that the operational duty under Article 2 is at least as broad as the Supreme Court said that it was in Rabone (a significant endorsement for that important decision); and that inquests, internal investigations and illusory or elliptical civil proceedings may not meet the requirements imposed on a legal system by an arguable breach of Article 2. Not bad for claimants who were initially told by the Court that they couldn't even make it past CPR r. 3.4.

Court Case Management Powers/Rule 3.4 Power to strike out a statement of case

(1) In this rule reference to a statement of case includes reference to part of a statement of case.

(2) The court may strike out (GL) a statement of case if it appears to the court – (a) that the statement of case discloses no reasonable grounds for bringing or defending the claim; (b) that the statement of case is an abuse of the court's process or is otherwise likely to obstruct the just disposal of the proceedings; or (c) that there has been a failure to comply with a rule, practice direction or court order. (3) When the court strikes out a statement of case it may make any consequential order it considers appropriate. (4) Where - (a) the court has struck out a claimant's statement of case; (b) the claimant has been ordered to pay costs to the defendant; and (c) before the claimant pays those costs, he starts another claim against the same defendant, arising out of facts which are the same or substantially the same as those relating to the claim in which the statement of case was struck out, the court may, on the application of the defendant, stay(GL) that other claim until the costs of the first claim have been paid.

(5) Paragraph (2) does not limit any other power of the court to strike out(GL) a statement of case. (6) If the court strikes out a claimant's statement of case and it considers that the claim is totally without merit – (a) the court's order must record that fact; and (b) the court must at the same time consider whether it is appropriate to make a civil restraint order.

Dear MOJUK

Firstly, thank you for including my case in your newsletter (363).

Over the coming months more of the prosecution's 'evidence' will be discussed, debated and debunked on the campaign website. Therefore, I would be grateful if you could give *grahamcoutts.co.uk* a mention in your next newsletter.

Also, my CCRC application was submitted in February. In fact, to highlight just how important your work and newsletter is to people in my position, my appeal point has been considerably strengthened as a result of information you brought to my attention. Specifically the Hanif & Khan case that has just had their application upheld at the European Court of Human Rights. Even my solicitor was unaware of this judgment at that time! So once again, thank you.

MOJUK, there was one thing that troubled me slightly. In newsletter 363 you quoted me as saying that I had been "convicted of the same murder twice". If these words have come from the campaign site, then they have misquoted me. I would. never have used the words 'the same murder'. I know this may seem like trivial semantics, but words can be so powerful, negatively and positively. There was no murder, so I could not have been convicted of 'the same murder' . Using the definite article 'the', followed by an adjective 'same' turns the word 'murder' from what I have been convicted of, into a meaning that is not accurate in my case. I apologise, I know I am coming across like a pedantic idiot, but that is the result of 9 years of this. Every detail matters to me, so please forgive me wittering on about this.

Once again, thank you. I hope to bring you a positive update in due course. Home for Christmas 2013?

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MOJUK: Newsletter 'Inside Out' No 366 05/04/2012)

Sex and drugs and private cells: Behind bars in South America

A deadly riot in Mexico and an inferno in Honduras have turned the searchlight on conditions in Latin America's overcrowded and anarchic prisons.

Simeon Tegel spends a day behind bars in Peru - Indpendent, Wednesday 28 March 2012

The cluster of shirtless, tattooed inmates in the prison courtyard make no effort to hide the joint as a policeman wanders by. Instead, one turns up the volume on the salsa booming out of a portable stereo. Unconcerned by the clouds of cannabis smoke billowing from the group, the officer does not miss a beat as he carries on patrolling the grimy maze of corridors and patios that make up Lurigancho, Peru's largest jail.

Built for 2,500 inmates, Lurigancho's crumbling walls are currently home to some 7,000 prisoners. Of Peru's 66 desperately overcrowded jails, this human clearing house on the arid outskirts of Lima is the most overcrowded. Conditions are appalling. According to Peru's official human rights watchdog, the Defensoría del Pueblo, there are only 63 doctors and one psychiatrist attending to the country's 49,000 prisoners. Rates of HIV and Aids are three times higher than outside, and TB is 20 times more common.

Other than for sexual offenders, there is no segregation of inmates at Lurigancho. Armed robbers, hitmen and drug kingpins mingle with adolescents sent down for stealing a pair of trainers. Most are Peruvians but there is also a smattering of foreigners, everything from Africans to Americans, mainly convicted of acting as cocaine couriers.

Yet prisoners here have far more personal freedom than in most jails in the UK. They wear their own clothes, are allowed up to two conjugal visits a week, and from 6am to 6pm are largely free to wander around Lurigancho's labyrinthine facilities. Although there are several internal police checks, the biggest obstacles are the security controls organised by the prisoners themselves at the entrance to each wing. "We don't want people we don't know from other wings coming here and causing trouble," one inmate tells me. "The prison authorities don't care, so we have to do it ourselves. Everything good here has been done by the prisoners. The authorities have just left us here to rot."

Inside, in the dingy corridors, inmates play cards and cook lunch on small gas stoves. Cannabis smoke scents the air, while stereos and old television sets are set to deafening volumes. In a nearby courtyard lies the prison "market", where entrepreneurial convicts trade fresh fruit and vegetables, used clothes and pirate DVDs. One rents out cellphones – supposedly banned by the National Penitentiary Institute (INPE). In another courtyard, the walls are covered in murals. There are homages to Alianza Lima and Universitario, Peru's two biggest football clubs, both of which attract tribal, often violent, followings. Yet there are also colourful – if shaky – representations of Spider-Man and Winnie the Pooh, one of various poignant efforts made by the convicts to welcome their children on visiting days.

Meanwhile, just inside the main gate, two prostitutes negotiate with a group of inmates. Today is supposed to be a visiting day for men only – yet no one thinks anything of it until I ask one inmate. "Nurses," he says with a wry smile. Another tells me that without female sex workers, the prison would erupt.

Dreadful acts of violence occur here and Lurigancho is sometimes described as one of Latin America's more ferocious jails. Recently, one Dutch inmate was found to have battered and strangled his Peruvian girlfriend to death and entombed her corpse in concrete beneath the floor of his cell. But Lurigancho is far less dangerous than many other prisons in the region. It takes only 150 police officers to supervise the thousands of inmates, even as they mingle freely together – conditions that would be unthinkable in jails in Central America or Mexico, housing some of the world's most vicious gang members.

Last month, the world watched in shock as more than 300 prisoners died after an inferno swept through a jail in Honduras. The blaze in Comayagua, about 45 miles north of the Honduran capital Tegucigalpa, was the country's third major prison fire since 2003. In Mexico, fighting between two drug cartels in February was reported to have led to the killing of more than 40 inmates at a prison near the Monterrey prison.

At Lurigancho, the incident with the Dutch inmate once again shone a spotlight on the corruption that, according to the Defensoría del Pueblo, is "institutionalised" in Peru's jails. Unresolved questions include how the prisoner acquired the sacks of concrete mix, and how was he able to spend hours banging his way through the rock-hard floor without the police guards stopping him?

Inmates with money or power inhabit well-equipped private cells, which, it is said, start at £2,000. Those without the means to bribe prison guards, convicts say, end up sleeping in the corridors. "You are like an orphan," one says. "INPE just dumps you here. They don't even give you a cell or a mattress. It is down to you whether you make it or not." INPE also largely fails to live up to its legal obligations to provide vocational training and help prisoners prepare for release. There are huge pottery and textile workshops at Lurigancho, even exporting products to Japan. Yet these were set up by a non-profit group founded by the Catholic Church.

According to the prisoners who work there – and who ply me with gifts of their ceramics – guards levy bribes for raw materials brought into the jail and finished products brought out. The corruption is so rampant it is impossible to avoid even during a brief visit. To enter Lurigancho, visitors pass a series of security checks, with the police officers shamelessly, casually, blatantly demanding bribes. "It's for a soft drink," one policeman says, demanding one Sol, roughly 25p, to allow me through. I demur but he insists. "It's hot today," he says. "I'm thirsty." Afterwards, a prisoner asks in disgust: "Who sells their dignity for a Sol?"

Unusually, Lurigancho is run by Peru's notoriously corrupt police. Yet if anything, the jails run by INPE personnel may be even more corrupt. Part of the problem lies in the lack of training or professional career path for INPE workers, according to Leonardo Caparrós, a former acting head of INPE. Promotion is based on the whims of superiors and there is no attempt to objectively judge job performance. Meanwhile, INPE's top salary, including for the director of Piedras Gordas, the country's highest security jail, is the equivalent of less than £400. The police colonel in charge of Lurigancho earns around three times that amount. INPE denied requests for an interview with its current boss, José Luis Pérez Guadalupe, as he battled to contain multiple corruption scandals, including a mass escape from Challapalca, a high-security jail at 13,000ft near the Bolivian border, often used to house recalcitrant prisoners from the coast.

Yet few in Peru, a country where many still live in grinding poverty, are willing to argue for more resources for convicted criminals. Meanwhile, populist politicians and tabloid newspapers regularly demand stiffer sentences when most criminologists agree that what is really needed is for the police to simply enforce existing laws. "The political use of jail adversely affects the proper functioning of the prison system," José Ávila, head of the Defensoría del

deceased, ending the cold principle that such parents suffered no legal loss.

Rabone means that in the future those in the unfortunate position of Mrs Reynolds should (if the relevant Article 2 test is met) have a claim in the civil law against the negligent public body. However, this decision was four and a half years late for Mrs Reynolds.

She had issued an action for damages under the HRA, which was struck out in the County Court on the basis that the domestic law as it then stood meant that there were no reasonable grounds for bringing the claim. Mrs Reynolds obtained further legal advice that an appeal had no realistic prospect of success. At that point, her legal aid funding was withdrawn.

For most claimants, that would be the end of the road. However, Mrs Reynolds took the case to the European Court of Human Rights arguing that she had been denied proper redress, contrary to Article 13 ECHR, as there had been no mechanism by which she could obtain a civil remedy (i.e. compensation) for an arguable breach of Article 2 arising from her son's death. Sadly, Mrs Reynolds died before the conclusion of the case, but her daughter, Ms King, continued to pursue it on her behalf. And she did so successfully, despite three very significant hurdles.

The Court's judgment: First was the issue of whether the claim in Strasbourg was even admissible, given that Mrs Reynolds had not pursued an appeal against the County Court judgment, let alone subsequent proceedings in the Court of Appeal and House of Lords (as then was). The Strasbourg Court held that in the circumstances of this case – where Mrs Reynolds had been advised by two barristers that there was no prospect of success, where her legal aid funding had been withdrawn, and where she had insufficient funds to meet the likely legal costs – she was not required to continue a hopeless (and expensive) chain of litigation.

Second, the Court held that Mr Reynolds' death did give rise to an arguable claim that there had been a breach of Article 2. It held that the circumstances in which Mr Reynolds found himself – notwithstanding the fact that he was a voluntary resident and not a detained patient – could engage the operational duty on the state to take reasonable steps to protect him from a real and immediate risk of suicide. The Strasbourg Court is here agreeing with the decision in Rabone, and in doing so is following the UK court in extending the scope of the operational duty (for the first time in its own jurisprudence) to voluntary mental health patients.

Third, it found that Mrs Reynolds had the right to pursue a civil action for compensation for the arguable breach of Article 2, and that the domestic law (as it then was) did not allow her to do so. The inquest and the internal investigation were not enough as they did not allow for any finding of civil liability (or subsequent payment of compensation). The Fatal Accidents Act 1976 and the Law Reform (Miscellaneous Provisions) Act 1934 offered no remedy to Mrs Reynolds in her own right (and in reality offered no prospect of compensation beyond funeral expenses). And, as Mrs Reynolds found in the County Court, an action under the HRA 1998 was, at that time, doomed to failure by strike out.

The Court therefore concluded that Article 13 (in conjunction with Article 2) had been breached. It awarded Ms King (on her mother's behalf) €7,000, noting that while the inquest had "elucidated the central facts of the present case", the lack of a civil remedy had nonetheless "caused her some frustration and distress" (a masterpiece of understatement).

Comment: At first sight, this case may seem to be of only historic interest – Rabone should mean that no-one is in Mrs Reynolds' position again. However, in clearing the three hurdles identified above, Mrs Reynolds and Ms King have also established or reinforced some interesting precedents: that a claimant can – in certain circumstances – jump straight from the County Court to Strasbourg without the need for litigation in the appellate domestic courts;

Counsel relied in particular upon the decision of the Court of Appeal Criminal Division in R v Auguste [2003] EWCA Crim 3329, [2004] 1 WLR 917. That was a case under section 8(1)(d) of the 1971 Act which makes it an offence for a person who manages premises knowingly to permit the smoking of cannabis, cannabis resin or prepared opium. The appellant in that case admitted that he would have permitted cannabis to be smoked on the premises and there was, in fact, cannabis found there. However, there was no evidence that any smoking had actually taken place. The court accepted that the conviction should be quashed on the ground that it was necessary for the prosecution to establish that the requisite activity had actually taken place before a conviction could be sustained. That was a necessary ingredient of the offence. The fact that the appellant would have allowed smoking to take place was not enough. Since it was common ground that it was not open to the jury to conclude that smoking cannabis had taken place, there was no basis upon which the appellant could be convicted.

From County Court Strike Out to Strasbourg Success

Matthew Flinn, UK Human Rights Blog, March 30th 2012

What – if anything – can a claimant do when she suspects that the domestic law is not only out of kilter with Strasbourg jurisprudence but is also denying her even an opportunity to bring a claim? Taking arms against a whole legal system may be an heroic ideal, but the mundane reality is a strike out under *CPR rule 3.4 by a district judge in the County Court. It is a long way from there to the European Court of Human Rights.

This was the position in which Patricia Reynolds and her daughter Catherine King found themselves following the sad death of (respectively) their son and brother. David Reynolds suffered from schizophrenia. On 16 March 2005 he contacted his NHS Care Co-ordinator and told him that he was hearing voices telling him to kill himself. There were no beds available in the local psychiatric unit, so Mr Reynolds was placed in a Council run intensive support unit. His room was on the sixth floor and at about 10.30 that night Mr Reynolds broke his (non-reinforced) window and fell to his death.

There followed an inquest, which recorded an open verdict (not suicide), and an internal investigation completed by the NHS. However Mrs Reynolds was unable to bring a civil claim for compensation for two reasons. First, as the mother of the deceased and someone who was not financially dependent upon him, she had suffered no loss for which legal recompense was then available. Second, Mr Reynolds had been a voluntary resident at the support unit. At that time the domestic case law – and in particular the High Court decision in Savage v South Essex Partnership NHS Foundation Trust [2006] EWHC 356 and the Court of Appeal in R (Takoushis) v Inner North London Coroner and Another [2005] EWCA Civ 1440 – stated that the death by his own hand or actions of a person who was not formally detained by the state could not (other than in particular circumstances not applicable in Mr Reynolds case) amount to a breach of Article 2 ECHR (the right to life).

These arguments will be familiar to anyone who has considered the recent Supreme Court case of Rabone v Penine Care NHS Trust [2012] UKSC 2, the latest – and most definitive – in a line of cases in which the scope of the Article 2 operational duty on the state to prevent the loss of life has been considered and incrementally extended. As discussed in two previous posts (here and here), the Supreme Court held in that decision that no absolute line should be drawn between the self-inflicted deaths of voluntary and non-voluntary mental health patients when considering a state's obligations under Article 2. Significantly, the Justices also found that the parents of an adult child who killed herself could bring a civil action under the Human Rights Act 1998 ("the HRA") even though they were not financially dependent on the

Pueblo's prison programme, says diplomatically.

As I queue up to leave Lurigancho, the man behind me helpfully explains that I need to pay yet another bribe to avoid waiting hours for the police officer to return my ID. Behind us, as dusk settles on Lurigancho, the prisoners take one last breath of fresh air before filing into the heaving wings for the night.

Curious case of the president's brother: While prisoners across the region languish in appalling conditions, one high-profile inmate in Peru appears to be doing just fine, allegedly conducting business from his prison cell. Antauro Humala, the brother of the Peruvian President Ollanta Humala and a former army major sentenced to 19 years for leading a military uprising, has been making headlines after being transferred from Piedras Gordas prison to a secure unit at a military base. The official explanation is that Humala's safety was at risk after the arrest of the leader of the remnants of the Shining Path terrorists, known as Artemio, who was also sent to Piedras Gordas. The authorities have not explained why they cannot protect Humala at Peru's highest security prison. Revelations about luxurious conditions enjoyed by Humala and the supposed influence he wields from behind bars have sparked criticism of the president.

Fernando Rospigliosi, a former interior minister, called on the president to "acknowledge his responsibility for Antauro's privileges and announce his transfer to a common prison". Antauro Humala's use of a prohibited cellphone and photos of him slow-dancing with his girlfriend have caused particular outrage. He has also been receiving business propositions from as far away as the US and China. The allegations are just the latest in a long series of scandals surrounding the conditions of some of Peru's highest-profile prisoners, most notably Alberto Fujimori, the former president now serving 25 years for embezzlement and ordering extrajudicial killings. Most of the revelations about Antauro Humala come from the hacking of his email account by Peruvian journalists. One email includes a "business model" for lucrative land deals. Correspondents also request his support for relatives applying for public-sector jobs.

IPP prisoners in jail longer as HMP fails to provide courses

By Raymond Peytors - theopinionsite.org, 29th March 2012

TheOpinionSite.org has recently received more reports that prisoners subject to an IPP sentence (Indeterminate Sentence for Public Protection) are unable to achieve their release because the Prison Service is still failing to provide the necessary number of offending behaviour courses. IPP prisoners must complete specified courses if they are to have any hope of ever being released.

Just after the 2010 general election, prisons minister, Crispin blunt said, 'We have 6,000 IPP prisoners, well over 2,500 of whom have exceeded their tariff point. Many cannot get on courses because our prisons are wholly overcrowded and (they are) unable to address offending behaviour. That is not a defensible position.'

Two years on, the current situation appears to be even worse than it was before. With average prison numbers at an all time high, IPP prisoners are often sent to inappropriate establishments where the necessary courses are not available or are told that they will be 'made a priority' for their particular course, only to later discover that they have not actually been included on the list at all.

There have even been occasions where a prisoner has sent to a particular prison for the express purpose of completing a specified offending behaviour program and is then transferred to another establishment, usually without a reason being given, shortly before the course begins. He then often discovers that the course is unavailable in his new establishment.

In any of the above circumstances, it can be another two or three years before another

place on the appropriate course becomes available. That is another two or three years unnecessarily spent in jail.

TheOpinionSite.org has also received reliable reports that where a prisoner's case has been the subject of high profile media attention, the probation and prison services then insist that he undertakes additional and often unnecessary courses before they will even consider recommending his release. The end result is that an IPP prisoner who has a 'tariff' (the minimum time to be served) of 3 years may very well find himself serving nearer 10 years or longer behind bars for no good reason.

The government has claimed that it wishes to reform the British criminal justice system. It has announced that it will in fact scrap IPP sentences altogether and replace them with long, determinate sentences.

It has consulted, reviewed, consulted again and drawn up new legislation. It has done all this and yet there are still over 6,500 IPP prisoners, 3,000 of which are well past their tariff and are still in jail because they are forced to undertake courses that are not being provided.

The worst thing of all is that nobody can actually provide independent evidence to show that these courses work. Any 'evidence' has either been produced by the government itself or by sources in other jurisdictions – notably the US – where the culture, psychology and makeup of individuals is completely different to Britain anyway.

It is the fact that many of the most contentious courses, especially the so-called Sex offender Treatment Programme, are not used so much as a means of rehabilitation but rather as a method of risk assessment. A good idea one may think, except that reliable sources inside the prison system have made it clear that if the 'assessment' is positive and indicates that 'no further work is necessary', this positive assessment will be ignored. As a result, additional courses in prison and upon eventual release are always specified as part of release criteria.

This is a way of ensuring that the massive numbers of prison staff, probation staff and police officers involved in 'protecting' the public can be maintained and their employment guaranteed.

Some may find that a cynical view but, in truth, It would be a brave politician indeed who stood up and expressed the view that millions of pounds paid by taxpayers every year are being wasted on meaningless courses, the highly secretive and unaccountable MAPPA system and other procedures that cannot be proven to actually improve public protection at all.

As all the above measures are shrouded in secrecy, it is impossible to verify whether the methods employed by the authorities in order to 'protect the public', 'assess risk of reoffending' and to 'safeguard children' are effective or not. We are all simply supposed to take the word of those who themselves benefit greatly from being involved in the running of the system.

The Coalition has pronounced that the new measures relating to IPP sentences – that they will be replaced with long, determinate sentences – will not apply to existing IPP prisoners. Thus, 6,500 prisoners will be unaffected by the 'reforms' to the system and will remain in jail until they can – with great difficulty – somehow 'prove' that they are no longer a risk to the public.

Meanwhile, as the legislation containing the reforms, the 'Legal Aid, Sentencing and Punishment of Offenders Bill' has again been defeated in the House of Lords, this time over some of the cuts to Legal Aid, the horse-trading will inevitably begin in order that the government can get the new law on to the Statute Book by the time of the Summer Recess.

This gives those who are against IPP reforms – and there are significant numbers of them – the opportunity to derail the government's plan to scrap IPPs and also distracts attention away from the very real problem of what to do about those who are already serving the sentence that was

Inside Woodhill Close Supervision Centre (CSC) report by Woodhill prisoner

Her Majesty's Chief Inspector of Prisons (HMCIP) visited HMP Woodhill in January 2012. This unannounced inspection also focused in part on Woodhill's notorious Close Supervision Centre. As could probably be expected, for around ten days a magic transformation occurred whereby all staff were on their best behaviour. The same day that HMCIP left the prison, all that changed back. Prisoners at Woodhill CSC now face more restrictions than they have for years, with less support from mental health teams than ever. Promises to remedy this have proven to be nothing more than an attempt to delay the prisoners from realising what is happening.

A prison officer working in the Woodhill CSC has recently resigned rather than face disciplinary action for a string of assaults on prisoners. The self-confessed steroid addict, who was seen on CCTV punching a prisoner in the face for complaining about him to the Independent Monitoring Board, is not to face prosecution as Thames Valley police refuse to investigate.

The HMCIP report is due to be published very soon. Let's hope they have not been made to accept the most flagrant violations through bureaucratic spin because they have never fully grasped what was demanded of them and were not sufficiently interested to notice what was happening, and instead managed to maintain some integrity and their report pushes for positive change.

R v McGee [2012] EWCA Crim 613 - Appeal against conviction

The appellant was convicted of permitting her premises to be used for the supply of Class A drugs, contrary to section 8(b) of the Misuse of Drugs Act 1971 and sentenced to 18 months' imprisonment.

As a result of a police operation, police entered the appellant's house to conduct a search. They found under the appellant's bed an open wrap containing a block of over 100 grams of powder containing cocaine. There were other quantities of cut cocaine in the room that her son occupied, as well as a quantity of heroin. They discovered in the utility room cutting agent powders and other items which would have been used in mixing and packaging quantities of drugs. There were two sheds in the garden. In one of them they found a hydraulic press used for compacting mixed or cut cocaine into blocks, as well as large quantities of cutting agent.

The appellant's defence was that she knew nothing about any drug processing or supply. She had taken her son into her home in August 2009 to try to help him break his heroin habit. The £7,000 cash could be explained because it had been largely money withdrawn from her mother's account after her recent death. She had no idea about the drugs under the bed. She never went into the shed where the drugs paraphernalia was found. She would not necessarily know if people visited her son on the premises because his room was the old conservatory and it led directly into the garden. The appellant submitted that the judge erred in identifying as the only relevant question for the jury the issue of knowledge, that is, whether she knowingly permitted supply to take place on the premises. (In fact, the judge went on to explain that this could also include turning a blind eye.) The appellant submitted that in addition to the question of knowledge, the jury had to be satisfied that the supply of cocaine actually took place on the premises. She could not know of something that had not occurred.

Both counsel and the judge in his summing-up appear to have assumed that there was no issue about that. In fact, it had never been admitted by the appellant that such supply had occurred and, as the prosecution concede, there was no evidence before the jury of any such supply. Counsel submitted that there would have been a cast-iron case for having the charge dismissed at half time on the basis that the prosecution had failed to adduce sufficient evidence to establish the offence.

authorities were reviewed by this court sitting as a full court of five judges presided over by the Lord Chief Justice in Medway [1976] 1 QB 779. The decision in the Medway case has been frequently applied. In Bellos [2011] EWCA Crim. 1421 this court stated that the use of the word "reinstate" in the Criminal Procedure Rules 2010, rule 65.13(5), did not give a discretion to reinstate an appeal in circumstances other than those set out in the Medway case. In the Medway case, after reviewing the authorities, the court stated that there is undoubted jurisdiction to give leave to withdraw an abandonment where it is shown that circumstances are present which enable the court to say that the abandonment should be treated as a nullity if "the court is satisfied that the abandonment was not the result of a deliberate and informed decision - in other words that the mind of the applicant did not go with his act of abandonment." Although the court stated that the cases illustrate that "nullity" had been used in a wide sense, it is also clear from the authorities that only in exceptional circumstances will this court treat abandonment as a nullity. In Medway's case itself the abandonment was either the result of a misunderstanding of the position in the light of the observations of the single judge when refusing leave or because of advice founded on the mistaken view of the law. Neither was said to be capable of vitiating the effectiveness of the notice to abandonment.

The examples of insufficient circumstances considered in earlier cases included the position where a person weighs up his chances and decides that it would be more advantageous for him to abandon his appeal and is later advised that that was an unfortunate decision to make: Healey (1956) 40 Cr.App.R 40 at 43. This case is an example of just such a situation. The applicant's main concern was to be in a prison at which his girlfriend and child could visit him. He therefore deliberately decided to abandon his appeal. He no doubt was unfamiliar with the prison system. He may have been inappropriately advised by other prisoners that he would be at risk of a loss of time order. He may, as his solicitor in his letter to the court dated 3rd October stated, also have panicked, but he was aware of what he was doing. The position is that where an appeal has been abandoned it is treated as having been dismissed and this court is functus officio. Unless the abandonment is a nullity in the sense set out in Medway there is no remedy in this court."

R v Clugston [2012] EWCA Crim 98 - Appeal against sentence.

The appellant pleaded guilty to six offences of fraud and was sentenced to 5 years' imprisonment concurrent on each count. The appellant asked for 25 similar offences to be taken into consideration. Each of the offences involved the same kind of fraud. The appellant would go into business premises claiming to have champagne to sell, left over from a recent reception. On that basis he offered the champagne, said to be Dom Perignon or Bollinger, at £15 per bottle or less. The appellant would tell those who snapped up the bargain that he would be back shortly and then disappear with their money. People fell for this confidence trick on no less than 31 occasions, and parted with cash totalling some £19,500.

The appellant was a professional conman with offences going back 55 years. It was submitted on his behalf that a sentence of 5 years' imprisonment on an early plea means that the judge adopted too high a starting point of 71⁄2 years after trial. The appeal court found that the appellant's appalling record was an aggravating factor that took him substantially higher than the starting point indicated in the Sentencing Guidelines for confidence fraud characterised by multiple transactions.

Held: "Nevertheless, we keep in mind the need to reserve the higher sentences for the more serious frauds. Serious though the appellant's offending was, we do not think it falls into the most serious category." - Sentence quashed and 4 years' imprisonment substituted.

described by the Justice Secretary, Ken Clarke as being "…a stain on British Justice."

As stain on 'British Justice' it may very well be but, if the government does not either provide more courses or alternatively change the criteria for release, many thousands of IPP prisoners will still be being held unjustly behind bars next year, the year after and for the foreseeable future.

In fact, if the term 'British Justice' is to retain any sense of its original meaning at all, TheOpinionSite.org believes that whatever the cost, embarrassment or criticism that may come the government's way, the increasingly out of touch David Cameron and his Cabinet must realistically address the issue of those IPP prisoners who are over-tariff and who are still in prison.

Almost every sensible and reasonable person, lawyer and judge (notably not policeman, prison officer or probation officer) believes that the IPP sentence is and always has been an unmitigated disaster. It is a politically driven sentence introduced for purely political reasons by David Blunkett in order to suck-up to the Sun, News of the World and child protection charities.

According to the original estimates given when IPP sentences were introduced, there should today be about 900 IPP prisoners. Instead, there are 6,500 and the figure is still rising. How much more of a disaster does the government want? What real action is being taken to solve the problem?

TheOpinionSite.org believes, sadly, that actually the government doesn't care about the injustice that continues to take place. What it does care about however is the negative reporting that may be directed towards it should real solutions be put in place.

The sad truth is that, as previously stated, the IPP sentence is and always has been a 'political' sentence. It looks very much as if it is destined to remain as such and that makes it very difficult, if not impossible for the government to fix the problem without being accused of 'going soft' on crime, something that David Cameron is simply not prepared to do, now or ever.

Tarriff Expired Removal Scheme (TERS)

This is the provision within the Legal Aid ,Sentencing and Punishment of Offenders Bill relating to the Secretary of State having the power to authorize release for deportation of indeterminate Foreign National Prisoners (FNPS) at tariff expiry without involving the Parole Board Below is an initial summary of Practical tips for those FNPs subject to the TERS, prepared by Melanie Plimmer (Counsel at Kings Chambers, Manchester & Leeds and 3 Hare Court, London).

Tariff Expired Removal Scheme (TERS)

1. The letter circulated by the APL dated 21 March 2012 makes it clear that the scheme will only apply to FNPs who "have been confirmed by the UKBA as liable for removal from the UK (and there are no outstanding barriers to deportation)". This implies that this can only take place once a deportation order is signed AND the time limit for appealing has passed OR the appeal has been finally determined.

2. This means that the PB should not be deferring FNP cases because TERS may be relevant or a decision is awaited from the UKBA. Unless a deportation order is signed AND the time limit for appealing has passed OR the appeal has been finally determined, there is no sound basis for the PB not proceeding in the usual way.

3. If the PB refuses to proceed in the usual manner this may be challengeable particularly in cases involving EU citizens, recognised refugees, those with outstanding fresh asylum claims, those with strong Article 8 cases, those without travel documents (for eg. Iranian citizens).

4. It is important to emphasise that the provisions in LAPSO do not mean that the FNP does not have a right of appeal. The TERS letter expressly states "the new scheme does not affect your appeal rights against deportation and your removal under the scheme can only take place once

UKBA have confirmed that there are no outstanding appeals or other barriers to removal".

5. The new scheme does mean that more FNPs will be tempted to not pursue appeals so that they can be released albeit to their home country. It is of pivotal importance that prisoners receive clear specialist immigration advice to enable them to reach an informed decision. Although deportation is described as "automatic" it will be unlawful if it would result in a breach of the Refugee Convention, EU law, ECHR etc. It is therefore vital that the FNP receives clear advice of the prospects of success at an appeal prior to making a decision on whether to appeal or not.

6. In addition the FNP should be advised that the LAPSO Bill makes it clear that if he enters the UK having been removed pursuant to the scheme he is liable to be re-detained pursuant to his sentence. Even if the PB had given a direction he will be treated as recalled to prison.

Selling off the punishment machinery

Their are 16 privately run prisons in UK/Scotland

HMPs Birmingham, Altcourse, Oakwood, YOI Parc, Rye Hill, Wolds, run by G4S Justice Services

HMPs, Ashfield,Doncaster, Dovegate,Lowdham Grange, Thameside, Kilmarnock, run by Serco

HMPs, Forest Bank, Bronzefield, Peterborough, Addiewell, run by Sodexo Justice Services

In July 2011 the government announced that it would be tendering 15-year contracts for the running of eight previously public sector prisons. These contracts are estimated to be worth a total of £2.5bn and could see the percentage of Britain's prison places which are in the hands of private companies increase to 20% of the total. NICKI JAMESON reports.

Although both the 1997-2010 Labour government and the Conservative government prior to that flirted with 'market testing' state prisons, the current government is embarking on the biggest wholesale exercise to date in shifting previously state-run places of incarceration and punishment into the private sector. This is driven both by an ideological commitment to privatisation and by the desperate hope that private management will relieve the state of some of the financial burden of maintaining Britain's vast punishment apparatus.

The prisons up for tender are all Category C men's prisons and, with the exception of Coldingley in Surrey, are all in the north of England. Low security closed prisons are the most easily 'saleable' parts of the prison system, as those managing them neither need to worry about the stringent security demanded in higher security prisons housing Category A and B prisoners, nor about monitoring day release, home leave, working-out schemes and the other features of Category D open prisons.

Seven private companies have been vying for the contracts, including massive international security firms G4S and GEO, the latter having teamed up with road maintenance operator Amey (owned by Ferrovial, the Spanish group which runs Heathrow airport) to form GEOAmey. Also bidding for a slice of the pie are French catering company Sodexho - infamous among asylum seekers to Britain and their supporters for running the Labour government's humiliating food voucher scheme - and Interserve, which specialises in support services and construction. Like G4S, Interserve boasts of the high level former employees of the Prison Service and National Offender Management Service who it has poached to advise on or lead its bids. The deadline for submission of tenders is the end of April 2012; the victors will be announced in October and the contracts begin operation from early 2013.

Private/public and public/private: The 'market-testing' bidding process is not quite as simple as straight-forward privatisation, as in the current exercise the Prison Service itself is also bidding to continue running the prisons it now manages and all the bids are being made by consortia of

R v MC [2012] EWCA Crim 213 - Appeal against conviction.

This appeal serves as a reminder of how important it is to pay careful attention to dates and to ensure that an offence is charged under the correct statute. The appellant was convicted of two counts of gross indecency and five counts of indecent assault. The matters complained of were historic. The complainant was the appellant's adopted daughter. An additional count (count 7) was added by a late amendment to the indictment. The complainant in this case was the appellant's natural daughter. The issue with this count is that it charged an offence under section 14(1) of the Sexual Offences Act 1956 but at the date of the indecent assault alleged in the particulars the 1956 Act had long since been repealed and replaced by the Sexual Offences Act 2003. The reference to the 1956 Act no doubt slipped in by mistake because all the charges in relation to JB fell under that Act. The result of the mistake is that on count 7 the appellant was convicted by the jury of an offence not known to the law. It was submitted for the crown that the court could exercise the power under section 3 of the Criminal Appeal Act 1968 to substitute for the jury's verdict a verdict of guilty of another offence.

It was submitted that it was open to the court to substitute a conviction for an offence under either section 3 or section 9 of the Sexual Offences Act 2003. The Court found a difficulty with that line of argument to be that it does not pay sufficient attention to the requirement in section 3 of the Criminal Appeal Act that the jury could 'on the indictment' have found the appellant guilty of some other offence. (see R v Graham and Ors [1997] 1 Cr App R(S) 302).

Held: It follows, in our judgment, that section 3 of the Criminal Appeal Act does not allow this court to substitute a verdict under section 9 of the 2003 Act for the verdict entered under the defective count 7. The appeal in respect of count 7 must therefore succeed and the conviction on that count must be quashed. Solicitors Journal 29/03/12

R v Maguire [2012] EWCA Crim 353 - Application refused

This was an application to withdraw a notice in which the proposed appellant abandoned an appeal against sentence of eight-and-a-half years' detention in a young offender institution.

The appellant was in prison in Staffordshire which meant that the applicant's girlfriend felt unable to make the journey to visit him with their very young child. The applicant stated that his offender manager informed him that while his appeal was pending he would remain at HMP Swinfin Hall and that the Prison Service had no intention of sending him to a local prison in the North East just to send him back down to the London area for his appeal. He asked his offender manager whether, if he withdrew his appeal, he could be transferred to a local prison. The answer was in the affirmative and so the applicant subsequently abandoned his appeal.

In his statement the applicant stated that he knew he had done the wrong thing and should not have written to the Court of Appeal in those terms for personal reasons. However, he was serving a substantial term of imprisonment, he had a young family and baby who he had not seen, and this was his first ever sentence. He was unfamiliar with the prison system. He also stated that he was also aware from documentation sent to him by the Criminal Appeal Office and from discussion with other prisoners that it was a possibility that if his appeal was unsuccessful the court could make a loss of time order.

Held: "It is understandable that a young man whose girlfriend has just given birth to their child and who is incarcerated a long way from them and cannot see them would want to do whatever he needed in order to make it possible to see them. However, the fact that he made his choice in itself shows that the court has no jurisdiction to accede to this application. The

Five years later, the 68-year-old mother of Cardinal Pole (leader of the opposition movement against Henry VIII's break from Rome) was dragged to the scaffold kicking and screaming. She put up such resistance that it took the blood-drenched axeman several attempts to behead her, confuting the assertion that beheading is a swift and relatively painless mode of execution.

Catherine Howard, Lady Jane Grey and the Earl of Essex were also put to death by the axe and state prisoners or people of noble birth continued to be beheaded on Tower Hill throughout the 17th and 18th centuries until the gruesome practice ceased in 1747. Nearly 200 years later, the last execution at the tower took place on 15 August 1941.

Recent enemies of the state: The fortress was used as a place to incarcerate espionage prisoners during the First and Second World Wars, the most famous of whom was the disgraced knight, Roger Casement. Casement, a British subject, was knighted in 1911 for his work in the Congo exposing the mistreatment of the Congolese people at the hands of their cruel Belgium rulers.

As an Irish Republican, he was stripped of his British honours during the Great War when he tried to persuade Irish soldiers interned in Germany to join an Irish brigade and assist Germany to fight against England. At the time of the Easter Uprising, Casement sailed to Ireland on a German U-boat and was subsequently arrested as one of a party carrying arms and ammunition, which, it was alleged, were supplied to Irishmen and used on behalf of Germany in the prosecution of the war. Casement was imprisoned in the tower and executed for treason on 3 August 1916. He was put to death at Pentonville Prison, but 11 First World War spies were actually executed within the grounds of the tower.

The Second World War and the Treachery Act: The Treason Acts apply to all British subjects, wherever they may be, and also – by reason of the doctrine of allegiance – to aliens resident in the realm (see 'Cross country' 155/20, 24 May 2011). However, parliament realised that our archaic treason laws did not apply to aliens who had come to this country in a clandestine way.

Furthermore, the Emergency Powers (Defence) Bill introduced at the outbreak of WWII omitted the death penalty for acts done with intent to assist the enemy.

The Treachery Act 1940 was passed to overcome all of the abovementioned deficiencies the same month Winston Churchill became prime minister and

Germany invaded France. The main provisions of the Act, contained in section 1, made the death penalty available in certain grave cases of espionage and sabotage – to ensure that all classes of enemy alien could be put to death when entering Britain for a hostile purpose.

Our first uninvited guest was deputy fuhrer, Rudolf Hess, who landed by parachute on 10 May 1941 with the hope of sealing peace between the Third Reich and Great Britain. As a prisoner of war, Churchill immediately ordered Hess to be sent to the Tower of London and there he remained until 20 May 1941. Instead of facing a firing squad, Hess remained in this country as an enemy of the state for the whole duration of the war until he was despatched to Nuremburg to face trial for war crimes.

The final blood was spilled at the Bloody Tower within a few months after Rudolf Hess had left. Josef Jakobs, an officer in the intelligence section of the German General Staff, was captured after parachuting into England. He was conveyed to Scotland Yard and charged under section 1 of the Treachery Act 1940. After being found guilty he was sentenced to death on 15 August 1941 at 7.15am. Jakobs had injured his leg so had to be seated when placed before the firing squad. A white lint target was pinned to the prisoner's chest then eight men from the Scots Guards took aim and fired. This was the last execution to take place at the tower ending 900 years of death and suffering.

The 19th century historian, Thomas Babington Macaulay, succinctly describes our ancient London landmark so well: "In truth there is no sadder spot on the earth."

organisations. Consequently even the public sector bids have private components, and vice versa.

The complicated and farcical nature of this process was highlighted in early March when the governor of Lindholme prison in Doncaster locked probation staff out of the prison. A bid to run Lindholme, as well as neighbouring Hatfield and Moorlands prisons, has been submitted by a consortium consisting of G4S, South Yorkshire Probation Trust and housing charity the St Giles Trust. The Prison Service therefore viewed the presence of probation staff as potentially compromising to its own bid, which in turn is being made in 'partnership' with private facilities management and property services company Mitie and 'third sector' organisations the Shaw Trust and Working Links. Although the dispute was resolved and the probation staff re-admitted a week later, the conflict could potentially have resulted in hundreds of prisoners being deprived of reports which are crucial to their applications for recategorisation or parole.

The governor's actions were supported by the Prison Officers' Association (POA) which, like the Public and Commercial Services Union (PCS), opposes the privatising of prisons. The unions correctly point out that the main way in which the private sector bids attempt to undercut one another and succeed in profiting from imprisonment is by having fewer and lower paid staff than in public sector prisons. Their concern, however, is limited to protection of their own jobs and working conditions, and the POA in particular never hesitates to use scare stories, vilifying prisoners as dangerous and deranged and warning of how such cost-cutting will apparently lead to mass escapes and riots.

Labour's legacy: The proportion of prison places which are run by private companies in Britain is already the highest in the world at 15% - compared to 9% of the US's massive prison estate. This is entirely down to the Labour government; within a week of Labour being elected in 1997, Home Secretary Jack Straw reversed the party's pre-election position and announced that all new prisons would now be privately built and run. Since then punishment has become big business in Britain. At that point four prisons and three immigration detention centres were being privately run; when Labour left office in 2010 there were 11 private prisons in England and Wales and two in Scotland, with more in the pipeline. All four of the notoriously abusive Secure Training Centres (STCs) for children are privately run, as are nine out of the 12 immigration removal centres and all custodial transport between prisons, courts, detention centres and airports, as well as court security, home detention curfew (tagging) and the provision of prison workshops, education, catering and shop facilities.

Labour presided over a massive increase in the prison population, from 60,131 prisoners in England and Wales in 1997 to 84,073 in 2010. By the end of Labour's time in office, 154 out of 100,000 people England and Wales and 153 out of 100,000 in Scotland were behind bars, and this did not include those incarcerated in immigration detention centres, mental hospitals and STCs, or those who had been released from prison but were subject to electronic tagging, curfews or other supervisory measures. Labour's 2003 Criminal Justice Act, which came into force on 4 April 2005, made wholesale changes to the sentencing structure, ensuring that virtually anyone convicted of a violent or sexual offence received an indeterminate prison sentence for public protection (IPP). Prisoners can only be released from these sentences once the specified minimum tariff period has expired, after 'proving' to the Parole Board that they have reduced the risk of reoffending - an almost impossible task from within prison. By May 2011 there were 3,500 post-tariff IPP prisoners languishing in gaol.

A conundrum the government is powerless to resolve

The ConDem Coalition government inherited this vast punishment machine, along with

the task of reconciling its 'tough on crime' stance with the pressing need to make swingeing budget cuts. In December 2010, as Home Secretary Kenneth Clarke set out his plans to fulfil these objectives, including plans to abolish the IPP sentence, we wrote in FRFI: 'Behind all these plans there lies a conundrum that the government is powerless to resolve. On the one hand, the relentless drive to cut public spending means that there is less money available for the machinery of punishment. On the other hand, the very same programme of cuts will viciously attack the working class and the resultant desperation and resistance mean that the government cannot realistically allow itself to reduce the prison population. Indeed, there is every possibility that, instead of falling, the number of people behind bars could actually increase.'

This has of course been proven to be the case. On 4 August 2011, when the Metropolitan Police gunned down Mark Duggan in Tottenham, north London, sparking off a wave of revolt across England, prisons in England and Wales (not counting immigration detention centres) held 84,884 prisoners. State vengeance on 'rioters and looters' ensured that by 12 August it had risen to 85,324, by 19 August to 86,054 and by 26 August to 86,233. It remains at this level, with 86,848 prisoners as of 9 March 2012. As police forces publish yet more rogues' galleries of riot suspects and criminal trials continue, the aftermath of the August uprising looks set to effect the prison population for a considerable time.

No to profiteering from punishment: Although the physical conditions in some private prisons are better than in many old state prisons, and the bully-boy attitude of POA strongholds is often replaced by a less aggressive staff attitude, the regimes in most privatised prisons are poor and the medical provision is universally bad. Whatever the situation in individual institutions, private involvement in state punishment is never progressive. All the companies currently vying for contracts to take over public sector prisons have a material interest in keeping those prisons open and full, and in lobbying to build yet more prisons, pass more punitive laws and sentence more people to imprisonment. This includes the charities that participate in bids to run prisons, whatever gloss about assisting rehabilitation or education they put on their involvement.

INQUEST calls for an urgent review of practice at HMP Manchester

The Chief Inspector of Prisons released the results of an inspection of Manchester Prison in February. The report was severely critical of the high levels of self harm and self-inflicted deaths at the prison. There have been two further self-inflicted deaths at Manchester Prison since the inspection in September 2011, bringing the total to 29 since 2000.

INQUEST has been involved with many of the deaths that have occurred there in recent years and there have been wide ranging recommendations from both the Prison and Probation Ombudsman and HM Coroner Nigel Meadows. In light of the further concerns raised by HM Inspectorate of Prisons, INQUEST called for an urgent review of what action has been taken in response to investigation and inquest findings.

Inquests and casework: Our Casework Team continues to manage a large, wide-ranging caseload. Many of the cases raise questions about the treatment and care of highly vulnerable people who have died in all forms of custody and following police contact. Caseworkers work closely with individuals and families and their legal representatives to ensure the best possible scrutiny of each death. Issues arising from cases continue to be raised at a policy and parliamentary level.

INQUEST has opened 113 new cases this year (to 20 March). Of these, 36 (32%) are custody cases (23 deaths in prison, 1 in a probation hostel, 5 in police custody or following police contact and 7 of people detained under the Mental Health Act).

The remaining 77 (68%) of new requests for advice and information relate to non-custody deaths, with a number related to possible clinical negligence issues.

We currently have an open caseload (which includes cases from previous years which are still ongoing) of 428 as of 20 March 2012, of which 63% are custody deaths.

INQUEST's casework team dealt with 385 total new enquiries in 2011, of which 131 (34%) were custody cases, and 254 (66%) non-custody. The custody cases included 84 prison (plus 1 in a probation hostel and 1 while released from prison on licence), 26 police, 1 involving the military, 2 immigration custody and 16 cases of people detained under the Mental Health Act.

Issues arising from our recent casework: The casework team has identified a worrying increase in self inflicted deaths in the prison setting. So far this year, INQUEST has been notified of 19 self inflicted deaths as compared to 6 in the same period last year.

Of great concern has been a number of killings and serious attacks on prisoners in high security prisons. Colin Hatch was killed by another prisoner on the 22/2/11 at Full Sutton. His killer was also responsible for the serious attack on another prisoner at Frankland. In October 2011 Mitchell Harrison was killed at Frankland. In sentencing Colin Hatch's killer, Justice Coulson (5.10.11) commented: "It is troubling that these two attacks were carried out in two different high security prisons. I am particularly concerned that the killing of Hatch took place with prison officers outside the cell but apparently powerless to save him. I am also aware that over the last few days, another prisoner has been killed at HMP Frankland. Whilst everyone is acutely aware of the costs of monitoring vulnerable and high risk prisoners, from what I have seen in this case it appears that the management systems currently in place require urgent review". NOMS is conducting an internal review.

The contracting out of police services continues as a prominent issue in police deaths. In the case of Andrzej Rymarzac, who died in police custody, prosecution of a privately contracted police doctor went ahead in January 2012. Although the prosecution was unsuccessful, the case highlighted serious failures in the medical care of a highly vulnerable detainee. The recently concluded inquest of Sharon McLaughlin, who also died in a police cell, identified repeat failures of care and training by custody staff employed through Reliance similar to those raised in the highly critical investigation that followed the near death case of Gary Reynolds in 2008, both involving Sussex police.

The deaths of two women in Bronzefield prison within 10 months of each other both involving drug management and health services have also raised serious concerns. Bronzefield is a privately run prison under a 25-year contract by Sodexo Justice Services. INQUEST is working with both families and keeping a close eye on common themes arising from both deaths.

Torture, treachery and the Tower of London - No Sadder Spot on the Earth

Andrew Lugger, Solicitors Journal, 26th March 2012

William of Normandy erected the White Tower after the battle of Hastings in 1066 as a demonstrative act of power over his newly conquered country. Since its original construction, the tower has been extended and adapted for many purposes including: a state prison, an armoury, a mint, a menagerie and a home for the crown jewels. But it is the tower's use as a prison with the grim scenes of torture and death that capture the imagination of the hundreds of thousands who visit it each year.

The tower's most famous execution took place on 19 May 1536 when a French swordsman held up the severed head of Anne Boleyn, with her eyes still flickering and lips reciting a dying prayer. It is said that the headless ghost of this unfortunate queen still haunts the corridors of the White Tower.