders damages of €2,000 to be paid to each of the six plaintiffs and a for public apology to be made on the ministry's website. (European Roma Rights Centre, 22 July 2024) 23 July: The Roma children taken into care on 18 July, sparking unrest in Harehills, Leeds, are returned to members of their extended family. A group of Muslim men tell the Observer of how they stepped in to calm a potential anti-police 'riot'. (Guardian, 23 July 2024; Guardian, 28 July 2024) 23 July: A video of 19-year-old Muhammed Fahir, lying prone and being

kicked and stamped in the head by an armed police officer at Manchester airport prompts worldwide outrage and triggers an investigation by the IOPC and suspension of the officer, who faces a criminal investigation and disciplinary hearing for potential gross misconduct. (Guardian, 25 July 2024)

26 July: After two nights of street protests in Rochdale and Manchester about police violence, Muhammed Fahir's family calls for 'calm in all communities', and emergency meetings are held between 'Muslim community leaders', police and senior local politicians to prevent tensions in Rochdale being inflamed by 'nefarious actors' such as Tommy Robinson and Reform MP Lee Anderson. (Guardian, 26 July 2024; Guardian, 27 July 2024) 26 July: Nine civil liberties and racial justice groups sign an open letter to the new government calling for meaningful protection against police facial recognition technology, which the groups point out is the subject of no law and has never been debated in Parliament. (Statewatch, 26 July 2024)

28 July: A new video shows a violent build-up at Terminal 2 of Manchester airport in the lead up to Muhammed Fahir's arrest, in which a female officer allegedly had her nose broken and for which Fahir and three others face charges of affray and assault. Fahir's lawyer says the media are trying to discredit Fahir and move the focus away from police brutality and misconduct. (Guardian, 28 July 2024; Guardian, 29 July 2024) 28 July: A report by the Centre for Crime and Justice Studies calls for Labour to reform the law on joint enterprise, which causes 'systemic injustice'. (Guardian, 28 July 2024) 28 July: Greater Manchester Police refers itself to the IOPC after suspending eight officers from Bury and Rochdale and placing an officer on restricted duties in a case seemingly related to previous suspensions and the use of offensive language and racially discriminatory behaviour.

29 July: A hearing is set for the appeal of two Met police officers against their dismissal for gross misconduct in October 2023 over their wrongful arrests of Olympian Ricardo dos Santos and his partner Bianca Williams, after £150,000 was raised for them online. (BBC News, 29 July 2024) 30 July: Irish police issue a banning order against Leon Bradley, a recent anti-immigrant election candidate in Ballymun-Finglas, Dublin, ordering him to stay away from the former Crown Paints factory in Coolock, where recent anti-asylum protests took place. (Irish Independent, 30 July 2024) 31 July: The Court of Appeal grants leave to appeal to seven defendants convicted of conspiracy to murder and conspiracy to commit grievous bodily harm on the basis of social media chats following a prosecution relying on stereotypes about Blackness and gang culture ('The Manchester 10').

1 August: Following submissions from the media, principally the Daily Mail, a Liverpool crown court judge rules that is it in the public interest to lift the anonymity of the 17-year-old boy arrested for the Southport murders, citing a risk of 'mischief-makers' spreading 'disinformation in a vacuum'. Merseyside Police & Youth Justice Team oppose the lifting of reporting restrictions. (Guardian, 1 August 2024; X, Sangita Myska, 1 August 2024) 1 August: The prime minister announces a new 'violent disorder capability' gathering intelligence on 'extremist troublemakers' across the 'ideological spectrum'. Sited in the operations centre of the National Police Chiefs Council, it will share intelligence, deploy facial recognition technology more widely and take preventive action. Rioters could be handed criminal behaviour orders. (Guardian, 1 August 2024; Guardian, 1 August 2024; Irish Times, 1 August 2024) 1 August: The first progress report on the Police Race Action Plan, introduced across England and Wales in May 2022, shows that Black people are still more likely to be stopped, searched and arrested or have force used against them. (Police Professional, 1 August 2024) 1 August: Former undercover police officer Trevor Morris tells the Spycops inquiry that smearing people like the Lawrence family is the job of the security services, after which the inquiry's live feed is immediately cut. (Independent, 2 August 2024) 1 August: Security concerns relating to the Paris Olympics have seen the legalisation of algorithmic surveillance, a system that utilises AI to carry out real time behaviour analyses in order to anticipate

suspicious acts. The technology, described as a 'violation of the right to privacy' by Amnesty International, is fuelled by biases against certain populations. (Guardian, 1 August 2024)

3 August: Big Brother Watch warns that the prime minister's plan to expand the use of live facial recognition technology represents the 'effective introduction of a national ID card system based on people's faces', with others warning of its increased use at railway stations and other transport hubs. (Guardian, 2 August 2024). *3 August:* PM announces plan for increased use of Orwellian facial recognition. The alarming pledge to roll out facial recognition in response to recent disorder is a pledge to plunder more police resources on mass surveillance that threatens rather than protects democracy. *3 August:* West Yorkshire police announce that they have made 27 arrests in connection with the disorder in Harehills, Leeds, on 18 July following the forcible removal of five Romani children from their parents by social workers and police officers. (European Roma Rights Centre) *3 August:* The Police Service of Northern Ireland bans 'emblems' after a TSG officer policing an anti-racist rally in Belfast is filmed wearing a patch worn by far-right US militia the Three Percenters. (Irish Times, 6 August)

Kent Processing Centre Migrants Illegally Held and Humiliated

A group of 96 migrants were unlawfully detained at a Kent Processing Centre and subjected to ill-treatment by staff and humiliation, their lawyer has told the High Court. The claims have been brought against the Home Office, which is yet to formally file a defence. Allegations included that migrants held at Manston between September and November 2022 did not have access to menstruation products, had severe bleeding in pregnancy and miscarriage and struggled to breastfeed. A Home Office spokesman said: "It would be inappropriate to comment while there are ongoing legal proceedings." Agata Patyna, representing the migrants, said in written arguments the group included unaccompanied children, women who were pregnant at the time of detention, vulnerable people with mental health conditions and disabilities and victims of trafficking, sexual offences and torture. She said cases involved alleged "breaches of fundamental rights, including the right to liberty and prohibition on inhuman and degrading treatment, 'Hijabs removed'". All 96 people made protection claims in the UK, with 54 recognised as refugees or given humanitarian protection, she said.

No Refunds in Historic Miscarriage of Justice Cases

Victims of historic miscarriages of justice have been told by the government they must have "bed and board" costs for the time they spent in prison deducted from their compensation payments. Last year the Conservative Lord Chancellor, Alex Chalk, scrapped the policy of making such deductions from all future payouts. That followed the high-profile case of Andrew Malkinson who was wrongfully imprisoned for 17 years. The issue of past cases was left undecided. But the government has now said people who have already had payouts cannot claim back money retrospectively. Among those who have been told they will not be refunded money docked from their compensation payments is Paul Blackburn. Aged 15 he was wrongfully convicted of the attempted murder of another boy and he spent 25 years in prison. The Court of Appeal said police had fabricated evidence. When he received compensation in 2011, more than £100,000 was deducted to cover rent and food costs he would have had to pay if he had been a free man.

Last year, after outrage over the case of Mr Malkinson, the policy of clawing back money was stopped. Some involved in historic cases said it should apply to them too. But the government has written to Mr Blackburn's solicitors to say it is an established principle that changes in policy do not apply retrospectively, so he and others cannot claim back money already deducted. Mr Blackburn says that is "morally wrong" and his solicitors may bring a legal challenge

Justice Review Calls For End to Child Imprisonment in England

Child prisons in England and Wales 'Significantly More Violent' than adult jails

Leading children's rights and justice organisations have called for the end to child imprisonment in England. In a review, they argue that child imprisonment is beyond reform and that responsibility for children who have to be deprived of their liberty should be transferred from the Ministry of Justice to the Department for Education. The review is published 20 years after the deaths of 14-year-old Adam Rickwood and 15-year-old Gareth Myatt in children's prisons. Rickwood killed himself after being restrained at Hassockfield secure training centre (STC); Myatt, who weighed less than seven stone (44kg), died after being restrained by three G4S officers at Rainsbrook STC.

MoJ pledges and policies on child imprisonment are benchmarked against the evidence in the review, which has been produced by the Alliance for Youth Justice, Article 39, the Centre for Crime and Justice Studies, Child Rights International Network, Howard League for Penal Reform, Inquest, Just for Kids Law and the National Association for Youth Justice. While the safety of children in prison is a stated MoJ priority, a 2017 report from the chief inspector of prisons said: "There was not a single establishment that we inspected … in which it was safe to hold children and young people." Although the government asserts that solitary confinement is not used for children, in 2023 the UN Committee on the Rights of the Child expressed concern about the "continued use of solitary confinement for children and segregation and isolation in child detention facilities". Restraint should only be used on children as a last resort and pain-inducing techniques reserved for extremely grave incidents, but earlier this year a report from HM Inspectorate of Prisons stated: "There was a high number of pain-inducing restraint techniques and strip-searches under restraint. Many of these incidents were not in accordance with national policy and were not properly authorised."

The new review shows that imprisoned children receive far less than the promised 30 hours a week of "education and purposeful activity". An inspection report into Feltham young offender institution (YOI) last month stated that many children received far less than 15 hours of weekly education. The review also shows that children are being cared for by staff who are untrained and poorly managed, and that despite the pledge to provide support in custody to enable the children to thrive on release, "outcomes for children leaving custody remained, with a few exceptions, poor". Although there have been repeated promises since the 1990s that YOIs and STCs would be transformed, and the last government pledged to permanently close and replace them with secure schools (the first of which is due to receive children this summer), 81% of children in custody were still held in YOIs and the one remaining STC in June. Only 19% were held in secure children's homes, which are childcare establishments run by local authorities focused on providing intensive, expert multidisciplinary care and support to young people and their families. There was an average of around 440 children in custody at any one time during 2023.

The review concludes that children should only be deprived of their liberty when this is the only means of avoiding serious and immediate harm to the child or others, and – when this does happen – ministerial and civil service responsibility should rest with the DfE alongside other areas of child welfare. Carolyne Willow, the founder director of children's rights charity Article 39, said: "The cumulative evidence that imprisonment causes children serious harm, and cannot be made safe, is incontestable. Ministers can and must change this never-ending cycle of child harm once and for all." Deborah Coles, the executive director of the human rights charity Inquest, said: "Twenty years on from the deaths of Adam Rickwood and Gareth Myatt, child prisons have proved themselves incapable of reform and remain inherently dangerous and harmful. We need to close child prisons and invest in community support and services that protect and nurture children."