Jeremy Bamber, Peter Moore and Douglas Vinter, in February this year, lodged a challenge with The European Court of Human Rights, against their 'whole life sentences'. They claim that the whole life tariff, breaches articles three, five and seven of the European Convention on Human Rights and condemns them to die in prison and that this in itself, is 'Inhuman and Degrading Treatment' and their sentences should be subject to regular review. ECtHR have deliberated the claim and will hand down their decision on the joint appeals on January 17th 2012.

Officers sacked for beating up innocent man

Police constables used 'excessive force' on group of three men after car chase in north London. Two Metropolitan police officers have been sacked for gross misconduct after an innocent man was dragged from his car, beaten and threatened with police dogs after a car chase into a housing estate. The constables, aged 40 and 37, were dismissed for using "excessive force" after a group of police rounded on three men inside the car after they failed to catch the driver who fled. Two other constables were given final written warnings. Disciplinary hearings for two other officers, including a policewoman, will be heard at a later date. The incident started in the early hours of July 17, 2009, when four men and the driver they knew only as Steve went to try to buy alcohol at an off-licence. The driver drove off as soon as he saw a police patrol car, which tried to stop them and then followed them a short distance to an estate in Finchley, north London. The driver jumped out and ran away.

One of the men, Ali Shahbazi, was handcuffed and slammed head-first into a fence so hard that his blood was left on it, according to a statement from his solicitor. He said he was kicked in the head, stamped on and abused by officers and left with a suspected broken nose and a swollen and marked face. Paul Peachey, the Indpendent, Friday 23 December 2011

Charlene Downes murder detective forced to resign

Charlene Downes, 14, disappeared in 2003 and has not been seen since. Mr. Iyad Albattikhi was arrested for her alleged murder in 2007, following covert surveillance. A jury at Preston Crown Court was discharged in 2007 after failing to reach a verdict and a subsequent retrial collapsed after the Crown Prosecution Service conceded it had "grave doubts" about the reliability of the covert surveillance.

A Lancashire detective has been forced to resign after an investigation into the handling of a murder case. A disciplinary hearing found Det Sgt Jan Beasant guilty of misconduct following a review of the investigation into the murder of Blackpool teenager Charlene Downes. Two other officers who retired prior to the Independent Police Complaints Commission (IPCC) investigation could not be considered for disciplinary sanctions.

Hostages: Norman Grant, Ricardo Morrison, 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 Mawhinney, Peter Hannigan, Ihsan Ulhaque, Richard Roy Allan, Sam Cole, Carl Kenute Gowe, Eddie Hampton, Tony Hyland, Ray Gilbert, Ishtiaq Ahmed.

Miscarriages of JusticeUK (MOJUK)
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MOJUK: Newsletter ‘Inside Out’ No 352 (01/01/2012)

No human Right to an hour's Minimum in the Open Air for “Lifer”

Matthew Flinn, UK Human Rights Blog, 29th December 2011

Malcolm v Secretary of State for Justice [2011] EWCA Civ 1538 - Read Judgment

The Court of Appeal has decided that a failure to provide a life sentence prisoner with a minimum of one hour in the open air each day did not constitute a breach of his human rights under Article 8 of the European Convention of Human Rights (“ECHR”).

Between 26 Apri/2 October 2007,/159 days, Mr Leslie Malcolm was detained in the Segregation Unit at HMP Frankland. During that time, he was provided with an average of 30 minutes in the open air each day. However, paragraph 2(ii) of Prison Service Order 4275 (“PSO 42753), which contained policy guidance for prison officers operating under the Prison Rules 1999, stated that he should have had the opportunity to have at least one hour each day in the open air.

When Mr Malcolm first brought his claim, he complained that not only had his human rights under the ECHR been infringed, but also that the prison officers at HMP Frankland were liable for misfeasance in a public office. Both aspects of the claim were rejected by Sweeney J at first instance, and it was only the human rights question that was considered on appeal.

The judgment of Richards LJ, in leading a unanimous Court of Appeal, is an elucidating one insofar as it breaks down and draws attention to the various questions which need to be addressed when a human rights claim under Article 8 is brought. Firstly, it needs to be determined whether the act being complained of impacted upon an interest which falls within the scope of the right. This might be called the “scope question”.

In this case, Mr Malcolm pointed out that Article 8 is a very broad right (a point which has often been made in posts on this blog), and that it encompasses expansive and rather amorphous concepts such as a person's “physical and psychological integrity” (Pretty v United Kingdom (2002) 35 EHRR 1 at [66]) and “personal autonomy“ (R (Wood) v Commissioner of Police of the Metropolis [2010] 1 WLR 123 at [21]-[22]). He said that the ability to exercise was integral to his personal autonomy and well-being, particularly in the context of life in the segregation unit of a prison. Richards LJ accepted at [26] that the claim fell within the scope of Article 8: . . . .Without attempting elaborate discussion of the point, I am prepared to accept in general terms that enjoyment of exercise in the open air is capable in principle of constituting an interest protected by article 8 and that it may have a particular significance in the context of prison life and all the more so in the context of solitary confinement in a segregation unit.

The next question to be considered was whether or not there had been an interference with the interest that had been determined to fall within the scope of Article 8(1) - in this case the interest in exercising in the open air. This might be called the “engagement question”. As a matter of general principle, the engagement of a right under the ECHR requires that an interference crosses a minimum threshold of seriousness (see Costello-Roberts v United Kingdom (1995) 19 EHRR 112 at [36]).

On this point, the Secretary of State clearly had more arguments to deploy. Whilst Mr Malcolm sought to emphasise that he was upset by being repeatedly denied the full hour of exercise he had applied for, the Secretary of State pointed out that:

1.Mr Malcolm had been able to exercise on the days that he had made an application,

at least for 30 minutes and frequently longer.

2.Article 8 did not have such specific content so as to provide that a prisoner was entitled to 60 minutes rather than 30 minutes, and it could not be given that content by means of a policy decision taken by the Secretary of State, which was subject to change from time to time. (In this respect, it is notable that following the first instance decision, PSO 4275 was replaced by Prison Service Instruction 10/2011, which provides that prisoners are afforded a minimum of 30 minutes in the open air daily, subject to weather conditions and the need to maintain good order and discipline.)

3.Sweeney J at first instance found that Mr Malcolm had suffered no adverse physical or psychological effects as a result of the way in which his outdoor activities had been limited.

4.Mr Malcolm had made a conscious choice to remain on the Segregation Unit at HMP Frankland by refusing to move to any other prison wing. This was part of his plan to have himself transferred to another prison - a venture in which he was ultimately successful. Had Mr Malcolm agreed to go on normal location at the prison, there would have been no difficulty in ensuring that he received at least an hour in the open air each day. In this way, any interference was of his own making (this argument had been deployed and accepted in McFeeley v United Kingdom (1980) 3 EHRR 161).

These points were endorsed by the Court of Appeal, and its resolution of the engagement question in this way effectively disposed of the appeal. Nevertheless, Richards LJ went on to consider what the position under Article 8(2) would have been if there had been a sufficiently serious interference with Mr Malcolm's rights under Article 8(1). Article 8(2) contains two broad requirements that a prima facie interference with a Convention right must comply with in order not to be unlawful:

1. The interference must be in accordance with the law. 2. It must be necessary in the pursuit of a legitimate aim such as national security, or the prevention of disorder or crime.

The requirement that an interference be in “accordance with the law” is often dealt with swiftly in human rights claims, because the public authority in question can normally point to a statutory provision which provides it with the power to take the action it has taken e.g. the power contained in section 3(5) of the Immigration Act 1971 to deport non-citizens on the ground that their presence in the UK is not conducive to the public good. In this case, however, the matter was examined in greater detail, with the Court of Appeal taking a more rigorous approach to what this requirement actually means in the context of domestic principles of public law.

Richards LJ explained that PSO 4275 was a published policy to guide the exercise of prison officers' discretion under rule 30 of the Prison Rules 1999. That policy was not complied with. On that basis, the Secretary of state had acted unlawfully in failing to follow his own policy, unless he could provide good reasons from departing from it. This followed from the recent Supreme Court decision in R (Lumba) v Secretary of State for the Home Department [2011] 2 WLR 671, in which it was decided in the immigration context that a failure to review an immigration detainee's detention in accordance with policy rendered that detention unlawful.

He went on to say at [32]: . . .When determining whether an interference is “in accordance with the law”, even the Strasbourg court looks at domestic law (see, for example, Eriksson v Sweden (1989) 12 EHRR 183 at [62]-[63]); a fortiori the national court must look at domestic law when deciding whether the requirement is satisfied; and I can see no possible basis for contending that the principles of public law do not form part of domestic law for this purpose.

The Secretary of State argued that there were sound operational reasons for departing from the policy, such as the limited exercise space, the need for proper supervision and the number of prisoners held on the Segregation Unit at particular times. However, Richards

alleged miscarriages of justice is carrying out its own investigation into the case. Nine officers have been told they are under investigation. The issuing of notices of investigation into an officer's conduct is not meant to imply any wrongdoing. The allegations being examined by the investigation include conspiracy to pervert the course of justice and misconduct in public office. The senior officers under investigation include Adrian Lee, chief constable of Northamptonshire, who is also the lead on ethics and policing for the Association of Chief Police Officers. Suzette Davenport, deputy chief constable of Northamptonshire, is also under investigation. The inquiry is also examining the conduct of Jane Sawyers, assistant chief constable with the Staffordshire force, and Marcus Beale, assistant chief constable with the West Midlands force.

The Guardian has learned that the investigation into the officers began after material uncovered by the CCRC inquiry was referred to the IPCC, which is a police watchdog. The investigation is being carried out by the chief constable of Derbyshire, Mick Creedon, on behalf of the IPCC, which retains control and direction of the inquiry.

The four police chiefs have not been suspended from duty or arrested. It is rare, if not unprecedented, for the IPCC to investigate four officers of the most senior ranks over the same incident. The IPCC refused to elaborate on the detail of the investigation, but said: "We can confirm the Independent Police Complaints Commission is managing an investigation into allegations against a number of former and serving Staffordshire police officers. "The investigation is being carried out by the chief constable of Derbyshire, Mick Creedon, under the direction and control of the IPCC. His investigation began following a request from the Criminal Cases Review Commission who are conducting an inquiry on behalf of the court of appeal in relation to an ongoing appeal. Subsequently the chief constable's investigation raised matters which were referred to the IPCC. As matters are sub judice pending the appeal case we cannot provide further information at present."

Northamptonshire police authority said: "We can confirm that allegations have been made in relation to chief constable Adrian Lee and deputy chief constable Suzette Davenport, who both served in Staffordshire police. The authority has considered information provided by the IPCC and remains completely confident in both the chief constable and deputy chief constable." Adrian Lee became the head of the Northamptonshire force in 2009, which he joined from Staffordshire. There he was assistant chief constable, being promoted to deputy, before becoming Staffordshire's temporary chief constable.

Staffordshire police authority said: "We can confirm that a serving chief officer has been served with a notice advising them that their conduct is subject to investigation. Such notices are not judgmental in any way and we need to let the ongoing investigation run its course and establish the facts. "As a result, the police authority has taken the decision not to suspend the officer. The force and authority are continuing to fully cooperate with the IPCC and its investigation team."

West Midlands police said: "The matter has been considered by the chief constable and West Midlands police authority and the officer concerned has not been suspended. As always, West Midlands police will co-operate fully with the IPCC investigation."

Lee is the second chief constable currently under investigation by the IPCC. In a wholly separate case, the police watchdog is examining fraud and corruption allegations against Sean Price, who heads the Cleveland force. He was arrested and bailed, and has been suspended from duty. He denies any wrongdoing. The notices issued to the police chiefs, known as regulation 14 notices, inform them that their conduct is under investigation.

Justice for Jeremy Bamber

ply decline custom from designated persons – even after their designation has ended. The impact on business thus compounds the problems for targeted individuals and their families.

The Report affirms Anderson's emerging philosophy on counter-terrorism reform: that the courts and Parliament complement rather than challenge each other in holding the executive to account. This has been the case in recent years with court judgments prompting legislative reform and with the House of Lords in particular amending draft legislation to improve rule of law compliance. Anderson does not, in this Report, recommend amendments to the asset freezing legislation.

Nonetheless the reform process continues. The European Court of Justice today reaffirmed its strong stance on the rule of law in EU asset freezing. Next year will see judgments from both the European Court of Human Rights and the European Court of Justice on UN asset freezing. If the courts continue their defence of the rule of law there may be further legislation in response.

Overall, Anderson's Report paints a picture of a system that is highly intrusive but not extensively used – an 'ancillary' part of UK counter-terrorism. However, it consumes an inordinate amount of time for those involved in the administration of justice, in Government, in the courts, the academy and the legal profession. An optimistic view is that recent reforms are steps in the right direction. The pessimistic outlook is that the tools of oppression are merely being refined.

What remains unclear is whether the system in general or any individual designations do anything at all to make us safer. That question should be at the heart of the debate on the system's future. The Independent Reviewer's Report at least ensures that the debate is that much more enlightened than it was before. Dr Cian Murphy is Lecturer in Law at King's College London.

Police chiefs investigated for misconduct over gangland killing case

Criminal inquiry - managed and controlled by IPCC - under way in relation to murder investigation by Staffordshire police *Vikram Dodd, guardian.co.uk, Thursday 22 December 2011*

Four police chiefs, including the national lead on ethics in policing, have been placed under criminal investigation over allegations of misconduct, the Guardian has learned. Formal notices of investigation were served on the senior officers, who are in positions of command at three different forces, earlier this month. The allegations relate to a murder investigation by Staffordshire police, where all four had previously served, into a gangland killing. In 2008 five men received sentences totalling 135 years after Kevin Nunes was murdered. He was taken to a country lane where he was shot dead in a drugs feud.

The men convicted of the murder have lodged a challenge to their convictions with the court of appeal, which in turn asked the Criminal Cases Review Commission to investigate issues of disclosure in the original trial. The CCRC is the body responsible for investigating alleged miscarriages of justice. The CCRC said: "We confirm that the Criminal Cases Review Commission is investigating matters on behalf of the court of appeal in relation to an ongoing appeal involving Joof and others." Two of the five men convicted of the murder were Adam Joof and Antonio Christie. Levi Walker was alleged by the crown to have taken Nunes, 20, to face the firing squad in 2002 and was convicted of murder, as were Owen Crooks and Michael Osbourne. Nunes, a talented footballer who had been on the books of Tottenham Hotspur, was shot five times. The convictions were gained after one man who was present, Simeon Taylor, gave evidence for the crown.

The investigation into the police chiefs, managed and controlled by the Independent Police Complaints Commission (IPCC), concerns allegations that material and evidence that could have affected the trial were withheld from the prosecution and court. The official body that examines

LJ rejected this because he said that there was no evidence that any consideration had been given to whether or not the exercise facilities could be altered or extended so that the policy could be complied with. Without such consideration having taken place, those reasons took on the appearance of unverifiable excuses.

The court then dealt much more swiftly with the second question, which normally commands much more of the court's time as it engages with the difficult but increasingly ubiquitous doctrine of proportionality. Mr Malcolm argued that because there was no good reason for departing from the one hour policy contained in PSO 4275, it could not be demonstrated that the interference was a proportionate means of achieving any legitimate purpose. Richards LJ merely observed that had the operational reasons relied upon by the Secretary of State been successfully made out, he would have considered them as indicating that the interference was proportionate.

Although this was a private law claim for redress, the observations of the Court of Appeal on the requirements of Article 8(2) are a timely reminder of the different ways that human rights law and the other public law principles of judicial review interact. Most straightforwardly, a human rights infringement is a well-recognised independent ground of judicial review.

However, other principles of judicial review may also come into play when determining whether or not a human rights infringement has taken place. This is because in order for a public authority to act "in accordance with the law", (or in a way that is "prescribed by law") it must act both within the confines of its statutory powers, and in accordance with other public law principles such as the requirement to provide reasons for decisions, the requirement to consult, and the requirement to act in accordance with policy unless there is a good reason for departing from it.

As noted above, similar questions were considered in Lumba, and also in the more recent case of R (Kambadzi) v Secretary of State for the Home Department [2011] 1 WLR 1299, which was the subject of a previous post. In those cases, the Supreme Court was considering whether or not a failure to comply with various requirements set out in policy documents could render the detention of foreign national prisoners unlawful. If the detention was unlawful, then it would naturally be in breach of Article 5 of the ECHR. The Supreme Court emphasised that in order for the detention to be unlawful, the error being complained of had to be sufficiently closely linked to the detention so as to have some bearing on it.

This principle was not explicitly cited by the Court of Appeal in Mr Malcolm's case although it would arguably be sensible for it to apply to cases involving other human rights. On this reasoning, in order for a particular act to constitute a rights infringement on the ground that it is not in accordance with the law, the public law error which is being cited must be sufficiently closely linked with that act in order to make it unlawful.

The facts of Mr Malcolm's case came within this limiting principle: he complained that his rights were interfered with because he received less than 60 minutes of outdoor exercise each day, and this occurred because the policy, which provided for that length of time, had been improperly departed from.

However, the conclusion of the Court of Appeal on the "in accordance with the law" criterion might have been different if Mr Malcolm had complained that the decision to give him only an average of 30 minutes each day was unlawful because e.g. the policy provided for such decisions to be taken by the Prison Governor, when in fact it had been taken by a Prison Officer. Such an error would arguably have had no bearing on the substance of the decision as to his allotted exercise time. Were such a limitation not to apply, then the ramifications of this decision could be very broad indeed.

Slopping out Regime in Prison not in Breach of Human Rights, Judge Rules

Rosalind English, UK Human Rights Blog, 20th December 2011

Desmond Grant and Roger Charles Gleaves v Ministry of Justice High Court (Queen's Bench Division) 19 December 2011.

The High Court (Mr Justice Hickinbottom) dismissed claims by two prisoners that their rights under Articles 3 and 8 of the European Convention on Human Rights were violated by the prison conditions in which they were detained.

The following is based on the High Court's summary of the case.

About 360 long term prisoners, who were at HMP Albany between 2004 and 2011, brought claims that their right not to be subjected to inhuman or degrading treatment or punishment under Article 3 and their right to respect for private and life under Article 8 had been violated by the regime under which they were detained in that prison, which included the use of a bucket for toilet purposes when they were in a locked cell and the later emptying of the bucket at a sluice ("slopping out"). Five lead claims were selected, of which two reached trial.

The claimants were accommodated in single occupancy cells. Although each made other complaints, the focus of their claims was upon the prison sanitation regime. All of the HMP Albany claims were made following publicity of the decision in Napier v The Scottish Ministers in April 2004, in which the Court of Session in Scotland held that the conditions at HMP Barlinnie (which included regular slopping out) breached the pursuer's Article 3 rights.

The claimants at HMP Albany spent 7_11 hours per day out of their cells - and there was no complaint about the facilities then. However, when they were locked in for periods during the day (routinely for lunch, staff changeovers and roll calls, and sometimes when they were not in work or education or when there were staff shortage), they said that prison officers would not manually open their cell door to enable them to use the toilet facilities, if required.

Their main complaint, however, concerned the night time sanitation regime. There were 24 prisoners on each self_contained landing. Each cell door had a computer_controlled electronic locking/unlocking system which operated at night, and which enabled one prisoner per landing to be released at any one time, to use the toilets on each landing. Each prisoner was able to obtain three exits per night, of nine minutes each. The electronic system was, at times, very unreliable. When the duty governor considered there was a risk of it not working, he was able to call in additional officers for that night who would patrol the landings in turn, and manually open cell doors to allow prisoners to go to the toilet. Prisoners also had the ability to contact duty officers by intercom to ask them manually to release them to use the facilities, but they did not always do so.

Although extent was in issue, it was common ground that, day or night, there would be times when a prisoner was locked in his cell and wished to use a toilet, and his door would not be opened promptly enough for him to use the proper landing facilities. For this eventuality, each cell was provided with a bucket and lid, washing bowl, soap, water and towel. The claimants claimed that the bucket had to be used routinely. The defendant said that there was a need to use the bucket only in exceptional circumstances. *The arguments before the court*

The claimants' case was that any requirement for a prisoner to urinate or defecate into a bucket is, in itself, degrading treatment and a violation of Article 3; but, alternatively, such a requirement was degrading, and a breach of their right to respect for private life under Article 8, when considered in the context of all of the conditions at the prison, particularly the allegedly inadequate space, light and ventilation in each cell. One claimant contended that it was particularly degrading for Muslim prisoners, because of their need ritually to wash before prayers.

would appreciate it if the Minister could write to me following the search for the report to confirm whether it has been found and what has happened to it. If it is decided that it would not be appropriate, despite what the Court of Appeal said, to give that document to Mr Cleeland, will an independent expert be able to scrutinise it on behalf of Mr Cleeland and form an opinion about its contents?

Lynne Featherstone: I am more than happy to write to my hon. Friend following our search; I do not know about Hertfordshire police's search. We will do whatever we can. I cannot go ahead of that, before we understand whether we have it, but I am happy to write to my hon. Friend in that regard. I congratulate him again on securing this debate and on bringing such an important issue to Parliament.

Terrorist asset-freezing: an intrusion too far

The system is a sledgehammer to crack a nut – and there is cause to doubt both the necessity and the effectiveness of that approach . . . . A cruel intrusions into the daily lives of often-vulnerable families Dr Cian Murphy, 1 Crown Office Row, 21st December 2011

One could be forgiven, amidst the furore over the European Court of Human Rights' Al-Khawaja judgment last Thursday 15/12/11, for missing the first report of the Independent Reviewer of Terrorism Legislation on the operation of the Terrorist Asset-Freezing etc Act 2010. The Report runs to over 100 pages and is the most comprehensive account of UK terrorist asset freezing in print.

It is the third report of the current Independent Reviewer, David Anderson Q.C., since he took up the post in February. Asset freezing is something of a speciality of his, as he has appeared in litigation in both EU and UK courts on the matter. It is therefore unsurprising that the Report exhibits the same attention to detail that made the Anderson's previous two efforts essential reading.

Although press coverage of the Report has concentrated on some of the catchier phrases ('financial house arrest') there is much in the Report that merits closer consideration. It teases out the listing and delisting processes to consider the operation of the law with remarkable precision. Indeed, the Report's greatest success is lifting the shroud of secrecy on the system's operation. This is achieved in two ways.

First, the Report clearly sets out the legal regimes involved (for there are several) and indicates how they interact. Second, it puts a human face on those targeted by making available the details of individual cases. Thus, we learn that most of those targeted are already incarcerated or are overseas – with only five individuals at liberty but subject to UK asset-freezing (one of whom has now been delisted). Many of those targeted have few, if any, assets in this jurisdiction. The system is a sledgehammer to crack a nut – and there is cause to doubt both the necessity and the effectiveness of that approach.

Although many of those targeted are either incarcerated or overseas there remains a significant societal impact. The fact that all those targeted are male conjures a misleading image of footsoldiers on the wrong side of a 'war on terror'. Several of those targeted have never been convicted of any crime. Many have families whose daily lives are seriously disrupted by the sanctions. These effects have been ameliorated by a successful challenge to HM Treasury's interpretation of the law and subsequent amendments to the legal framework.

Anderson's Report contains details on the cruel intrusions into the daily lives of often-vulnerable families. A seemingly unrelated but nonetheless notable feature of the Report is its examination of the system's cost to business. It is not just human rights lawyers that are dismayed at its operation as it also causes severe compliance headaches for financial institutions. The onerous regulatory burden placed on such institutions may lead them to sim-

generous. What I said was not that the test is unsound for detecting the presence of lead, but that it is not a safe test for detecting firearms residue.

Lynne Featherstone: Indeed, but I notice that in terms of the specific case, the forensic test was one of the 20 grounds of appeal considered by the Court of Appeal in 2002, when Mr Cleeland's conviction was upheld. The understanding was that electron microscopic testing had not then been developed within the Metropolitan police laboratory to be in use. Also, whether or not that was correct, there was no evidence as to what such testing might or might not have demonstrated at the time or with the benefit of hindsight.

Damian Collins: My concern is that there was knowledge of the limitations of the test, yet evidence was presented from it in a court that suggested that there was no ambiguity at all and that it could be safely relied upon, whereas academic papers that were in the possession of the Metropolitan police cast doubt on that.

Lynne Featherstone: My hon. Friend is saying that since the relevant time, new evidence has come to light that casts doubt on all this, and has requested a review. What I can offer is this. I can ask the forensic science regulator, Andrew Rennison, to consider this type of evidence. I cannot give an answer on whether there will be a review, but I will ask his opinion of whether there should be a review. In terms of the Boothby report, my hon. Friend has requested that a report on the allegations of police misconduct in connection with the case made by Mr Cleeland be made available. The Court of Appeal ordered the disclosure of that report in 2001 to seek to allay concerns raised by the appellant at the time about that. We therefore understand that his solicitors from that time may have a copy of the report.

Damian Collins: Mr Cleeland has confirmed to me that they do not have possession of the report. They never have had possession of it, despite what was said at the Court of Appeal. Certainly the report is not in his hands at all. Therefore if the Minister could deliver that report—make it available to him—we would be very grateful.

Lynne Featherstone: It was brought to my officials' attention yesterday that the issue would be raised. The whereabouts of the report was discussed with the Hertfordshire police. We understand from them that Mr Cleeland's solicitor has requested the report and that they are trying to locate a copy so that they can consider whether it would be appropriate to disclose it. The Home Office will also carry out the same process to see whether we can find the report, but I cannot guarantee that it was or will be found.

My hon. Friend has made an excellent case today in laying out why he believes that there should be a reconsideration, presumably both of the case and in looking at forensics and residues in that context. I cannot give answers on that or on the actual case; as I said, it is for the criminal review board to decide whether there is enough new evidence to take the case back to any sort of judicial process. I thank my hon. Friend. I have sought to be as helpful as I can possibly be.

Damian Collins: I appreciate that the Minister is drawing to her conclusion. Would it be possible for her to write to me, following the debate, on the points that she has raised about the review of the test, the location of the Boothby report and whether that can be made available, so that I am able to share that information in writing with my constituent?

Lynne Featherstone: Hansard will do it for me, but I am happy to write to my hon. Friend on those particular points that he has raised.

Lynne Featherstone: Am I misunderstanding my hon. Friend?

Damian Collins: The Minister said that both Hertfordshire police and the Home Office will try to locate a copy of the Boothby report and see if that can be made available to Mr Cleeland. I

Alternatively, it was submitted that, even if Article 8 rights of the Claimants themselves were not directly breached, there was an unacceptable risk that the sanitation arrangements at the prison would breach of a prisoner's Article 3 and Article 8 rights; that risk itself amounted to a breach of Article 8 rights. Finally, one claimant claimed that the fact that his cell space was less than the Council of Europe recommendation of six square meters was in itself a violation of Article 3.

The High Court's judgment - All claims dismissed.

In terms of the facts, Hickinbottom J found that the sanitation regime was not ideal. In particular, although most faults could be quickly remedied, there were times when the night time electronic system was unreliable; and, during night and day, there would be occasions when a prisoner, having made a request, would not be released promptly by an officer. The use of buckets had been criticised by a succession of reports by HMCIP and Independent Monitoring Boards.

However, during the day, many periods of lock in were routine, and prisoners could regulate themselves so as not to need the toilet during those periods; and, during the night, there were no significant problems when the electronic system was working.

The judge concluded that the system obliged a healthy prisoner to urinate in a bucket only rarely, and to defecate in a bucket very rarely. If a bucket were used, then there would usually be an early opportunity to empty it at a sluice in the toilet recess area (so waste would not remain in the cell for long), and there were proper facilities there to enable him to empty and clean the bucket properly (e.g. a flushing sluice, hot water, brushes, cleaning agents and disinfectant). Prisoners were able to do that in uncramped conditions, without any physical or time pressures. They were instructed both in cell hygiene, and how to use and empty the bucket after use. Whilst he accepted that to urinate or defecate at all in a small locked cell was not optimal, the sanitation regime did not significantly increase risk to the health of prisoners.

He found that, on the evidence, neither claimant used a bucket as often as he alleged: he used it no more than rarely, as described above. Further, he found that the sanitation regime at HMP Albany did not cause either claimant any distress, anxiety, feelings of humiliation or any other harm: indeed, there was no evidence that any prisoner had. Further, neither the claimants nor any other prisoner had made any contemporaneous written complaint about either sanitation regime, in an environment in which such complaints about other aspects of prison life were common.

In relation to the specific grounds, the judge found as follows.

1. Whilst the sanitation regime was not ideal, Article 3 did not require the state to provide an optimal regime, only one which did not degrade prisoners or otherwise offend their human rights.

2. Where the burden of proof in relation to Article 3 fell on a complainant, the standard of proof was balance of probabilities; although, given the seriousness of such allegations, a court may require particularly cogent evidence in order to be satisfied that hurdle was overcome.

3. The size, lighting and ventilation of the cells at HMP Albany did not materially contribute to the claimant's assertion that the prison conditions were degrading.

4. An obligation imposed by the State on a prisoner to use a bucket to urinate or defecate was not in itself a violation of Article 3. The Strasbourg jurisprudence did not support such a proposition. Whether a prison regime which included such a requirement was a violation depended on all the circumstances, including the effect on the particular prisoner.

5. In all of the circumstances of the conditions at HMP Albany and the two particular claimants, the claimants fell far short of proving a breach of Article 3, even on the balance of probabilities. Particularly important was the absence if any harm resulting from the sanitation arrangements at HMP Albany.

The regime was very different from those considered in the Strasbourg cases in which a breach of Article 3 had been found. Napier was distinguishable; in that case, the pursuer shared a cell, and it was found that he suffered physical harm (eczema) as a result of slopping out.

6. The regime did not present any specific difficulties for Muslim prisoners in practising their religion: at night, they could adequately perform their ablutions before they prayed, either via the electronic door system or in their cells using the washing facilities there.

7. Neither was there a breach of Article 8. The regime did not substantively lower the dignity of the prisoners, and their privacy was adequately respected. They did not share a cell, and the regime at the sluice did nothing to disrespect the prisoners' private life.

8. The indirect Article 8 claim also failed because it lacked the basic building blocks for such a claim, which included, first, proof of a breach of Article 8 and not a mere risk of a breach.

9. Finally, the claim that the size of the cell alone breached Article 3 failed, because the recommendation upon which it was based was just that: a recommendation. It was patently not a mandatory requirement, not a norm for degrading treatment under the Convention.

Acquitted: Marvin Service cleared of Ted Shaxted murder Kent Online, 22/12/11

A former strongman who was convicted almost three years ago of murdering alcoholic Ted Shaxted at his Northfleet flat has now been acquitted. Marvin Service was jailed for life with three others in February 2009 with a minimum tariff of 14 years. The Court of Appeal overturned the conviction, along with those of Kelvin Horlock, Bill Saunders and Trevor Lees, in July last year on a point of law and ordered a retrial. Horlock, 33, Saunders, 31, and Lees, 39, were again convicted at the second trial in June this year and re-sentenced to life, but the jury could not agree on verdicts for Service.

Now, Service, of Brandon Street, Gravesend, has been acquitted of both murder and manslaughter by a third jury. The 35-year-old looked stunned as the verdicts were returned today. He was alleged to have gone with others to the victim's home in Wallis Park in December 2007 and given him a beating for stealing a car and crashing it while drunk.

The prosecution called it a "callous, bullying revenge attack", which left Mr Shaxted's head looking like a pumpkin, swollen to almost double the normal size, and his rib cage broken virtually from top to bottom. A paramedic said there was so much blood at the 36-year-old victim's flat it looked like an abattoir. He died from his injuries two weeks later.

Mr Shaxted had taken a Peugeot car owned by Horlock's mother Karen with her pedigree dog in it. The dog ran off when the car crashed but was later found. The jury heard Service's left palm print was found on the wall of the bathroom where Mr Shaxted was dragged and beaten. Service, who has competed in power lifting contests, admitted lying to police for two days by denying he had ever been to Wallis Park. He then claimed he went to the flat to see if the police were there after Horlock told him "a fella had been given a bit of a dig".He said he went into the bathroom and saw blood. It must have been then, he added, that his palm print was left there.

Never Stop Fighting to Overturn Your Conviction

A Kent MP has called for an independent review into the case of a Paul Cleeland, 67 who served 25 years in jail for a gangland shooting he claims he did not commit. He was jailed in 1973 for shooting gangland leader Terry Clarke in Stevenage, Hertfordshire. He was released in 1998, 5 years over tariff.Conservative MP Damian Collins has questioned the reliability

this way matters that are of concern to their constituents. My hon. Friend has set out the grounds on which Mr Paul Cleeland disputes his conviction for murder. I listened very carefully to what he had to say, because allegations of miscarriages of justice are very serious matters. My hon. Friend went over the ground in this case. The conviction has been the subject of much scrutiny and debate. It is worth reflecting on the fact that, to my knowledge, this is the third time that the matter has been debated in Parliament. As my hon. Friend said, the previous debates took place in 1982 and 1988. He referred to the many right hon. and hon. Members who over the years have tried to raise these issues.

However, as my hon. Friend the Member for Folkestone and Hythe said, it is of course the criminal justice system, not Members of Parliament or Ministers, that decides on guilt or innocence. Terence Clarke was murdered in 1972, and Mr Cleeland was convicted of his murder by a jury the following year. The Criminal Cases Review Commission has been engaged with this matter over time since the first application to it in 1977. In 2000, the case was referred to the Court of Appeal, which upheld the murder conviction in 2002.

Of course, I listened carefully to the arguments about discrepancies in the ballistic evidence. My hon. Friend makes the case very well. He raised the issue of forensics and the reliability or otherwise both of the sodium rhodizonate test and of Mr McCafferty himself. Notwithstanding all that has happened with regard to this case, as set out in section 13 of the Criminal Appeal Act 1995, the Criminal Cases Review Commission can always refer a case back to court on the basis of information or an argument that has not previously been raised—at trial, on appeal or with the Home Office—and which creates a “real possibility” that an appeal would succeed. I assume—I hope that my hon. Friend will correct me if I am wrong—that many if not all those points were made in the appeals, and those issues have been raised previously.

Damian Collins: As I said in my speech, the Metropolitan police manual for 1980 has come to light only recently and subsequent to some of the appeals; and, indeed, the evidence that I have obtained via the Home Office, which cites academic papers dating back to the 1960s, has not previously been presented and, I think, certainly undermines the evidence presented by Mr McCafferty.

Lynne Featherstone: On the case itself, I would then make this suggestion—I am not able to give legal advice; I am not a lawyer in any sense. I would have thought that if there is new evidence, the Criminal Cases Review Commission is the body that should seek another judicial stage, if that were to be sought. In that sense, this is not, as we have said, a matter for Members of Parliament or, indeed, Ministers.

In terms of the alleged miscarriage of justice, the use of a forensic test in the case is questioned. That goes to the heart of my hon. Friend’s request for a review by the Home Office. Forensic science is an essential tool in the armoury of criminal justice. Forensic service suppliers in England and Wales provide some of the quickest turnaround times and highest-quality forensic science in the world. The Government have recently reappointed Andrew Rennison as the forensic science regulator to provide strong, independent regulation of quality standards, and it is right that the Government set the direction for and expectations of the quality standards to be used in the criminal justice system.

I want to be clear in that context that, as a test for the presence of lead, the sodium rhodizonate test is not fundamentally flawed. It is the case, however, that forensic science techniques are available today that would provide considerably more information than those in use in the 1970s. That does not mean that convictions from that time are unsafe or that a court has not properly relied on the scientific evidence available to it at the time.

Damian Collins: I am grateful to my hon. Friend for giving way again; she is being very

were discharged in the murder; two discharged shells were found in the breech of the double-barrelled shotgun. We know that the breech of the shotgun had not been opened, because if it had been the shotgun would have discharged the shells. Therefore, in this murder case, where the shotgun's breech was not opened to eject the shells, the Metropolitan police forensic science laboratory has known since 1965—some seven years before the murder of Mr Clarke—that it was not possible to detect "traces of lead" with a sodium rhodizonate test.

We know that more specific tests were available to the Metropolitan police forensic science laboratory at the time of the investigation, and that Mr McCafferty should have been aware of them. Mr McCafferty should also have been aware that the sodium rhodizonate test was unsuitable for the detection of firearm discharge residue, and that given the circumstances of the murder, it had "not been possible to detect traces of lead" using the sodium rhodizonate test.

It seems to me obvious that Mr McCafferty was an unreliable expert witness, and the very grave problems with his evidence in my constituent's trial must surely cast doubt on every other trial in which he has given evidence. It may also cast doubt on the trials of others whose convictions resulted from the evidence of the Metropolitan police forensic science laboratory where the presence of firearm discharge residue was alleged.

We are dealing with a case that took place in the 1970s, and my concern when looking at the evidence is that it sounds almost like something from "Life on Mars", where the crime has been fitted to the person but not necessarily to the evidence available to the police.

Reflecting on those grave matters, is the Minister prepared to consider a review into cases where the sodium rhodizonate test was used to establish the presence of firearm discharge residue? With particular reference to Mr Cleeland's case, I ask whether an independent review of all the papers relating to his case in the Home Office and with the police could take place. The Boothby report was commissioned in the 1970s to examine the case in detail and also the evidence prepared by Mr McCafferty. Conclusions of that report have been referred to in previous debates in the House. Mr Cleeland has never seen a full copy of the report. Could the Boothby report be published in full, including any supporting documentation and notes used in its preparation? If it is not possible to publish the report in full, could it be given to an independent expert outside the Home Office to examine in detail?

My constituent feels very strongly that previous Ministers may have inadvertently given misleading information to the House, based on guidance that they gave about what was contained in the Boothby report, which asserted that the evidence presented by Mr McCafferty was correct and that the conviction was sound. I would like that to be reviewed by an independent person, if not Mr Cleeland himself and his lawyers. If it is the case that assertions based on the Boothby report that were made to the House were not valid, a formal note should be placed on the record to confirm that, but obviously that requires an independent review of those papers and documents.

My constituent has raised a number of very important and fundamental questions about his case and the nature of his conviction. This is not a court of law—it is not a court of appeal—but I believe that the Home Office, if it is in possession of the Boothby report and any supporting notes and documents, should seek to make those available for independent scrutiny. That would certainly help my constituent in preparing for his case and shine some light on the way in which forensic evidence of this kind was presented in court cases in the 1970s.

Parliamentary Under-Secretary of State (Lynne Featherstone): Let me turn to the serious nature of the case in front of us. First, I congratulate my hon. Friend the Member for Folkestone and Hythe (Damian Collins) on securing the debate. It is important that Members of Parliament can raise in

of forensic evidence presented at the trial.He has called for an independent review of the case and successfully obtained a debate in the House of Commons, which took place last December. Below is the full debate.

Firearms Residue Testing (Criminal Cases)

Damian Collins: It is a pleasure to serve under your chairmanship, Mr Hollobone. I applied for this debate because a constituent has brought to my attention a case in which forensic evidence that was presented to achieve his conviction for murder has been proven to be unreliable. That constituent is Mr Paul Cleeland, who was convicted in 1972 of the murder of Terence Clarke outside his home in Stevenage. I want to address some specific issues about Mr Cleeland's case, but I believe that it is an exemplar of problems with evidence presented in such criminal cases in the 1970s. The matter has been raised twice in the House: in 1982 and 1988. It was pursued with persistence by Baroness Williams when she was a Member of Parliament, Mr Bowen Wells when he was the MP for Hertford and Stevenage, and Mr John Hughes when he was the MP for Coventry, North East. It is a matter of great regret that the issue remains unresolved to my constituent's satisfaction after such a long time. Mr Cleeland is in the Public Gallery to witness the debate, a privilege he was unable to exercise in the previous debates. When the case was first debated, it was reported that a "prominent Queen's Counsel" at the time had stated: "There are a quite unusual number of blemishes in connection with the police evidence—in particular the discrepancies" with ballistic evidence.

"Dr Julius Grant, Secretary of the Society of Forensic Medicine, calls the ballistic evidence 'disturbing' and said that it would appear to provide Mr. Cleeland with ample reasons for wanting his case re-opened and on purely scientific grounds I cannot do other than support them.—[Official Report, 29 April 1982; Vol. 22, c. 1062.] There is a wealth of discrepancies in the evidence against my constituent, which I will not rehearse here because the purpose of this debate is to focus on the problems that his case brings to light with the testing for firearms residue. However, I want to recount briefly some discrepancies in the ballistics evidence, because they have a direct bearing on the reliability of the forensic evidence of firearms residue.

The firearm submitted by the police as the murder weapon was an antique 12-bore Gye and Moncrieff shotgun. The police claimed that it was found in the vicinity of the murder by children, and that it contained two discharged shells with a box of unused shells lying nearby. The police attested through witnesses that the gun was sold to Mr Cleeland, but that was later refuted, and it was proven that the gun had been given to the victim. Mrs Clarke, Terry Clarke's widow, had known Paul Cleeland for 12 years before the murder, but was unable to identify him as the murderer, despite being a witness to the crime. Mrs Clarke and neighbours, who were all witnesses to the murder, claimed that the assailant discharged a gun twice at a range of not more than 6 feet—point blank range—first into Mr Clarke's back, and secondly into his chest.

There are discrepancies between ballistics reports. Mr J. McCafferty, a principal scientific officer in the Metropolitan police forensic science laboratory on whose evidence the prosecution relied, claimed that the firearm would have been discharged at a minimum of 18 feet from the victim. However—I want to stress three key points—Mr Rothery, another expert, said that if the shotgun had been fired at a range of 18 feet, cartridge wadding would have remained affixed to the victim's jacket. Mr Rothery and Mr Jennings, another ballistics expert, said that the firearm that the police claimed was the murder weapon would have to have been discharged 36 to 40 feet away to achieve the distribution on the victim. Dr Rufus Crompton, then consultant pathologist at St George's hospital, London, provided corroboration of the evidence of Rothery and Jennings when he concluded

from medical evidence that the range was about 36 feet.

If those witnesses were correct in their account of the assailant's distance to the victim, or if Mr McCafferty's assessment of that distance was correct, the necessary conclusion from the evidence provided by Mr Rothery, Mr Jennings and Mr Crompton is that the Gye and Moncrieff shotgun could not have been the murder weapon. It would instead have been reasonable to argue that using a shotgun at point-blank range to achieve as wide a distribution of pellets as that achieved by firing at a range of 40 feet, would have required the use of a sawn-off, 12-bore shotgun such as the one later found at a weir in nearby Harlow.

Those points are important because the doubts about the ballistics evidence submitted by Mr McCafferty underline the unreliability of his forensic evidence. At the time of Mr Cleeland's trial, Mr McCafferty was a principal scientific officer in the Metropolitan police forensic science laboratory. He had no formal academic qualifications, but he had been in charge of the firearms section of the forensic science laboratory since January 1964. At the time of the trial, he had 25 years of ballistic experience as an examiner of firearms and ammunition.

Given his long-standing position at the forensic science laboratory, it is perhaps unsurprising that Mr McCafferty was frequently relied on in trials as an expert forensics and ballistics witness for the prosecution. That included the trial of James Hanratty, who was hanged in 1962 for the murder of a Government scientist, over which there has been great and long-lasting doubt. Were the competence of Mr McCafferty as a forensics and ballistics expert to be brought into question, so too would the safety of the convictions of those in whose trials he gave evidence. That is why the results of the forensic tests used to convict my constituent have implications far wider than the case under discussion today.

During the original investigation, Mr McCafferty carried out a sodium rhodizonate test on Mr Cleeland's clothes. The results of that test were relied on by the prosecution as evidence that Mr Cleeland had discharged a firearm. It has since become apparent, however, that the sodium rhodizonate test is suitable only as a preliminary, screening test. It is not capable of specifically detecting firearm discharge residues, but only the presence of lead or lead compounds. Despite the fact that the sodium rhodizonate test was not suitable for establishing the presence of firearm discharge residue, Mr McCafferty clearly considered that to be the purpose of such a test, as is clear from statements that he made during the 1977 investigation into allegations of perjury made by my constituent:

"On the 17th November I received from Mr Chaperlin in the laboratory exhibits…which were all items of Mr Cleeland's clothing for the examination principally for firearms residue… On the completion of my examination of all the items received including the items of Mr Cleeland's clothing I made a further statement which covered my chemical test for the presence of possible firearms residue."

McCafferty's evidence clearly impressed the judge at the time, who said when summing up the case that the clothes had been examined for "traces of this lead residue"—

—a reference to the powder residue from the discharge of a firearm. The test carried out was the sodium rhodizonate test that we now know is unreliable for establishing the presence of firearm discharge residue.

In the early 1970s, forensic science was not as developed as it is today; the expertise and tests available were more limited, even if we could reasonably have expected the scientific rigour to have been the same. If we ask ourselves, however, whether other tests available at the time were suitable for establishing the presence of firearm discharge residue, the answer is yes. Other chemical

tests would have supplemented the sodium rhodizonate test, and they were available to the prosecution at the time of the original trial. In particular, the atomic absorption spectroscopy and neutron activation analysis were available, and those sophisticated modern analytical methods were adopted to improve the sensitivity of the testing process. Neither test was used on Mr Cleeland's clothes, however, even though, according to an expert witness who has gone unchallenged throughout my constituent's appeals, they "could have helped in ascertaining whether the elements on the clothing of Mr Cleeland came from the discharge of a firearm or were present as a result of completely innocuous activity."

The fact that Mr McCafferty was seemingly unaware of the existence of those tests at the time of the original investigation casts doubt either on his expertise or his integrity. Some reassurance could perhaps be gained if it could be established that in his investigation into the murder of Mr Clarke, Mr McCafferty was incompetent but honestly so. Such a conclusion would perhaps cast less doubt on the evidence that he has given in other trials, as it would rely on him being unaware of the availability of those more specific tests.

Was Mr McCafferty aware of those tests? In 2006, my constituent came into contact with Professor Marco Morin, a ballistics expert who was involved in the high-profile case of Barry George, the man incorrectly convicted of the murder of television presenter Jill Dando. The prosecution in that case relied heavily on evidence of what it claimed was firearm discharge residue on Barry George's clothing. Professor Morin referred my constituent to the training manual prepared by the Metropolitan police forensic science laboratory, dated November 1980. That manual explicitly recognised that the sodium rhodizonate test, carried out by Mr McCafferty, was unreliable for the purposes of establishing the presence of firearm discharge residue, and it refers to the test as:

"Simple. Not specific. Useful for lead distribution on a target eg bullet wound."

It later confirms that the presence of lead and barium particles—those detected by the sodium rhodizonate test—is "not reliable" as an indicator of firearm discharge residue.

It was known, therefore, during Mr Cleeland's many appeals that the forensic test presented to the court as evidence of firearm discharge residue was not really evidence at all. However, that manual was prepared in 1980 and Mr Clarke was murdered in 1972. For how long was the Metropolitan police forensic science laboratory aware that the sodium rhodizonate test was not a suitable test for the detection of firearm discharge residue?

During my inquiries into my constituent's case, and following a written parliamentary question to the Home Office, I was kindly assisted by Martyn Ismail of the Forensic Science Service, with which the Metropolitan police forensic science laboratory was merged in 1996. Mr Ismail provided me with three papers from the archives relating to the sodium rhodizonate test, dated 1943, 1959 and 1965. All those papers were useful, but especially that by G. Price in the 1965 edition of the Journal of Forensic Sciences, which describes the use of the sodium rhodizonate test—which we now know to be inappropriate—for the identification of firearm discharge residue on hands. The paper's penultimate paragraph states:

"In the case of firearms where the breech remains closed after firing, such as shot guns and rifles, it has not been possible to detect traces of lead by this method." In other words, lead residue is released when the breech is opened following discharge of a weapon.

At the beginning of my speech, I said that the firearm submitted by the police as the murder weapon was an antique 12-bore Gye and Moncrieff shotgun, which police claimed was found in the vicinity of the murder, and which contained two discharged shells. Two shots