Baroness Stern to ask Her Majesty's Government what are the official criteria for the completion of exception incident reports relating to children held in Young Offender Institutions, Secure Training Centres and Secure Children's Homes.

To ask Her Majesty's Government how many exception incident reports have been submitted to Ministers in each of the last seven years by (a) young offender institutions, (b) secure training centres, and (c) secure children's homes.[HL12959]

Lord McNally: The Youth Justice Board (YJB) has collated exception reports for secure training centres (STC) since 2006. An exception report is submitted by an STC if any warning signs or serious injuries are detected during or following the use of physical control in care (PCC). Exception reports are used to gather evidence and enable a central review and identify ways to improve the safety and efficacy of restraint methods. Responsibility for the management of exception reports transferred to National Offender Management Service (NOMS) in August 2010 as the training provider for PCC.

The list of warning signs are as follows: struggling to breathe;complaint unable to breathe;nausea;vomiting;swelling to face or neck;abnormal redness to face;blood spots on face or neck;limp or unresponsive;change in degree of agitation; respiratory arrest; andcardiac arrest.The category of "serious injury requiring hospital treatment" includes: serious cut;fractures;concussion,loss of consciousness, and damage to internal organs.

These exception reports are passed to a review panel (which include medical experts) who consider every case and are able to report to Ministers on any significant issues.

Exception reporting is not currently required in young offender institutions (YOIs) holding young people. However, there are a number of safeguards in place including a requirement that healthcare staff visit all young people within 24 hours of them being subject to use of force to assess any injuries, which are recorded on a body map with an accompanying narrative. Monthly statistics on injuries and the number of injuries that occur are collected from this data so that trends can be identified and analysed with appropriate action taken forward. In under-18 YOIs, in addition to the above, all serious injuries are reported to the Youth Justice Board.

In secure children's homes (SCHs), there is no exception reporting process as outlined above. As the independent regulator, Ofsted must be notified by children's homes (including SCHs) whenever a serious event has taken place. Ofsted assess these notifications and forward them to the Department for Education (DfE) if they raise safeguarding or policy issues. This arrangement would allow DfE Ministers to be briefed about any potentially high profile significant incidents-eg involving serious injury to children.

The number of exception reports that have been submitted by STCs since 2006

2011 (to date) 29 - 2010/61 - 2009/33 - 2008/82 - 2007/58 - 2006/22

Hostages: Alex Silva,Terry Smith, Hyrone Hart, Glen Cameron,Warren Slaney, Melvyn 'Adie' McLellan, Lyndon Coles, Robert Bradley, Sam Hallam, John Twomey, Thomas G. Bourke, David E. Ferguson, Lee Mockble, Talha Ahsan, George Romero Coleman, Gary Critchley, Neil Hurley, Jaslyn Ricardo Smith, James Dowsett, Kevan Thakrar, Jordan Towers, Peter Hakala, Patrick Docherty, Brendan Dixon, Paul Bush, Frank Wilkinson, Alex Black, Nicholas Rose, Kevin Nunn, Peter Carine, Simon Hall, Paul Higginson, Thomas Petch, Vincent and Sean Bradish, John Allen, Frank Wilkinson, Stephen A Young, 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 & Keith Mawhinney, Peter Hannigan, Ihsan Ulhaque, Richard Roy Allan, Sam Cole, Carl Kenute Gowe, Eddie Hampton, Tony Hyland, Timothy Caines, Ray Gilbert, Ishtiaq Ahmed.

Miscarriages of JusticeUK (MOJUK)
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MOJUK: Newsletter 'Inside Out' No 345 (13/11/2011)

Is it justice to lock up Babar Ahmad so long without trial?

Babar Ahmad has spent seven years behind bars fighting a US extradition warrant. Innocent or not, he deserves a fair hearing here

Mehdi Hasan, guardian.co.uk, Sunday 6th November 2011

On 2 December 2003, in the middle of the night, anti-terror officers from the Metropolitan police's notorious territorial support group burst into the home of a computer programmer named Babar Ahmad in Tooting, south London. Ahmad was punched, kicked and strangled. He arrived at Paddington police station with 73 injuries to his body. Yet, just six days later, he was released without charge (and subsequently offered £60,000 compensation by the Met, which conceded that he had been the victim of a "serious, gratuitous and prolonged attack").

However, Ahmad's "ordeal" – to quote Judge Geoffrey Rivlin QC at a recent hearing – wasn't over. It was only the beginning of his Orwellian nightmare. Nine months later, on 5 August 2004, Ahmad was rearrested by officers from Scotland Yard acting on a US extradition warrant. The Americans accused him of running a website to raise funds for Islamist terrorists and providing material support to the Taliban, the Chechen mujahideen and al-Qaida.

For seven long years, Ahmad has languished behind bars, fighting against his extradition – under the Labour government's "lopsided" (Nick Clegg) and "rotten" (Shami Chakrabarti) Extradition Act 2003, which allows for British citizens to be removed from the UK without the need for a court to hear if there is any actual evidence against them – and appealing to the European court of human rights to block the move. He is believed to be the longest detained British citizen – held without conviction or even charge as a "category A", high-security prisoner for 88 months.

But might this be about to change? In June, a report by parliament's joint committee on human rights concluded that a "most appropriate forum" safeguard should be implemented, which would allow a British judge "to refuse extradition where the alleged offence took place wholly or largely in the UK", and called for a "requirement for the requesting country to show a prima facie case".

Then, this month, the "Put Babar Ahmad on trial in the UK" e-petition, secured its 100,000th signature, thereby crossing the mark required to trigger a parliamentary debate. Backed by a handful of celebrities, including comedian Mark Thomas and boxer Amir Khan, and a few dozen British mosques, the Ahmad e-petition is one of only five so far to have attracted more than 100,000 signatures (but little press coverage).

So will MPs, especially those Conservatives who have been so exercised by our perceived loss of sovereignty to the European Union, now use this opportunity to denounce the very real loss of sovereignty to the US on the issue of extradition and champion the cause of a British citizen on the floor of the Commons? I am told that the Tory leader of the Commons, Sir George Young, is planning to advise members of the backbench business committee, which schedules debates on e-petitions, to ignore the Ahmad one on the grounds that it is "sub judice". In law, sub judice – Latin for "under judgment" – refers to a case currently under trial. Yet the whole point of this particular e-petition is to highlight the fact that Ahmad has been denied and deprived of a trial in his own country, and that he has been in legal limbo for more than seven years.

The whole episode smells of a miscarriage of justice. If Ahmad is a terrorist, or linked

to terrorists, why has our own Crown Prosecution Service repeatedly refused to try him? Why did the British authorities choose to free him without charge after his first arrest in December 2003, despite having a panoply of anti-terror laws at their disposal? Could it be that the "evidence" against him is nonexistent? For instance, the US justice department extradition request in 2004 drew attention to a faded, four-page tourist brochure of the Empire State Building found in Ahmad's home by TSG officers. In fact, the brochure was picked up by Ahmad's father on a visit to New York in … 1973. (That didn't, however, prevent unnamed "federal officials" from using it to brief the New York Daily News in October 2004 that "Al-Qaida thugs ... may have considered taking down the Empire State Building".)

Let me be clear: I don't know Ahmad. I've never met him or spoken to him. Friends of his tell me he is a "good guy" and that he "isn't a [religious] headbanger". They remind me that his friend and cousin Sarah Ali was one of the 67 Britons killed by al-Qaida in the 9/11 attacks. His local MP, the shadow justice secretary, Sadiq Khan, has said he is "known locally in Tooting as a caring and helpful member of our community".

Ahmad may or may not be guilty of terror-related offences. But that isn't the point. What matters is that the only tried and trusted method we have of establishing guilt is a trial in open court – not unsourced and unproven US allegations behind the scenes.

Our former prime minister Gordon Brown once infamously called for "British jobs for British workers". It is time for his successor, David Cameron – who attacked the one-sided Extradition Act in opposition, and whose coalition agreement with the Liberal Democrats calls for an "evenhanded" extradition process – to demand British trials for British citizens. Ahmad, like every other citizen, has a right to see the evidence against him; he has a right to a fair trial, in his own country, in front of a jury of his peers. Anything else would be a travesty of British justice.

Messages of support/Solidarity to:

Babar Ahmad: A9385AG, HMP Long Lartin, Evesham, WR11 8TZ

Kevan Thakrar - Not Guilty on all Five Counts

The jury at Newcastle Crown court, gave their verdict on, Wednesday 9th November after a trail lasting three weeks and three days.They took only eight hours to find Kevan not guilty of two accounts of attempted murder and three counts of section 18 wounding with intent. David Thompson the governor of HMP Frankland at the time of the incident, (now retired from the prison service) said on hearing the verdict said he felt, "let down, dismayed and humiliated". The judge Mr Justice Simon thanked the jury at the outcome of the case.

Kevan Thakrar's Statement to the Press following his Acquittal 09/11/11

I will be forever thankful to every member of the jury, as well as those that supported and believed in me. I owe a great amount to my barrister , Joe Stone of Doughty Street Chambers, and my solicitor Marie Bourke of Bark and Co and her team. Also great appreciation goes out to all those who appeared on my behalf and spoke the truth, I understand how difficult this must have been for them.

I am deeply sorry for the part I have played in the horror that has been my life inside prison. I hope urgent scrutiny of the appalling treatment and abuse which mounts to nothing short of torture, within the English prison system, is taken.

My sympathies go out to all victims of Her Majesties Prison Service, especially those wrongly imprisoned like myself.

Kevan Thakrar: A4907AE, HMP Woodhill, Milton Keynes, MK4 4DA

together, with support from the case of Various Claimants v The Catholic Child Welfare Society v The Institute of the Brothers of Christian Schools [2010] EWCA Civ 1106 (paragraph 37) when he said “it is a judgment on the synthesis of the two which is required.”

The judge considered recent cases where vicarious liability was at issue, including Canadian and South African cases that decided similar issues. The Canadian cases were crucial. The case of “most significance” is MAGA v Trustees of the Birmingham Archdiocese [2010] EWCA Civ 256, which we have posted on previously.

The case involved similar allegations of child abuse at a Catholic church. However, in that case as in most others cited by the judge, it was the second part of the test – whether the acts could be said to be sufficiently connected with employment – that was at issue. It was accepted there that the priest was employed by the diocese.

In this case the diocese has maintained that Father Baldwin was not an employee, that the relationship was not even ‘akin to employment’ and so the Church shouldn’t be held liable for his acts.

The judge disagreed. He said that there was a ‘close connection’ within the meaning of both limbs of the test:

At stage two the close connection is between the tortious act and the purpose and nature of the employment / appointment. At stage one the closeness of connection is between “the tortfeasor and the person against whom liability is sought (paragraph 34).

The judge said that employment clearly meets this standard for the first stage. But there were “crucial features” to be considered for non-employment cases: who appoints the person alleged to have done the wrong (the ‘tortfeasor’); what is the purpose of their appointment; if they have authority to be a representative; if they are provided with equipment, premises and training (paragraph 35).

The judge found that in this case each of these features were in favour of potential liability. In deciding this, Mr Justice MacDuff explicitly said that many of the reasons for passing the first limb – a sufficiently close relationship – would be used in deciding the second limb – acts closely connected with the employment / appointment. The judgment ends by reinforcing that the two different aspects of finding vicarious liability “are not to be determined in isolation” (paragraph 40).

Comment: This is clearly a significant decision. It clarifies that the Church may be liable for negligent actions of its priesthood. There are likely to be dozens of cases lining up to follow the decision.

Additionally, though the judgment ends up with a thoughtful and reasonable approach to a difficult area of law, much of the reasoning considers cases that argued a different point of law or were in different jurisdictions. This does not mean the end result is wrong, but it certainly leaves room for argument.

This will not be the last word on the case as permission has been granted for appeal to the Court of Appeal. Given the potentially enormous financial consequences of the decision being left to stand, this case may well end up in the Supreme Court.

Young Offenders: Restraint House of Lords / 9 Nov 2011 : Column WA72

Baroness Stern to ask Her Majesty's Government whether the Ministry of Justice, the Youth Justice Board and the Restraint Advisory Board have sought or obtained legal advice on the lawfulness of pain compliant restraint techniques in the under-18 secure estate.

Lord McNally: The requirements of the Human Rights Act 1998 and the UN Convention on Rights of the Child together with all other requirements of international and domestic law are taken into account by the Government in determining their policy and practice on the use of restraint in the under-18 secure estate. This includes the use of pain-inducing restraint techniques.

population but learning had yet to be taken forward in a comprehensive way. A resettlement unit had been set up on F wing but this was very new and it was too early to establish with any clarity its actual role and purpose. Use of temporary release to support resettlement initiatives was disappointingly low. In general, sentence planning arrangements worked quite well but the quality of supervision for prisoners in scope for formal offender management varied greatly. Much sentence management work would have benefited from a clearer focus, better quality assurance and improved coordination. Work in support of the resettlement pathways was generally adequate but provision to address offending behaviour was limited.

Overall, this is a reasonably good report on an establishment that has sustained good outcomes for prisoners over a number of years. The overarching assessment, however, does not diminish some quite cogent criticisms. The prison is safe but many related indicators are concerning. Prisoners are generally treated decently but access to showers and clothing arrangements need improvement. The quality of regime was generally good, but take up of activity places and time out of cell were inadequate. Resettlement work was adequate, but required better coordination and strategic focus. Nick Hardwick, HM Chief Inspector of Prisons

Bishop can be vicariously liable for priest's sex abuse, rules High Court

Adam Wagner, UK Human Rights Blog, 9th November 2011

JGE v The English Province of Our Lady of Charity & Anor [2011] EWHC 2871 (QB) (08/11/11

A Roman Catholic diocese can be held liable for the negligent acts of a priest it has appointed, the High Court has ruled. The ruling is a preliminary issue in the Claimant's proceedings against alleged sexual abuse and rape at a children's home. The trial of these allegations are to follow.

The Claimant, a 47-year-old woman, is suing the Portsmouth Roman Catholic diocese for the injury she alleges she suffered from abuse and rape while living at a children's home run by the diocese in the early 1970s. The priest involved, Father Baldwin, is now dead. The High Court was asked to determine, before the trial of the allegation, whether the diocese – that is, the district under supervision of the Bishop – could be held liable for Father Baldwin's acts; whether the principle of vicarious liability applies to a diocesan bishop for the acts of a priest he has appointed.

The principle of vicarious liability has been in flux in recent years. As the judge noted, the principle applied initially solely to an employment setting: it was a way of holding employers responsible for the negligent acts of employees performed in the course of employment. This gives the victim of harm some monetary redress (as many employees may not have the money to pay damages) and it further encourages employers to take care in appointing staff.

In recent years, the principle has been gradually extended beyond the employment scenario, but up to now the courts have been reluctant to extend it to the non-employment relationship between a priest and their Bishop.

Close enough connection: The issue at this preliminary hearing was whether the relationship between the priest and the diocese was such that the diocese should be liable in principle for the acts of the priests. With the priest deceased, only a positive finding could allow the claim to continue.

The judge, Mr Justice MacDuff, set out the two parts of the test to establish relationship of vicarious liability: stage one is whether the relationship between the person committing the wrong (tortfeasor) and the potential vicariously liable party (normally an employer) is such that liability may be established; stage two whether the act was done 'in the course of employment' so that it was fair and just to impose liability (the so-called 'close connection test').

However, after laying out these two limbs, Mr Justice MacDuff then considered them

Four bomb plotters confirmed as high escape risks BBC News, 4th November 2011

Four jailed bomb plotters have been confirmed as "high escape risks" by the High Court. Two judges rejected claims that the Prison Service had acted unlawfully by placing them in that category. Bilal Abdulla, Tanvir Hussain, Assad Sarwar and Ramzi Mohamed were convicted at three different trials of conspiracy to detonate bombs or blow up aircraft.

The court heard that they were being subjected to a "particularly restrictive" regime. This included hourly checks which disrupted their sleep and regular changes of cells, their barrister Hugh Southey QC said. Mr Southey said the four also faced more intrusive and regular searches than other prisoners and they underwent "stressful" monitoring of social visits and phone calls despite what he contended was a lack of "valid intelligence".

But the court rejected the application for a judicial review of a decision in March 2010. The four are all serving life sentences with minimum jail terms of more than 30 years before they can be considered for parole. Their Category A status means the men are thought to pose a continuing danger to the public and their escape from prison should be made impossible.

NHS doctor Abdulla, 31, was sentenced in December 2008 to a minimum of 32 years in jail after being convicted of plotting to set off car bombs in London and at Glasgow airport. He is serving his sentence at Frankland prison in County Durham. Hussain, 30, is serving a minimum of 32 years at Full Sutton prison near York after being found guilty in September 2009 of conspiracy to murder by planning to destroy seven transatlantic aircraft with home-made liquid bombs, disguised as drinks. Sarwar, 31, was given a 36-year minimum term after being convicted of being involved in the same plot and is being held at Wakefield prison, West Yorkshire. Mohamed, 30, is serving a minimum of 40 years at Whitemoor prison in Cambridgeshire after being found guilty with three others of attempting to explode homemade bombs on the London transport network on 21 July 2005.

Justice For Ross Macpherson

Victim of a compulsive liar and a vindictive prison service

On Monday is" September 2010 at approximately 15.45 hours in high security HMP Woodhill , Milton Keynes, on House Unit 2B, prisoner Ross Macpherson was attacked in his cell by prisoner Jonathon Watson and two other unidentified prisoners.

Ross, who had only been on the unit for 7 days, acting in fear of his own safety, reached for a home-made weapon he had made due to threats he'd received by the group of prisoners in the days leading up to the incident (which had included threats to stab him if he didn't hand over tobacco).

During the melee (which had spilled onto the landing) Jonathon Watson received a cut to the left of his head, a number of other prisoners joined in the attack on Ross at which point prison staff intervened causing the group to disperse apart from Watson who was restrained by staff after making repeated attempts to get at Ross and threatening to kill him.

Two other prisoners who had been witnessed by staff assault Ross but who were not involved in the initial assault have never been charged for any offence. Watson was charged under prison rules for fighting which was later dismissed, he was never charged by the prison or police for threats to kill, despite staff witnessing Ross being assaulted and threatened.

They all claim Ross was the aggressor even though they also claim not to have seen how the incident started and can't remember the names of the other prisoners involved. Conveniently for the CPS and somewhat surprisingly for a High Security Prison there is no CCTV footage of the incident. Subsequently Ross has 'been charged by the police on the

7th April 2011 for the wounding with intent of Jonathon Watson on the 13th September 2010 and is due to stand trial at Aylesbury Crown Court on the 5th December 2011.

22 year old Macpherson, who was 10 days off the young offenders unit and at the time serving a five year sentence for wounding with intent after stabbing a man in Worthing, West Sussex in 2006, will claim self defence.

30 year old Watson, who is serving a six year Indeterminate Sentence for Public Protection (IPP) for 8 arsons and 2 arsons with intent to endanger life, one of which was featured on BBC's Crimewatch in which he barricaded the external doors to a family home in Northampton and proceeded to set fire to the home whilst the occupants were inside, including young children. He claimed to police that he tried to rescue the family. He wasn't believed and convicted of arson with intent to endanger life.

Ross believes the reason there's no CCTV footage and the reason why staff put him down as the aggressor is due to his history with HMP Woodhill and his support for Kevin Thakrar and the complaints/articles he's written over their treatment.

Ross Macpherson: TF4230, HMP Loudham Grange, Loudham, NG14 7DA

Inmate dies after prison cell fire

A 51-year-old prisoner has died after a blaze in his cell, the Prison Service said on Friday 4th November. John Cann, who was awaiting sentence for criminal damage, died in hospital after being pulled from his cell at the Cat B HMP Holme House, following a fire on Wednesday 2nd October. It is understood he was not on suicide watch. A Prison Service spokesman said: "HMP Holme House prisoner John Cann was found unresponsive after a fire in his cell at approximately 4.40pm on Wednesday November 2. "Staff removed him from the cell and attempted resuscitation, and he was taken to hospital by ambulance. He was pronounced dead at approximately 2.35pm on Thursday November 3. "As with all deaths in custody, the Prisons and Probation Ombudsman will conduct an investigation."

Young Offender Institutions

Greg Mulholland (Leeds North West) (LD): What steps he is taking to ensure the provision of adequate legal advice in young offender institutions.

Crispin Blunt: The training requirement to carry out the Prison Service order requiring legal services officers to be available in every prison, including young offender institutions, could not be delivered. In future, governors will be required to give prisoners information on how to access legal advice as part of their induction into custody. The Prison Service order will be promulgated before the end of the year. Juvenile offender institutions have discrete advocacy services available for prisoners under 18 years old.

Greg Mulholland: I thank the Minister for that answer. Last year a study of 25 young offender institutions and 300 requests for legal help from young people showed that 80% of those struggling to access legal advice were from a black and ethnic minority background, and 9% were female, which is disproportionate when compared with the general population. What plan do the Government have to tackle that?

Mr Blunt: I am grateful to my hon. Friend for bringing that to my attention. We will examine the new arrangements for induction into custody and the advocacy services available to make sure that any suggested discrimination that is happening will not be allowed to recur.

Keith Vaz (Leicester East) (Lab): Will the Minister agree to meet me and other interested groups to discuss the issue? The only way to combat the high level of discrimination is to be able to discuss it with those concerned. House of Commons / 8 Nov 2011 : Column 145

Located near Barnard Castle, County Durham, it provides just over 500 places for convicted young men originating, in the main, from the north east. At our last full inspection in 2006, we noted that Deerbolt provided a safe and constructive environment with improvements evident in the provision of purposeful activity. In 2007, the prison suffered a serious disturbance and since then staff have worked hard to get the prison back on track. At this inspection the evidence suggested that overall outcomes for prisoners continued to be reasonably good, but we identified a number of areas requiring significant further development. It was also a concern that prisoners' perceptions of their experience at Deerbolt were often more negative than we had previously identified.

Deerbolt remained a fundamentally safe institution and overall prisoners in our survey suggested to us that they felt safe. New arrivals were generally received into the establishment well, and there was a broad commitment to safer custody initiatives from across the prison. The quality of care for those at risk of self-harm was good and the prison was active in addressing issues of bullying and violence. The amount of violence prevalent, however, was not insignificant and neither was use of force, although many incidents were comparatively minor. Use of special accommodation, batons, removal to segregation and formal disciplinary procedures were also significant, and in most of these important areas, governance arrangements required improvement.

The quality and cleanliness of the residential units, as well as the general environment, was an impressive feature of the prison. Relationships between staff and prisoners were constructive and respectful and supported by a reasonably effective personal officer scheme. However, in our survey, prisoners' perceptions of staff were worse than at our last inspection. Access to basic amenities was often too restricted, with weak arrangements for the provision of prison kit and inefficient procedures to enable access to stored property. Prisoners were not assured of a daily shower. In our survey, only 37% of prisoners indicated that they could shower daily, against the comparator of 68%. This poor access was in the main caused by limited time out of cell, a lack of domestic time in daily routines and unnecessarily restrictive arrangements to manage evening association.

The prison had a reasonably good approach to diversity with work in place across most strands, although ongoing work would benefit from an up-to-date assessment of need as well as a clearer identification of priorities. Our survey of prisoners from a black and minority ethnic background found reasonably positive perceptions, and there was reasonable individual support for the few foreign national prisoners. Work to address disability issues was good. Prisoners were generally appreciative of the food on offer and the cleanliness of serveries was noteworthy. Arrangements for the management of prisoner complaints worked well but it was concerning that prisoners reported more limited confidence in application and complaints procedures compared with our last survey. Health care provision across a range of services was generally very good.

Learning and skills provision was well managed and the curriculum had been sensibly amended on the basis of local labour market need. There were about 100 vocational training places and 114 education places, but only sufficient activity for about 80% of the population. Take up of education places was inadequate and activity allocation arrangements required further improvements. At the time of our inspection, 79 young men were recorded as unemployed and we found a quarter of the population locked in their cell during the working

Quality of provision and the achievements for those who engaged in education or vocational training was, however, reasonably good, and most work activity was also linked to qualifications. Provision of accredited PE was outstanding and most prisoners could access recreational PE.

There had been analyses to better understand the resettlement needs of Deerbolt's

HM Inspectorate of Constabulary. MAPPA enables criminal justice agencies and other organisations to share information and work together in a structured way to improve public protection.

Offenders subject to MAPPA are often reluctant to change, difficult to accommodate and sometimes dangerous. As a result, they present enormous challenges to those agencies tasked with ensuring that the risk of harm they present to the public is effectively managed. The inspection was carried out in six towns and cities.

The report found that: - what previously would have been seen as the exception in terms of inter-agency cooperation is now the norm across England and Wales and there were numerous examples of information exchange between agencies;

- here was effective control and restriction of offenders; and
- there was a commendable commitment to work with difficult and intractable offenders.

However, inspectors would like to see:

- greater clarity in identifying the lead agency in each case;
- greater sophistication in risk management planning;
- improved recording of actions; and
- for public protection activity to move from being centred on the exchange of information about an offender to the active management of that offender through the multi-agency framework.

Chief Inspector of Probation Liz Calderbank and Her Majesty's Inspector of Constabulary Dru Sharpling said: "Whilst good progress has been made, there is still some way to go before we can confidently say that all reasonable action has been taken to manage the risk to the public presented by every offender subject to Multi-Agency Public Protection Arrangements. When the arrangements worked, it was because all the agencies had put the pieces of information together, assessed the level of risk and managed the offender collaboratively. The recommendations in this report are intended to help make this outcome more likely in every case."

MAPPA was introduced in 2001 under the Criminal Justice and Court Service Act 2000 and subsequently strengthened by the Criminal Justice Act 2003, as the statutory arrangements for managing sexual and violent offenders. It provided a mechanism whereby the agencies involved could better discharge their responsibilities and protect the public in a coordinated way. It is not a statutory body in itself and each agency retains its full responsibilities and obligations.

Report on an announced inspection of HMYOI Deerbolt, 20–24 June 2011 by HMCIP. Report compiled September 2011, published Tuesday 8th November 2011

Concerns: - prisoners' perceptions of their experience at Deerbolt were often more negative than we had previously identified - a significant level of recorded violence and a high use of force, often for minor incidents; - the use of special accommodation, batons, removal to segregation and formal disciplinary procedures was also significant and governance arrangements needed improving in some cases; - access to basic amenities was often too restricted, with weak arrangements for the provision of prison kit and poor access to showers;

- take-up of education places was inadequate and activity allocation arrangements required further improvements: inspectors found a quarter of the population locked in their cell during the working part of the day; and
- much sentence management work would have benefited from a clearer focus and provision to address offending behaviour was limited.

Introduction form the report: Deerbolt Young Offender Institution has an established history of managing young adult male prisoners dating back to when it first opened in the early 1970s.

Indeterminate Sentences

Steve McCabe (Birmingham, Selly Oak) (Lab): What steps his Department is taking in respect of prisoners serving indeterminate sentences who have completed their minimum tariff.

The Lord Chancellor and Secretary of State for Justice (Mr Kenneth Clarke): Tariff-expired indeterminate sentence prisoners will be released from custody only if the independent Parole Board is satisfied that they may be safely managed in the community. We are seeking to identify further improvements to the progression of those prisoners through effective sentence planning, which will require the engagement of the offenders themselves.

Steve McCabe: As I understand it, under the Lord Chancellor's proposals a judge will be required to hand down a mandatory life sentence the second time someone is convicted of using a nuclear weapon. Allowing for all the Lord Chancellor's wisdom and guile, would it not be an awful lot smarter to hold someone indefinitely the first time they committed that offence?

Mr Clarke: Certainly, the Government take a serious view of the use of a nuclear weapon; I hope that not too much of that breaks out in the hon. Gentleman's constituency. We discussed these proposals in the House only last week, and we achieved the House's approval for them. There is an indeterminate sentence called a life sentence, which is the best and most established form of indeterminate sentence. Having got rid of the failed indeterminate sentences for public protection, we expect that quite a lot of people will get life sentences who hitherto would have been given the rather unsatisfactory IPPs.

Jeremy Corbyn (Islington North) (Lab): Will the Secretary of State consider the problem of pre-release of prisoners where insufficient preparation is made for training or, particularly, for somewhere to live or some kind of community support? That means, in turn, that they either stay longer in prison or are released into the community, where they are inadequately supervised and end up back in a whole regime of crime.

Mr Clarke: We are looking at that problem very seriously, and we hope to produce a substantial improvement on the present situation. In particular, I am working with colleagues in the Department for Work and Pensions to try to ensure that offenders leaving prison can have instant access to the work programmes that we are developing for other people seeking work. Enabling people to get back into employment is one of the best ways of improving the chances that they will not offend again. House of Commons / 8 Nov 2011 : Column 153

Social Services have both statutory/common law duty to protect children from abuse

Rosalind English, UK Human Rights Blog, 8th November 2011

ABB & Ors v Milton Keynes Council [2011] EWHC 2745 (QB)- read judgment

This case concerned the entitlement to compensation for the years of abuse the claimants, three brothers a sister, the youngest, who had suffered at the hands of their father. The older claimants had both suffered regular abuse from an early age until late teens. The third claimant escaped the prolonged abuse suffered by his brothers. The fourth claimant, who was conceived after the defendant social services became aware of the situation, nevertheless endured abuse for five or six years.

The father's abuse of the older boys came to light in 1992 when the first three claimants were placed on the child protection register and the father moved out of the family home. However charges against him were subsequently dropped and he returned home. The names were removed from the register but the abuse continued.

The facts were not disputed but the principal issue between the parties was that of

the quality of social work practice adopted by the defendants' employees and whether this fell below a reasonable standard.

Statutory and common law negligence: The statutory basis of the defendants' duties is set out in Section 47 of the Children Act 1989. Put simply, that section requires any local authority, which suspects that a child in its area is at risk, should take steps to safeguard the child's welfare. However this duty only arises if it is within the authority's power and it is "reasonably practicable" for them to do so. The section does not, in itself, provide a civil cause of action for those who assert that the duty has not been complied with. There is in addition to the statutory duty a common law – or judge-made – basis for the duty of care in the event of suspected child abuse is to be found in D and others v East Berkshire Community Health [2003] EWCA Civ 1151.

Standard of care: It's not enough to say that a duty of care exists and leave it at that. You have to look at the profession or class of workers to which the defendants belong; in this case the duty of social workers duty, in common with other professionals, is to exercise reasonable skill and care. The test to be applied to their efforts was laid down in a clinical negligence case, Bolam v Friern Hospital Management Committee, which held that an individual will not be negligent if they act in accordance with practice accepted at the time as proper, by a responsible body of professional opinion, even though another member of the same profession might adopt a different practice.

In this case Hampton HH found that there was a failure by the social workers to investigate the history of this family thoroughly and to a standard that would be regarded as a reasonable by a responsible body of social work opinion. The father's abuse of the claimants had been allowed to continue over a number of years was due to their failure sufficiently to investigate the father's past, the mother's ability or lack of ability to protect the claimants and the effect upon the claimants themselves.

Entitlement to damages: The judge observed that the claimants should not be denied compensation for sexual abuse simply because they did not have any diagnosed psychiatric illness (they had already received a payout from the Criminal Injuries Compensation Baord). The claimants are entitled to be compensated for the pain and suffering caused by the abuse itself, as well as its consequences. All the Claimants in the present case suffered personal difficulties as a result of the abuse they have experienced.

Quantum: In these cases it is difficult to assess what special losses had been incurred as a result of the abuse itself as opposed to the general vicissitudes of living in a dysfunctional family, an alcoholic and abusive father, and a frequently absent mother. The figures he arrived at sought to reflect the personality problems and consequent disadvantage in the labour market caused to the claimants as a result of the defendant's failure to take the necessary steps to end the abuse.

IPCC to probe Scotland Yard after London 'gang' shooting

Paul Peachey, Independent, 05/11/11

Scotland Yard will be investigated after officers sent to protect mourners at the funeral of a teenager with suspected gang links failed to prevent the shooting of one of his friends when he left the cemetery. Officers went to a church service and the wake for Joel Morgan, 17, in Brixton, south London, on Thursday but did not attend the burial ceremony in a neighbouring borough despite warnings from the dead teenager's mother of the potential for violence.

Police said yesterday that the suspected killer and his accomplice left the cemetery among at least 50 mourners before shooting Azezur Khan, 21, several times at close range in Forest Hill Road, East Dulwich, south London. A 17-year-old boy was shot in the ankle during the attack.

Readers may well recall the infamous case of the former American football star O.J. Simpson in the 1990s. Mr Simpson was acquitted of murder as the prosecution could not prove the case beyond reasonable doubt, but Mr Simpson was found liable in the subsequent civil claim for wrongful death. Lord Brown at [115] comments, philosophically: 'contrary to widespread popular misconception, acquittal does not prove the defendant innocent'.

While 'not guilty' does not entail 'innocent' in common parlance, the ECtHR has held that it is a violation of 6(2) to cast doubt in subsequent proceedings on the validity of a prior acquittal in criminal proceedings. Judges in the civil courts must choose their words carefully. The same goes for a public authority who suggests that a person found 'not guilty' may in fact have committed the offence. As mentioned above, however, this does not preclude a finding of civil responsibility arising from the same facts.

One common thread running through the Strasbourg case law was the requirement of a procedural connection between the criminal trial and the later civil proceedings. Only then would 6(2) apply to the civil claims. In the instant case, Lord Phillips found no link between the Portuguese criminal proceedings and the English civil proceedings and noted that the latter claim encompassed a far broader range of evidence. Lords Clarke and Dyson also referred to the absence of a link between the two claims, with Lord Dyson calling the civil recovery proceedings 'free standing'. Lord Phillips summarised his position at [44]:

. . . . If confiscation proceedings do not involve a criminal charge, but are subject to the civil standard of proof, I see no reason in principle why confiscation should not be based on evidence that satisfied the civil standard

and this despite the fact that the evidence was not sufficient to secure a conviction on the criminal standard. In this case, there was ample evidence to show that the appellants acquired the property through unlawful activity.

The costs order: Section 51 of the Senior Courts Act 1981 governs the court's jurisdiction to award costs in civil proceedings. Lord Clarke reduced the issues into two questions: 1. are the interim receiver's expenses 'costs of and incidental to the civil recovery proceedings?' (s51(1)) and 2. if so, is there any law preventing the court from making a costs order in favour of the respondent?

Lord Clarke held that the receiver's investigatory work was necessary to bring the civil recovery claim. Indeed, it was an 'essential part' of it. Thus, the costs were clearly 'of and incidental' to the claim. With regards to the second question,

Lord Clarke could not find any statutory rule or provision preventing the court from making a costs order in this matter. He drew an analogy with the recovery of costs for expert reports in ordinary litigation: 'In my opinion reasonable sums paid by SOCA to an interim receiver, at least in respect of his investigation should in principle be regarded in the same way' [87]. The recovery of the costs are still subject to CPR r44.4(1), namely that costs will not be allowed if 'unreasonably incurred' or unreasonable in amount.

The Supreme Court dismissed the appeal.

Multi-Agency Public Protection Arrangements a success but further progress can be made, say inspectors

Multi-Agency Public Protection Arrangements (MAPPA) to reduce the risk of harm to the public presented by offenders in the community have been successful but need to evolve, said independent inspectors, as they published the report of a joint inspection of MAPPA.

The report, Putting the pieces together, reflects the findings of HM Inspectorate of Probation and

of criminal activity, nonetheless sought to recover these fruits from David Gale and Teresa ('the appellants') by recovering property worth about £2 million. SOCA obtained an order to do so under Part 5 of the Proceeds of Crime Act 2002 (POCA).

To obtain the order, SOCA had to prove, on the balance of probabilities, that the appellants got hold of the property by unlawful conduct (section 241 POCA). The appellants went to the Court of Appeal, arguing that the application of the civil standard to this issue was a breach of their right to a fair trial under article 6 ECHR, and that the appropriate standard should be the criminal one, namely 'beyond reasonable doubt'. The Court of Appeal did not agree, and up to the Supreme Court it went.

When SOCA sought to obtain the order under Part 5, it appointed someone to investigate the issue, an interim receiver. The investigation proved monumental in scale, taking over 3 years and resulting in a report of over 400 pages, although the investigation was not assisted by the uncooperative behaviour of Mr Gale. The costs of the investigation were about £1 million, and the Court of Appeal reversed the High Court's initial refusal to make the order for costs. The disgruntled appellants raised this as a subsidiary issue in this case.

The law: The report of the Interim Receiver was damning, pointing to evidence of unlawful conduct and suspicious financial dealings. This led the judge at first instance to conclude that the appellants were engaged in unlawful conduct, such as money laundering, drug trafficking, and tax evasion. The judge was also unimpressed by the appellants' evidence, stating that David Gale and Teresa had lied repeatedly to the court.

The appellants pointed to Article 6(2) ECHR: 'Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law'. This clause, argued the appellants' barrister, entitled David Gale and Teresa to be presumed innocent and, if this presumption were to be rebutted, it would have to be so to the criminal standard of proof, not the civil one.

Lord Phillips turned to the Strasbourg jurisprudence to elucidate the meaning of 'charged with a criminal offence' in the context of Article 6(2) ECHR. Article 6(2) would not even be engaged if the proceedings were not held to be criminal in nature.

The case of Engel v The Netherlands (no. 1) (1976) 1 EHRR 647 put forward three factors when deciding whether or not a person is charged with a criminal offence:

. . . . The classification of the proceedings under national law (i.e., whether they are classed as civil or criminal proceedings);

. . . . The 'essential' nature of the proceedings;

. . . . The penalty that the applicant risks incurring.

Under UK law, the recovery proceedings are clearly civil (s240(1)(a) POCA). The essential nature of the proceedings is also civil, as the respondent is not charged with a criminal offence and not at risk of a criminal conviction. The purpose of the Part 5 proceedings is not to punish, as in criminal proceedings, but merely to 'ensure that property derived from criminal conduct is taken out of circulation' [123]. Yet, even if classified as 'civil' under the Engel criteria, a line of Strasbourg case law shows that 6(2) can still apply if the links between the criminal and civil proceedings are sufficiently close (more on this below).

Lord Phillips continued his trawl through the Strasbourg jurisprudence. He notes at [20] that the European Court of Human Rights (ECtHR) has recognised that a victim can legitimately issue civil proceedings for compensation following the Defendant's acquittal in criminal proceedings. The much higher threshold of the criminal standard of proof means that a person can be found not guilty at the criminal court but 'guilty' of the same offence at the civil court.

Joel Morgan's mother, Carlene Brooks, said that she had asked police to be present at the funeral for her son, who died in a car crash last month. Ms Brooks said she heard several shots as her son's coffin was being lowered into the ground. "To hear another boy has died is devastating," she said. "I can't believe another family now has to go through what I'm going through."

Scotland Yard referred the matter to its internal standards body, which decided to refer the case to the Independent Police Complaints Commission for further scrutiny. The investigation will try to uncover whether senior officers made the decision that officers should not covertly attend the burial, or if officers had failed to follow the cortege to the cemetery. "That will form part of the investigation. It's unclear what was decided," said a Scotland Yard spokesman.

Andrew Jones, 30, who lived a couple of doors from the shooting, saw the cortege as it passed on the way to Camberwell Old Cemetery. "I was on the phone when it went past and I mentioned to my friend that it was quite upsetting seeing the tributes, the first saying ' grandson', and then 'son'. "I went upstairs to my third floor flat when I later heard what I thought was fireworks. But it was six shots in very quick succession. When I came downstairs police were all over the place. The rumour was that undercover officers were monitoring it because the response was so fast."

Mourners carrying flowers who had just left the burial service watched as paramedics tried to revive Mr Khan outside a lettings agency, witnesses said. One bullet drilled through the shop's front window and into a wall above a desk. Police confirmed that staff were working there at the time.

Senior officers said a feud between gangs was being considered as a motive for the attack but added that there was no intelligence to suggest that Mr Khan – a friend of Mr Morgan - was himself involved in gang violence. Two men and two 17-year-old girls were arrested but later released on bail after Mr Khan's killing. Police intelligence suggested Mr Morgan "may have had some contact with gang members", said Det Supt Gordon Allison, of Operation Trident, which investigates gun-related murders in the black community.

Scotland Yard sent extra police to south London yesterday in case of reprisal attacks following the shooting. Previous attacks linked to feuds between gangs have been followed by tit-for-tat killings. Commander David Zinzan, responsible for south-east London policing, said the extra officers had been brought in following the shooting to "make it clear to anyone even considering being involved in violence that it will not be tolerated". He added: "Our priority is to bring to justice those responsible for this shooting and prevent further incidents from occurring over the coming days."The attack came in the week the Home Office announced a crackdown on gangs, prompted by summer riots - though research has countered ministerial claims that gangs were behind much of that violence.

Christopher Alder: Racism claims over morgue body mix up

The body of former soldier Christopher Alder who died in police custody ten years ago has been discovered in a mortuary after his family learned that the body they buried more than a decade ago was that of a 77-year-old woman.

Mark Hughes, Crime Correspondent 6th November 2011

Christopher Alder, 37, choked to death while handcuffed and lying on the floor of a police station in Hull, in the early hours of April 1 1998. At the time of his death allegations of racism were made after it was claimed police officers had made monkey noises as he lay on the floor.

Now a new investigation has been launched after Mr Alder's family were told that the body they buried was actually that of a 77-year-old Nigerian woman. Grace Kamara, who died of natural causes in 1999, was buried instead of Mr Alder, whose body was discovered in Hull mortuary on Friday morning.

Mr Alder's sister Janet complained of racism at the time of her brother's death, prompting an investigation by the Independent Police Complaints Commission (IPCC). She says the mix up over his body is evidence of further racism. Miss Alder told the Daily Telegraph: "They have just buried any old black person. From the word go, Christopher's death has been linked to the colour of his skin, from his treatment at the police station to the way that he was handled in the morgue. They have obviously just said 'We have got to bury a black person, that must be him'. How else could they make that mistake if it wasn't by looking at the colour of his skin?"

Despite dying more than 10 years ago, Mrs Kamara was only able to be buried on Friday, for family reasons. When morticians went to remove her body from the mortuary, they discovered Mr Alder's body in its place.

Hull City Council chief executive Nicola Yates said an investigation had been launched: She added: "On Friday 4 November 2011 I was made aware of a situation relating to the body of a man, who was in his late thirties, located in the city mortuary. "The body lay in place of where Grace Kamara had been recorded as resting. At the moment I cannot explain this. I am appalled and distraught at what I have learned and in conjunction with Hull and East Yorkshire Hospitals NHS Trust we will be undertaking a thorough review of the circumstances surrounding the events."

Ten years ago, a coroner's jury returned a verdict of unlawful killing after a seven-week-long inquest. In 2002, five Humberside Police officers went on trial accused of manslaughter and misconduct in public office but they were cleared of all charges on the orders of the judge at Teesside Crown Court. Four years later, an Independent Police Complaints Commission report said four of the officers present in the custody suite when the black former paratrooper died were guilty of the "most serious neglect of duty". Humberside Police Chief Constable Tim Hollis apologised to the Alder family after the IPCC report "for our failure to treat Christopher with sufficient compassion and to the desired standard that night".

The IPCC said the officers had been guilty of "unwitting racism". Its chairman, Nick Hardwick, said: "I do believe the fact he was black stacked the odds more heavily against him." But the Police Federation said the officers involved "strongly disputed" the report's conclusions.

Ms Alder claims the CPS racially discriminated against her during her extensive dealings with the organisation in the period after her brother's death and including the trial of the officers. In March this year Christopher's sister Janet lost a claim that the Crown Prosecution Service racially discriminated against her during her dealings with them after the death of her brother.

Despite this, Judge Penelope Belcher, sitting at Leeds County Court, said she shared concerns that racism played a part in Mr Alder's death.

She said in her judgment: "I understand and indeed share Miss Alder's concerns as to the possibility that racial discrimination played some part in the actions of the police officers on the night that Christopher Alder died.

Snooping councils, phone hacking, CCTV… time to reform surveillance laws?

Adam Wagner, UK Human Rights Blog, 4th November 2011

JUSTICE, a law reform and human rights organisation, has today published a significant and wide-ranging critique of state surveillance powers contained in the Regulation of Investigatory Powers Act (RIPA). The report - Freedom from Suspicion – Surveillance Reform for a Digital Age – is by Eric Metcalfe, former director of JUSTICE and recently returned to practise as a barrister. It reveals some pretty stunning statistics: for example, in total, there have been close to three million decisions taken by public bodies under RIPA in the last decade.

The report is highly critical of the legislation, which it argues is "neither forward-looking nor human rights compliant". Its "poor drafting has allowed councils to snoop, phone hacking to flourish, privileged conversations to be illegally recorded, and CCTV to spread." Metcalf recommends, unsurprisingly, "root-and-branch" reform.

The history of RIPA is interesting from a human rights perspective, as it was passed in direct response to a European Court of Human Rights ruling as well as the Human Rights Act itself. For more on the history of the act, as well as its central role in the phone hacking scandal, see my post: Was it human rights wot won the phone hacking scandal?

The Executive Summary and a Scribd version of the report are reproduced below:

• In 2000, Parliament enacted RIPA. At the time, it was acclaimed by government ministers as human rights-compliant, forward-looking legislation.

• Since RIPA came into force in 2000, there have been:

– more than 20,000 warrants for the interception of phone calls, emails, and Internet use;

– at least 2.7 million requests for communications data, including phone bills and location data;

– 4,000 authorisations for intrusive surveillance, planting bugs in someone's house or car;

– at least 30,000 authorisations for directed surveillance, eg, following someone's movements in public, or watching their house.

• In total, there have been close to three million decisions taken by public bodies under RIPA in the last decade.

• This does not even begin to include the number of warrants and authorisations on behalf of MI5, MI6 and GCHQ, which have never been made public.

• Of the decisions we do know about, fewer than 5,000 (0.16&) were approved by a judge.

• The main complaints body under RIPA, the Investigatory Powers Tribunal, has dealt with only 1,100 cases in the last decade. • In the last decade, it has upheld only ten complaints.

• Surveillance is a necessary activity in the fight against serious crime. It is a vital part of our national security. It has saved countless lives and helped convict hundreds of thousands of criminals.

• Unnecessary/excessive surveillance, however, destroys our privacy and blights our freedoms.

• RIPA has not only failed to check a great deal of plainly excessive surveillance by public bodies over the last decade but, in many cases, inadvertently encouraged it. Its poor drafting has allowed councils to snoop, phone hacking to flourish, privileged conversations to be illegally recorded, and CCTV to spread. It is also badly out of date.

• RIPA is neither forward-looking nor human rights compliant. Piecemeal amendments are no longer enough for what is already a piecemeal Act. Root-and-branch reform of the law on surveillance is needed to provide freedom from unreasonable suspicion, and put in place truly effective safeguards against the abuse of what are necessary powers.

Reclaiming the fruits of crime will not be made harder, rules Supreme Court

Daniel Soko, UK Human Righs Blog, November 4, 2011

Gale & Anor v Serious Organised Crime Agency [2011] UKSC 49

The Supreme Court has ruled that applying the civil standard of proof ('balance of probabilities') to confiscation proceedings does not breach Article 6 of the European Convention on Human Rights (right to fair trial).

David Gale and his ex-wife Teresa were accused of drug trafficking, money laundering and tax evasion in the UK, Spain, Portugal and elsewhere. They were never convicted. The Serious Organised Crime Agency (SOCA), whose job it is to identify and recover the fruits