Asian officer wins £840,000 Compensation *Jonathan Brown, Indpendent, 17/04/12*

Cleveland Police forced to make payout for racism that blighted traffic officer's career

Considering his ordeal over the past 17 years, Sultan Alam has surprising advice for a young Asian man or woman considering joining the police: "Do it. But do so with your eyes open because no one should think they cannot break the glass ceiling in any organisation." Yesterday Mr Alam, a retired traffic officer with Cleveland Police, was awarded more than £840,000 for loss of earnings and damages after staging a one-man battle against his former employer dating back to 1994.

In that time the 49-year-old father of two lost his career, his marriage and reputation. He suffered psychological illness and spent nine months in jail – the victim of a malicious prosecution by Cleveland Police after he complained of racist behaviour within the force. When he was in prison he was repeatedly moved for his own safety and on one occasion was threatened by a gang with a knife.

In admitting liability and agreeing to pay him the substantial figure yesterday, the force effectively conceded that had his career not been curtailed when he was wrongly jailed for conspiring to handle stolen car parts in 1996, he might have risen to the rank of superintendent, making him one of the most senior Asian officers in Britain.

But speaking to The Independent after his victory yesterday, Mr Alam said racism continued to exist within the ranks of his former colleagues, and that he feared he was still being watched by Cleveland officers. "It has not changed to this day and it won't change until it is taken apart and swallowed up by North Yorkshire and County Durham," he said.

Mr Alam was just one of three Asian officers when he joined in Middlesbrough in the 1980s. He was subjected to offensive name calling culminating with a Klu Klux Klan poster being left at his desk. "This all happened because I wanted to be treated as an equal in the police service," he said.

Following his decision to take the former Chief Constable to an employment tribunal, he found himself under surveillance for alleged car ringing. He was tried, convicted and sentenced to 18 months in prison. After his release he worked as a taxi driver, and uncovered evidence that fellow officers had deliberately suppressed vital evidence that could have led to his acquittal.

The Court of Appeal quashed the verdict against him in 2007. He returned to the force but in 2009 was forced to retire on health grounds. Four officers faced charges including perjury and perverting the course of justice but the case against them collapsed. One of them is still serving with Cleveland Police.

Looking back on his battle, Mr Alam said he never considered giving up. "It was never about the money. It's about the principle. It's about what's right," he said.

Hostages: Stephen Marsh, Graham Coutts, Royston Moore, Duane King, Leon Chapman, Tony Marshall, Anthony Jackson, David Kent, Norman Grant, Ricardo Morrison, Alex Silva,Terry Smith, Hyrone Hart, Glen Cameron,Warren Slaney, Melvyn 'Adie' McLellan, Lyndon Coles, Robert Bradley, Sam Hallam, John Twomey, Thomas G. Bourke, David E. Ferguson, Lee Mockble, George Romero Coleman, Gary Critchley, Neil Hurley, Jaslyn Ricardo Smith, James Dowsett, Kevan Thakrar, Miran 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, 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.

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MOJUK: Newsletter 'Inside Out' No 368 19/04/2012)

No funeral or answers' a year after Kingsley Brown's death

By Caroline Gall BBC News Online, Birmingham

The family of a man who died in hospital a year ago after being detained by West Midlands Police say they still do not know how he died and have not yet been able to bury him. Kingsley Brown was detained under the Mental Health Act in March 2011 after officers attended an incident in Icknield Port Road, Birmingham. He died in hospital four days later.

Mr Brown's sister, Kadisha Brown-Burrell, told BBC News the family had lost hope. The IPCC told his family that its investigation would initially take six to nine months, Ms Brown-Burrell said. 'Dragging their heels' It had also asked an external force, Dorset Police, to investigate the roles of non-police personnel.

But in January they were informed that Dorset Police was now investigating the role of NHS staff in connection with the death of the father of two, and this would take at least six more months. So far, four police officers have been interviewed under criminal caution and a further 10 as witnesses, the IPCC said.

Ms Brown-Burrell said her 29-year-old brother was detained by police under the Mental Health Act on 27 March after calling 999, saying he was concerned about or felt threatened by several young men nearby. He was then taken to the Mary Seacole mental health unit in Birmingham after being sectioned.

Police said that three days later, officers were called to support medical staff at a mental health unit over a disturbance involving Mr Brown. He was subsequently transferred to the Queen Elizabeth Hospital where he died the following day. Mr Brown had no history of mental illness, his sister said.

His body will not be released by the Birmingham coroner until the IPCC investigation is complete. Ms Brown-Burrell said she had lost faith in the investigation. "It's been a year now and they are dragging their heels," she said. "How can they keep a body for a year? The past year has been painstakingly difficult, frustrating and emotionally overwhelming for the family to begin to come to terms with his death. Especially, not being able to lay his body to rest, not knowing the sequence of events that led up to his death and how he died still remains unanswered. I personally have no confidence in the IPCC investigation into my brother's death. We do not want to prejudice any criminal prosecution, therefore there is not much that I can add, other than to express our family's need to see those investigations concluded quickly so that we can finally say goodbye to Kingsley."

A spokesman for the IPCC said the investigation was nearing its conclusion with more than 100 witness statements having been obtained from police officers, medical professionals, ambulance staff and members of the public. Footage from CCTV cameras has also been recovered from four locations. "A large volume of material compiled by the IPCC has been forwarded to Dorset Police to help their investigation," the spokesman added. "It is not up to the IPCC as to when to release a body. "We understand that the coroner is waiting for the results of the Dorset Police investigation and we're keeping the coroner and family informed and updated, and that contact is regular."

Deborah Coles, co-director of Inquest, a charity that advises families after a contentious death, said the burial delay was "highly unusual, serving nobody's interests". "The funeral is an important part of the grieving process," she added. It is widely recognised that delays in releasing the body cause unbearable distress to the family, not least to the children involved."

Ms Brown-Burrell said she was planning a second march through Birmingham city centre later this summer as part of her campaign for answers over her brother's death. His family held a vigil at his house last month to mark the one-year anniversary of his death.

A Dorset Police said it had been requested by the IPCC "to conduct an investigation into the actions of non-police personnel who had contact with Mr Brown". A spokesman added: "The investigation is ongoing and a number of medical professionals and ambulance staff are helping Dorset Police with their inquiries. "We are in regular contact with HM Coroner and are acutely aware of the family's concerns regarding the release of Mr Brown's body. We are actively pursuing inquiries that will allow Mr Brown's body to be released at the earliest possible opportunity."

Prison officers fail in bid to sue MoJ for post-traumatic stress disorder

Solicitors Journal, 11 April 2012

Claims by three prison officers that they should be awarded compensation for the post-traumatic stress disorder they suffered when a prisoner escaped have been rejected by the High Court.

Mr Justice Mackay described Joe Farnan as a “violent, devious and cunning prisoner”. The court heard how he faked an epileptic fit and was taken from Wormwood Scrubs to Hammersmith Hospital handcuffed to one of the three prison officers. On arrival, the ambulance doors were opened by two of Farnan’s friends, both wearing masks, one carrying a hand gun and the other a pair of bolt croppers. One of the officers had a gun held to his forehead and was threatened that he would have his hand cut off if Farnan was not released.

Mr Justice Mackay said the escape was a “highly organised affair” and Farnan had carried out a “dummy run” after faking epilepsy three weeks earlier. Giving judgment in Burn and others v Ministry of Justice [2012] EWHC 876 (QB), Mackay J said: “The Prison Service owes to its staff the same duty any employer owes, namely to take reasonable care for their safety in the carrying out of their employment. He went on: “Prisons are dangerous places populated by many dangerous people who have been entrusted to the Prison Service for safe detention. In the course of a prison officer’s working career he or she will often have of necessity to be placed in harm’s way.” Mackay J said the Prison Service also owed a duty to the public to prevent the escape of dangerous prisoners and to prisoners themselves, including a duty to take reasonable care of their physical well-being in accordance with common law and articles 2 and 3 of the European Convention of Human Rights. He agreed that the case had been “made out” by the claimants that Farnan should have been put on the escape list.

However, he said the only relevant consequence for the claim was that Farnan “would have worn the conspicuous clothing of an E list prisoner”, which would have been seen by Dr Paul, the doctor who came to examine him on the day of his escape. Mackay J said all the parties agreed that the decision to transfer a prisoner to hospital was a medical one, taken by a doctor, and could not be overridden. However, the two medical experts in the case “profoundly” disagreed as to whether Dr Paul’s decision to transfer Farnan was one that no reasonably competent doctor could have taken.

The court heard that Dr Bicknell thought it was reasonable to call out an ambulance

ating with them) or after his alleged assault and rape.

Detainees classified as dangerous should not have been kept under a special regime for several years

In today’s (17/04/12) Chamber judgments in the cases Piechowicz v. Poland (application no. 20071/07) and Horych v. Poland (application no. 13621/08), which are not final, the European Court of Human Rights held, unanimously, that there had been: - Violation of Articles 3 (prohibition of inhuman or degrading treatment) and 8 (right to respect for private and family life) of the European Convention on Human Rights in both cases; - violation of Article 5 §§ 3 and 4 (right to liberty and security) in the case Piechowicz v. Poland.

Both cases concerned a regime in Polish prisons for detainees who are classified as dangerous. The Court held in particular that keeping detainees under that regime for several years, in isolation, without sufficient mental and physical stimulation, and without examining if there were concrete reasons for the prolonged application of that regime, was not necessary in order to ensure safety in prison.

Report on an announced inspection of HMYOI Cookham Wood by HMCIP

Inspection took place, 14 - 18 Nov 2011, report compiled Jan 2012, published 16/04/2012

Inspectors had concerns

- number of violent and anti-social incidents remained too high
- Accommodation at Cookham Wood remained far from ideal
- arrangements for exercise in the open air were quite limited
- a need for better coordinated care planning for young people with substance misuse
- a need for better coordinated care for young people moving on to the adult estate

Justice for Sale: Chaos in the Courts

At the Ministry of Justice (MoJ), "privatisation" seems to equate nicely with "efficient public services". From private-run jails to forensic services, the justice system is up for grabs, without mention of the government's current plans for secret courts or the Legal Aid bill working its way through parliament right now. Last summer, legal interpreting services joined the fray, when in August a framework agreement was signed between the MoJ and Applied Language Solutions Ltd (ALS), a private language service provider, to cover courts, the Crown Prosecution Service, prisons and the police. Following a year-long procurement procedure, this five-year contract worth £300 million was anticipated to save over £60 million during that period. Previously, interpreters were hired using the National Register of Public Service Interpreters (NRPSI), which has over 2000 qualified and registered interpreters, following a rigorous registration procedure.

A protest was held in London on Monday 16 April to greet MPs returning from their Easter break. An initial protest, largely consisting of interpreters from all over the UK, particularly the northwest, converged outside the Ministry of Justice at 2-3.30pm, and later outside Parliament from 3.30-5pm. Over 200 people joined the demonstration.

Outside the MoJ, protesters were joined by Andy Slaughter MP (Lab: Hammersmith), a shadow Justice Minister, who has supported the interpreters' concerns throughout. Outside Parliament, they were joined by MPs Jim Cunningham (Lab: Coventry South) who asked interpreters to write to the chair of the Justice Select Committee to demand an inquiry. He also asked people to write to their MPs so that the relevant questions can be put to ministers in the Commons, and Gerald Kaufman (Lab: Manchester, Gorton). Mr Kaufman expressed his

months preceding the inspection

Charles Manson denied parole for 12th time... and next hearing won't be until he is 92

One of America's most notorious mass murderers, Charles Manson, has been denied parole in his 12th and possibly final bid for release from a California prison. Manson, 77, who has not attended parole hearings in recent years, was not present for the review of his case by the state board at Corcoran State Prison where he is serving a life term. The Corrections and Rehabilitation Department said Manson would next be eligible for parole in 15 years, when he would be 92 years old. Amid the hippie culture of the 1960s, Manson, a charismatic ex-convict, put together a collection of runaways and outcasts known as the Manson Family. In the summer of 1969 he became one of the 20th century's most infamous criminals when he directed his mostly young, female followers to murder seven people. Dailymail.co.uk/

Prison break Taliban-style: hundreds escape jail in Pakistan

Militants in Pakistan carried out a brazen strike against the security forces in the early hours of Saturday day morning – launching a two-hour long attack on a jail and releasing almost 400 inmates.The authorities are trying to trace at least 380 prisoners, among them many militants, who fled after dozens of Taliban fighters carried out a sustained attack on the jail in the town on Bannu, close to Pakistan's North Waziristan tribal area. Despite the duration of the attack, the prison guards apparently received no back-up from the military. "We have freed hundreds of our comrades in Bannu in this attack. Several of our people have reached their destinations, others are on their way," a Taliban spokesman told Reuters.

EDM 2955: Shaker Aamer - Primary sponsor: John McDonnell, date tabled: 16/04/2012

That this House welcomes the demonstration in Parliament Square held on 16 April 2012 by the Save Shaker Aamer campaign to highlight the fact that British resident Shaker Aamer has been imprisoned without trial or charge for over 10 yearsin Guantanamo; and calls for a new initiative by the Government to secure his release and his return to his British family in the UK, given the worrying concern that his health is now seriously deteriorating to the point that his lawyers havestated that he is gradually dying in Guantanamo.

Inadequate investigation into prisoner's allegation of rape and assault by fellow inmates in reprisal for his co-operation with the police In today's (17/04/12) Chamber judgment in the case J. L. v. Latvia (application no. 23893/06), which is not final1, the European Court of Human Rights held, unanimously, that there had been a: violation of Article 3 (prohibition of inhuman and degrading treatment – lack of effective investigation) of the European Convention on Human Rights. The case concerned a prisoner's complaint that, while serving a three-year-and-ninemonthprison sentence for misappropriation, the prison authorities refused to investigate his allegation that he had been assaulted and raped by fellow inmates for having co-operated with the police in another criminal case. This is the first time that the Court has underlined that prisoners who have co-operated with the police by reporting criminal offences are particularly vulnerable and exposed to violence in prison.

Decision of the Court: It was not in dispute that J.L. had cooperated with the police. Despite this, the authorities did not take any particular precautionary measures to which, as a witness and collaborator of justice, he had been entitled either before his transfer to prison (i.e. by the investigators communicating to the prosecutor and prison authorities that J.L. was cooper-

straight away and that "there was nothing to lose from the patient's point of view by so doing". In his opinion feigned epilepsy was a "most difficult" diagnosis, and, if the doctor was unsure, the "key decision" was to transfer the prisoner to hospital. On the other hand, Dr Lloyd-Jones was "strongly critical" of Dr Paul and said the "the longer the rigid attitude of the patient persisted without change" the clearer it became that he was not suffering from epilepsy.

Mr Justice Mackay said Dr Paul was in a "very difficult position" and only had two alternatives to calling the ambulance. The first was to inject the prisoner with diazepam and see if it improved his condition. "The only other option was to tell the staff to lock him in his cell and to leave him as he was," Mackay J said. "In my judgment, faced with those choices I cannot accept that the decision taken by Dr Paul was one which no reasonably competent prison doctor in his circumstances would have taken. "While, therefore, I have every sympathy for these claimants, who did their difficult duty well and bravely that day, I cannot accept that they have shown negligence on the part of the defendant and these claims must therefore fail."

Behind Bars: Secret courts consultation is a cover up

Jeannie Mackie, Solicitors Journal, 10 April 2012

The terminology used in the latest consultations on closed material procedure wrongly equates government interest with public interest.

"Nothing is so beautiful as spring—
When weeds, in wheels, shoot long and lovely and lush;
Thrush's eggs look little low heavens, and thrush
Through the echoing timber does so rinse and wring
The ear, it strikes like lightnings to hear him sing;"
Gerard Manley Hopkins - Spring

There are words which lift the heart with their beauty; words which educate and inform; words which console and clarify; words which work honestly for truth and virtue, words which rouse body and spirit to do good and think right.

And there are sneaky weasel words which would, if they were people, smell bad and steal your purse. Gerard Manley Hopkins' love song to spring is at the top end of that literary spectrum, and this is heading towards the other: "How can we best ensure that closed material procedures support and enhance fairness for all parties?"

Check out the buzz words: "we" is there to imply consensus and community; "Best ensure" suggests good faith; "Support and enhance" is tree-hugging psychobabble with the added demerit of sounding like an advert for a cheap PIP implant; and "Fairness for all parties", in the context of the question, is the very opposite of what it says.

The context is the Justice and Security green paper published last year, for which consultations have now closed. The measures proposed in the green paper include extending closed material procedures into all civil litigation 'in which sensitive material is relevant'. Closed material procedures (CMP) is the highly contentious and litigious method of dealing with material thought to be risky to national security that can be summed up very shortly indeed: secret courts.

CMP was introduced in 1997 when the Special Immigration Appeals Commission (SIAC) was created, in itself a response to the judgment of the European Court of Human Rights in Chahal v UK. Chahal challenged the then entirely secret and closed procedure of deporting people felt to be a threat to national security. SIAC and CMP was an enforced backing off from total secrecy into near total secrecy: 'fairness to all parties' does not even come close, how-

ever hard those weasel words work.

Hands tied: Specialist Advocates (SA), instructed for the defendant in the limited number and type of cases where the procedure applies, have a truly tricky job. They have to act in their client's best interests with one limb tied behind their back. Not one, nor two, but several limbs tied behind their backs. The normal procedure for dealing with sensitive information is Public Interest Immunity (PII), which in criminal cases involves the crown giving the judge sensitive information so that he can assess whether this is so relevant to the proper conduct of the defence case that it has to be disclosed. The defence barrister is excluded from court when that material is discussed, but allowed in to forage about in the dark, hoping that something he or she says will trigger disclosure.

The good thing about PII is that a judge can order it is disclosed to the defence if fairness requires that. If the crown don't want to disclose it, they drop the case. It is put up or shut up time.

Secret material under CMP on the other hand is never disclosed to the defendant. The SA, once they see the material, is not only not allowed to disclose it to him but is not allowed to even speak to him at all without specific court permission. No instructions, no ability to challenge – and the material can be relied on for the judgment the government seeks.

And the government want to extend this system into any civil litigation where, in the opinion of a secretary of state, there is sensitive material which might cause 'damage to the public interest'. How is that defined? Public interest is not the same as government interest, however embarrassing to the powerful disclosures of cockups or conspiracies might be.

Inquests, actions against the police, criminal cases involving informers, claims against the state for cover ups or oppressive behaviour – all under threat that secret, hidden, unchallenged 'evidence' might be used to defeat just claims.

Enhancing and supporting the fairness of that procedure is some trick. The Special Advocates responded to the consultation in robust terms: CMP is not fair to begin with, it undermines public justice, and departs from the foundational principles of natural justice – there is no reason whatsoever to extend it as proposed. Their full response is essential reading, and a summary cannot do justice to it: will the people who really know how this dangerously illiberal system purports to work be listened to at all? Imagine if their words rinsed and wrung the ears – let us all hope for lightning.

Criminals who assault Scottish police to be forced to pay for their treatment

Ministers also considering a surcharge on criminals to create fund for all victims of crime

Kirsty Scott, uardian.co.uk, Thursday 12 April 2012

The Scottish justice secretary, Kenny MacAskill, announced the initiative during a visit to a police treatment centre. Photograph: Danny Lawson/PA Police and victim support groups have welcomed the moves by the Scottish government to make criminals who assault police officers pay to help fund their recuperation. The Scottish justice secretary, Kenny MacAskill, announced the initiative, one of the first of its kind in the world, during a visit to a police treatment centre in Auchterarder, Perthshire, which is part funded by contributions from officers' salaries. In the last year there were 4,899 convictions for assaults on police officers in the Scottish courts. The new proposal would form part of the forthcoming victims and witnesses bill.

Ministers are also considering levying a victims' surcharge on criminals, on top of existing compensation orders, to create a fund that would provide help to all victims of crime. MacAskill said: "The police treatment centres put right the damage done by criminal assaults largely

had spent virtually his whole childhood and adult life in the UK, very serious reasons were needed to justify his expulsion. Most of Balogun's offences had been committed as a minor, and he had no meaningful social, cultural or family ties in Nigeria.

The judgments follow hard on the heels of the similarly disappointing judgment in the 'kettling' case, in which the court found that holding demonstrators and passers-by in Oxford Circus with no toilet facilities, food or drink for seven hours without allowing them to leave, was not a deprivation of their liberty.

The rulings come at a time when the British government is seeking to cut down the jurisdiction of the European human rights court in the draft Brighton declaration to be debated by Council of Europe ministers next week. It has repeatedly criticised the court for interfering in its freedom to deport those it wants to deport, and has effectively told the court to concentrate on countries such as Russia and Turkey.

David Cameron notoriously called the Strasbourg court a 'small claims court' over its upholding of Abu Qatada's complaint that his trial on torture evidence if deported to Jordan would be illegal as a flagrant denial of justice. It is hard to resist the conclusion that in these judgments the court is seeking to reassure the government that it is listening, and that it is prepared to give the UK authorities its support in deportation and public order cases whenever it can. Not quite the same as giving Gaddafi a present of a dissident illegally rendered from Bangkok – but not a million miles off.

Report on an announced inspection of HMP Durham by HMCIP

Inspection took place, 3–7 Oct 2011, report compiled Feb 2012, published Tue 17/2012

Recent inspections of Durham prison have identified slow progress against a backdrop of some significant concerns, and this inspection found a similar pattern.

Inspectors were concerned to find that:

- prison had not identified the needs of young adults and had no strategy to meet them;
- one in 10 of the population were young adults and they were much more negative about their relationships with staff than the older men.
- they were more likely to be subject to control and restraint [than the older population]
- one in five prisoners tested positive for drug tests, a third said it was easy to get drugs in the prison, 13% of prisoners said they have developed a drug problem while they were there;
- the availability of drugs was a significant cause of bullying in the prison and there was a lack of rigour in tackling the problem;
- the prison was not sufficiently safe, with around 110 violent incidents a month and ineffective measures to address the behaviour of perpetrators;
- prisoners spent between 16 and 20 hours locked in their cells each day, and a third of prisoners were locked up during the working day;
- the prison was overcrowded and was operating at 50% over the number it was intended to hold, so many prisoners shared cells designated for one, with unscreened toilets and one chair;
- Some other minority needs were not effectively met
- Some of the few foreign national prisoners were isolated.
- Prisoners with disabilities were under-identified and we were concerned that staff were unaware about how some of those with mobility problems would be evacuated in an emergency.
- There was no support for prisoners from other minority groups.
- There were significant levels of self-harm with over 250 incidents in the nine

efficiently and effectively and that's what we're trying to do."

Babar Ahmad: capitulation by the European Court?

Written by Frances Webber, Institute of Race Relations, 12th April 2012

Is the European Court selling Ahmad out, and the kettled demonstrators before him, for the sake of making peace with a British government determined to get the court off its back?

The Strasbourg court's judgment in Ahmad and others, ruling that the punitive regime in which four of them are likely to spend many years in the supermax prison ADX Florence, Colorado, US, does not prevent their extradition, comes as a bitter disappointment not only to the families and supporters of those involved but to all human rights activists. The conditions were described by a former warder as a 'clean version of hell', a sterile, concrete bunker where animal needs (food, clothing, shelter) are met but human needs for communication, activity and contact are scarcely acknowledged. The court heard evidence that inmates have spent over a decade in solitary confinement there (which the European Committee on the Prevention of Torture said should never exceed fourteen days). UN bodies accept that prisoners spending long periods in solitary confinement are deranged and damaged by it. The court's own previous judgments have acknowledged that prolonged solitary confinement may violate the ban on inhuman and degrading treatment.

The judges, however, ruled that the regime to which the men will be subjected is not inhuman or degrading and will not violate the ban. In doing so, they chose to prefer the government's optimistic evidence of how the ADX regime worked, to that of the applicants' witnesses, who described the reality for the prisoners. They ruled that the men's isolation would be 'partial', and that since the US is a country with a 'long history of respect of democracy, human rights and the rule of law', prisoners could petition the courts, and could earn more privileges (more recreation and communication) by good behaviour.

These conclusions sit strangely with the acceptance by the court that there may well be prisoners at ADX Florence whose continuous confinement does violate the prohibition on torture or inhuman treatment. The contradictions evident in the judgment give it the appearance of a cobbled-together piece of work – not a bona fide judicial exercise but a cop-out designed to avoid offending either the British or the US government. As the solicitors for four of the applicants pointed out:

. . . . ''It will come as a considerable surprise to the inmates of ADX Florence … and their lawyers who struggle fruitlessly to challenge in the US courts their continuing solitary confinement for 8, 10 or 16 years, that the prisoners' grim isolation could be considered only "relative" and its continuance as justiciable.'

The court simply refused to engage with the alternative to extradition which the men have long called for – their trial in the UK. The judgment, and the proposed extradition, were condemned by the Free Babar Ahmad campaign, while Babar's sister Nazia told the Independent, 'My brother has been living in limbo for the last eight years and so have we.' The younger brother of Talha Ahsan, whose extradition was also upheld in the judgment, said:

. . . . 'We shouldn't let America dominate us unfairly and unjustly – they have been abusive with their power in Guantanamo. The US prison system with 25 per cent of the world's prisoners and five percent of the world's population is a disturbing phenomenon in itself.'

Deportation and kettling upheld: On the same day, the court upheld the deportation to Nigeria of a young man convicted of drug-related offences who had been in the UK since the age of three. Moshood Balogun had attempted suicide a number of times following the decision to deport him. The two dissenting judges pointed out that, as a settled migrant who

with money raised by donations from the victims. This is the reverse of fair. Instead it is right to expect criminals who assault police to contribute to payment for this treatment. We believe proceeds from penalties should be paid into a fund for officers.

At the moment, anyone convicted of assaulting a police officer in the line of duty faces a fine, imprisonment, a community payback order or a compensation order. Under the new plan, another option would be for anyone convicted of such an assault to pay cash to good causes through a restitution order."This is a win-win situation which will result in restitution for offenders and recuperation for victims of crime."

Eight months after the English riots: young lives blighted by punitive sentencing

Sophie Willett, 4 April 2012 - Sophie Willett works for the Howard League for Penal Reform

Faded photographs of young faces still decorate police and train stations as a last ditch attempt to find rioters who evaded the police last August. For many, the 2011 English riots are a fading memory. For the people still serving their sentence for their part in the riots, it is something they will never forget. Who are these people? What will become of them?

The most common offences with which rioters were charged were burglary (49 per cent), violent disorder (21 per cent), theft (16 per cent), robbery (2 per cent) and criminal damage (2 per cent). Rather than fitting the sentence to reflect the severity of the crime, judges concluded that the sentences should reflect the mood of public indignation.

A college student with no criminal record was jailed for six months for stealing a £3.50 case of bottled water A teenager was sentenced to ten months in prison for stealing two left-footed trainers during riots in Wolverhampton.

In all 2,710 people appeared before the courts for their involvement in the national disturbance. Just over a quarter of those were children and a further 26 per cent were aged 18-20. The average sentence length for everyone convicted was 17 months. Two-fifths of the children in custody have had no previous connection with youth offending teams, and half of under-18s brought in front of the courts on charges of rioting and looting were completely unknown to the criminal justice system. These children faced an unusually difficult welcome.

First timers had to learn the vocabulary and politics of modern prisons to survive. A prison service email urged governors in England and Wales to warn prisoners against revealing too much information to other prisoners as they were concerned for the "safety of remands/offenders involved in the public disorder".

There were reports of unrest as established prisoners resented those convicted of rioting and sought to dominate the new green entrants. Turf wars broke out on the prison estate. An incident in Cookham Wood young offenders institute left two children in hospital.

A Howard League solicitor reported: "Prisoners who were involved in the riots have been advised to walk around in pairs and to not be out in the landing on their own. Other prisoners are saying that the rioters have 'destroyed their turf' and beatings have been going on all day. It was difficult to hear on the telephone as screaming and shouting could be heard in the background."

The media gaze has long since passed and young people and their families are left alone to piece together a future for those convicted. The cost of imprisonment to the taxpayer was extortionate, and the cost to education and career prospects is even higher.

Young people have been told they aren't welcome back to college or school. People found eviction notices on front doors from the council. Let us not forget that in the days following the riots, a number of councils said they would be seeking to evict council tenants from their property if any-

one living there was found guilty of participating in the riots.

Children and young people who behaved stupidly and were convicted for their part in the riots will have spent nine months being educated in a very expensive institution. Prison. Many will leave custody far more criminally able. Many will have picked up new skills and attitudes. Many will have made firm bonds and alliances with their new friends.

All will have drastically diminished life opportunities

The majority of employers will ask about previous convictions and four million Criminal Record Bureau (CRB) checks are carried out every year in England and Wales. If an employer does ask about an unspent criminal conviction a potential employee must disclose the information. If that person lies it is a criminal offence and they could be prosecuted for fraud.

There are large number of professions where convictions can never be spent and must be disclosed, including doctors, nurses, lawyers, teachers and police officers.

Anyone with a criminal conviction will be refused access to health, social care and education courses. There can be difficulties in getting visas or entering certain countries for those with previous convictions. There is a duty to disclose unspent convictions in an application for a mortgage.

The punitive response may have satisfied the supposed public want initially. But the public aren't educated in sentencing, nor are they experts in the lasting effects of prison on children and young people. The criminalisation of young people involved in the riots will have unintended devastating consequences that may haunt us by increasing the likelihood of crime.

New and compelling evidence for the purposes of the Criminal Justice Act 2003 s.78 (retrial – double jeopardy). R v B [2012] EWCA Crim 414

The trial of the offences involving the victim began on 16 June 1999. At the outset it was submitted to the trial judge that the proceedings should be stayed on the basis that they constituted an abuse of process; or, alternatively, that the evidence of the DNA match should be excluded in accordance with the discretionary provisions in section 78 of the Police and Criminal Evidence Act 1984. The judge acceded to this submission and held that the evidence relating to the DNA match should be excluded. He based his conclusion on the structure of sections 61 to 65 of the 1984 Act which created an "exhaustive" code for the taking, use and retention of such samples. As these provisions had not been complied with, the Crown should not be permitted to use the material. The judge went further and added that if he were wrong in his conclusion based on the construction of the statute, the evidence would also have been excluded under section 78. It is not entirely clear from his ruling whether he found that the events he summarised amounted to an abuse of process or that it simply constituted a decision that the evidence sought to be relied on by the Crown should not be admitted. In any event, however, as his ruling meant that the evidence of the DNA match was excluded from consideration by the jury at the trial, the prosecution were left with no alternative but to offer no evidence.

In May 2000 the Court of Appeal upheld the judge's ruling but referred to the House of Lords the question of the proper construction of sections 61 to 65 of the 1984 Act, and in particular section 64(3B). In December 2000, in Attorney General's Reference No 3 of 1999 [2001] 1 Cr App R 34, the House of Lords concluded that the decision of the trial judge was wrong and that the statute did not provide that evidence obtained in consequence of a breach of the statutory provisions in the 1984 Act was inadmissible.

Neither the Court of Appeal nor the House of Lords was invited to consider the exercise of the judge's discretion to exclude the evidence under section 78. Nevertheless, the speech-

exercise their rights, and not with limiting their ability to access justice still further.

Lawyers claim new policy causes miscarriages of justice By Rob Cave, BBC 5

Stop Delaying Justice (SDJ) is an initiative led by the judiciary in the magistrates' courts, with judges and magistrates working together. It is a response to the problem of magistrates' court trials being repeatedly adjourned or being too concerned with debating irrelevant evidence - often for minor offences. The policy designed to streamline trials in magistrates' courts in England and Wales is leading to miscarriages of justice, defence lawyers say. The BBC has learned that in some cases defendants have been asked to enter guilty or not guilty pleas without seeing all the evidence against them. The initiative was introduced this year to try to limit hearings to six weeks. The Crown Prosecution Service said it provided all relevant information to defence in good time for a trial. And the Magistrates' Association insists defendants still get a fair hearing.

However, lawyers criticising the SDJ policy say it is not giving the CPS enough time to disclose evidence to defendants. They say some defendants may be pleading guilty to crimes without knowing the full details of the prosecution case against them. Exeter defence lawyer Stephen Nunn told the BBC's 5 live Investigates programme that one of his clients was expected to plead guilty without seeing crucial fingerprint evidence. Mr Nunn said the CPS imagined his client would accept that the fingerprint evidence would lead to his conviction. In fact, when he instead chose to plead not guilty, it was the fingerprint evidence which proved his innocence. "This is undoubtedly leading to miscarriages of justice," Mr Nunn said. "If you've got to guess what the evidence is, and guess what your defence has got to be, justice is not going to be done. People will either plead guilty because they're bullied, or rushed into it, or plead not guilty for all the wrong reasons. It's just a really bad way to have a criminal justice system working," Mr Nunn said.

Defence lawyer Stephen Nunn believes the new system is hitting the prosecution as hard as it is hitting the defence: He said: "I can't imagine in reality they like it one little bit because they lose cases because of silly time scales, and inflexibility, and criminal procedure rules. So undoubtedly there will be some defendants who ought not to walk free, but do, as well as defendants who should walk free, and don't." The 5 live Investigates programme contacted defence lawyers across England who all said they had examples where their clients were expected to enter a plea without knowing the exact evidence against them. In some instances, the evidence eventually cleared defendants of the charges facing them.

Lawyers say the CPS is choosing to drop charges, or pursue more minor charges, because it speeds up the time it takes to prepare a prosecution file. The CPS said it fully supported the Stop Delaying Justice initiative and it fitted in with its objective of helping to provide swift and effective justice while maintaining the quality of the prosecutions it undertakes. It said it was committed to providing the relevant information to defence in good time for a trial.

As proof of how effective SDJ could be, the CPS said it had recently managed to successfully prosecute someone on the same day that the man had been arrested - even though he had pleaded not guilty. The main aim of the Stop Delaying Justice initiative is to ensure trials are completed within six weeks. Defendants get just two hearings, one to hear the evidence and to make a plea, the other to hear the trial.

Deputy chairman of the Magistrates' Association Richard Monkhouse said that while a six-week, two-hearing limit is the ultimate aim, courts should still be adjourning to allow the accused to see the evidence if there was genuine need. Mr Monkhouse told the BBC he hoped adjournments would be rare: "Justice delayed is effectively justice denied, and we've got to remember there's a victim in all of this. The victim wants to see that the courts are running

available to help them navigate these.

The dominant tone of the political debate and much media reporting means that, when it comes to foreign nationals who commit crime, we're only too familiar with the trope of the 'dangerous' individual who enters the UK, often illegally, and commits a serious offence - and who must, therefore, be removed from the country in order to preserve the safety of the public. It's important to point out, therefore, that a broad range of offences, and not simply serious violent or sexual offences, can trigger deportation action. Under the provisions of the UK Borders Act 2007, for instance, any non-EEA national sentenced to twelve months or more in custody faces automatic deportation. It's also worth highlighting that anyone who is not a British citizen - including those who are living here entirely legally, and who have been settled in the UK for many years - can be deported.

If a non-UK citizen who is sent to prison does find him or herself facing deportation, what are the difficulties they are likely to face? There is, firstly, the challenge of getting hold of immigration advice when you're in prison. Although prison service guidance sets out that "it is important that ... independent immigration advice [is] available for prisoners to access when it is required", as inspectorate reports often testify, this is rarely readily available. The charity I work for, the Detention Advice Service (DAS), is the main provider of immigration advice in prisons, and we currently work directly in 14 of the more than 130 prisons in England and Wales, which gives an indication of the scale of the problem.

The lack of co-ordinated advice provision, in spite of the significant number likely to be affected by deportation - a recent parliamentary written answer has highlighted that at the beginning of this year, more than 5,000 foreign national prisoners were being considered for deportation - means that many are passing through the prison system without getting any advice about their situation at all. According to the most recent instalment of a regular survey conducted by Bail for Immigration Detainees (BID) and the Information Centre about Asylum and Refugees (ICAR), 42% of immigration detainees who have been foreign national prisoners received no immigration legal advice while they were in prison; the previous survey showed that this was the case for a staggering 78% of former foreign national prisoners interviewed.

Even if a foreign national does manage to get some immigration advice whilst in prison, there is no guarantee that they will be able to find a legal representative to help them to challenge deportation proceedings. At present, it's often difficult for those held in prisons located outside major cities to find legal aid solicitors to take on their cases. From April next year, when the legal aid cuts come into force, it'll be, in short, impossible for foreign nationals held anywhere in England and Wales to access legal representation to challenge deportation action unless they can pay for it. Needless to say, the majority cannot.

This leaves those facing deportation with the 'option' of representing themselves at an appeal hearing. Given, however, the complexity of immigration law - as recognised by the House of Lords during its Report Stage debate of the Legal Aid, Sentencing and Punishment of Offenders Bill - and the very real barrier of language faced by many foreign national prisoners, not to mention the difficulty of preparing a legal challenge whilst you're in prison, the government's insistence in its 2010 green paper on legal aid that those facing deportation should be able to "navigat[e] their way through the tribunal system" without professional assistance is almost painfully disingenuous.

Theresa May is right to have highlighted the need to reform the way foreign national prisoners are dealt with. If she is truly determined to root out unfairness in the current system, however, her concerns should lie with increasing the opportunities available to this group to understand and

es in the House of Lords give the clearest possible indication that, if that question had been addressed, the decision of the trial judge on that issue, too, would have been found to have been mistaken. Notwithstanding the unequivocal ruling that the DNA evidence would have been admissible as a matter of law, and the intimation that the exercise of the discretion under section 78 was, at the very least, open to serious question, as the law then stood, this case was at an end. The opinion of the House of Lords in relation to sections 61 to 65 of the 1984 Act would be of importance in cases then current and subsequent cases, but not in this case.

The essential argument deployed in writing on behalf of the respondent was that the evidence now under consideration cannot be described as "new" in the context of and for the purposes of section 78(2). It was contended that it was "adduced" [Adduced: in effect - to cite reasons, examples, etc as evidence or proof] in the earlier proceedings when it formed the basis of the trial judge's ruling. The ruling that the evidence should not be admitted before the jury did not mean that it was not adduced in the proceedings. The argument is developed on the basis that the application by the prosecutor in truth constitutes an appeal against the terminating ruling in 1999, at a date when no such proceeding was available or permitted. In essence, the written submission invited the court to consider that section 78(2) was not intended to constitute a process of appeal against a trial judge's ruling and, more significantly, that it was not intended by Parliament to apply to evidence available at trial but ruled inadmissible.

For the purposes of sections 75 to 79 of the Criminal Justice Act 2003 the word "proceedings" is not defined or explained. Reading these sections as a whole within their own context, it is clear that the word "proceedings" is designed to cover the entire process which resulted in the original acquittal. However, as a matter of statutory construction it does not follow that all evidence which was available to be deployed in the earlier proceedings must fall outside the ambit of the "new" evidence provision on which section 76 applications must, whether in whole or in part, be based. Subject to the interests of justice requirement found in section 79, evidence which was available to be used, but which was not used, may be "new" evidence for the purposes of section 78(2). This provides the context in which to reflect that section 78(2) is concerned with evidence -- that is admissible evidence capable of being deployed against a defendant in accordance with the rules of admissibility.

Evidence sought to be advanced by the Crown at the original trial was undoubtedly available to be considered by the trial judge when he was asked to decide whether the evidence could or could not be adduced in, or should be or should not be excluded from, the evidence to be placed before the jury. Without considering it, he could not provide a proper ruling on the question. However, once the judge ruled that it should not be admitted at the respondent's trial, notwithstanding that it was available for his consideration, and indeed that he considered it, it was not, in the court's judgment, "adduced" in the proceedings.

In the instant case the judge ruled (wrongly, as the House of Lords found) that crucial admissible evidence should not be admitted. His ruling was wrong. As a result this crucial evidence was not, and could not be, adduced by the Crown in the proceedings against the respondent. In the court's judgment, the evidence excluded by the judge constitutes new evidence for the purposes of section 78(2) on the basis that it was never adduced in or brought forward for consideration as admissible evidence at the original trial. For present purposes, therefore, all the DNA evidence, whether available at trial or emerging from further investigation of the relevant material, constitutes new evidence.

It is clear that the language of clause 65(2) of the original Bill (the predecessor to section

78(2) of the Act to the effect that where at the original trial evidence was available in the broad sense, it should not be treated as new evidence) was deliberately amended to the current position that whether or not it was available, it is new evidence if it was not adduced in the proceedings.

Accordingly, the mere fact that evidence was available at the original trial does not mean that it was adduced in those proceedings.

Vulnerable adults still protected by High Court's "great safety net"

UK Human Rights Blog, April 6th 2012 - DL v A Local Authority & Others [2012] EWCA Civ 253

Where adults have capacity under the Mental Capacity Act 2005 (MCA 2005), does the "great safety net" of the High Court's inherent jurisdiction still exist to guard them from the effect on their decision making of undue influence, coercion, duress etc? In its judgment handed down on 28 March 2012, the Court of Appeal confirmed that it does.

DL proceeded in the High Court and the Court of Appeal on assumed (as opposed to agreed) facts, many if not all of which were contested by the appellant. For the court's purposes however, it was assumed that DL, a man in his 50s who lived with his mother and father (90 and 85 respectively), had behaved aggressively towards his parents, physically and verbally, controlling access to visitors and seeking to coerce his father into transferring ownership of the house into DL's name, whilst pressuring his mother into moving into a care home against her wishes. The Court of Appeal's judgment uses the term "elder abuse" for such a situation.

Importantly, it was assumed that both elderly parents did have capacity within the meaning of the MCA 2005 in that neither was subject to "an impairment of, or a disturbance in the functioning of, the mind or brain". The interference with the process of decision making arose rather from undue influence and duress inflicted by their son. The local authority, concerned by DL's conduct, nonetheless applied to the court for injunctions restraining DL's conduct towards his parents.

Jurisdiction to interfere: The interim injunctions, granted by Lord Justice Wall (President of the Family Division) and affirmed by Mr Justice Theis, were appealed by DL on the ground that since the passing of the MCA 2005, the court no longer had jurisdiction to interfere in the affairs of adults who had capacity within the meaning of that Act to make their own decisions, vulnerable or not. In the alternative, in so far as the inherent jurisdiction survived the introduction of the MCA 2005 and its accompanying Code of Practice, it was limited to providing a short period for the individual concerned to be allowed to make his or her own decision.

In rejecting DL's argument and finding that the parens patriae ("parent of the nation") jurisdiction of the High Court was maintained in relation to vulnerable if "capacitous" adults, the Court of Appeal referred at length to the extensive discussion of this area of the law contained in the judgment of Munby J in Re: SA (Vulnerable adult with capacity: marriage) [2005] EWHC 2942 (Fam). That decision affirmed the existence of the "great safety net" of the inherent jurisdiction (a term coined by Lord Donaldson in In re F (Mental Patient: Sterilisation) [1990] 2 AC 1) in relation to all vulnerable adults. Munby J's conclusion (at paragraph 79 of SA) was that:

. . . . The inherent jurisdiction can be invoked wherever a vulnerable adult is, or is reasonably believed to be, for some reason deprived of the capacity to make the relevant decision, or disabled from making a free choice, or incapacitated or disabled from giving or expressing a real and genuine consent. The cause may be, but is not for this purpose limited to, mental disorder or mental illness. A vulnerable adult who does not suffer from any kind of mental incapacity may nonetheless be entitled to the protection of the inherent jurisdiction if he is, or

is reasonably believed to be, incapacitated from making the relevant decision by reason of such things as constraint, coercion, undue influence or other vitiating factors.

In rejecting DL's appeal, the Court of Appeal dismissed the argument that SA was an isolated and impermissible extension of the court's authority – an argument difficult to sustain in the face of the exhaustive analysis of authority performed by Munby J, whose conclusions were given "unreserved endorsement".

The Court of Appeal also rejected arguments that Parliament in enacting the MCA 2005 must have intended an exhaustive code for the protection of adults, dependant on a criterion of incapacity; the Court held that, on the contrary, the fact that Parliament chose not to abolish the inherent jurisdiction for the protection of all vulnerable adults which pre-existed the Act was a factor indicating that it was intended to be left untouched. Regarding the augments in relation to Article 8 of the European Convention on Human Rights (ECHR), which were accepted to be somewhat neutral between the parties, it was observed (at paragraph 66) that:

. . . . In terms of the ECHR, the use of the inherent jurisdiction in this context is compatible with Article 8 in just the same manner as the MCA 2005 is compatible. Any interference with the right to respect for an individual's private or family life is justified to protect his health and or to protect his right to enjoy his Article 8 rights as he may choose without the undue influence (or other adverse intervention) of a third party. Any orders made by the court in a particular case must be only those which are necessary and proportionate to the facts of that case, again in like manner to the approach under the MCA 2005.

In dismissing the spectre of the use of the inherent jurisdiction by local authorities to pursue a "Big Brother" agenda, the Court commented (at paragraph 76) that:

. . . . It is, of course, of the essence of humanity that adults are entitled to be eccentric, entitled to be unorthodox, entitled to be obstinate, entitled to be irrational. Many are.

No doubt many citizens, lawyers in particular, will be reassured by that observation.

Time to Think Again About Foreign National Prisoners

Gemma Lousley, Hufington Post, 11/04/2012

Although you'd be hard pushed to remember a good one, it's been a particularly bad week for foreign national prisoners. A few days ago, in an interview with the Sunday Telegraph, Theresa May once again pledged her commitment to preventing the 'abuse' of Article 8 of the European Convention on Human Rights by foreign nationals convicted of a criminal offence, promising that by the summer, the Immigration Rules will be changed so that the right to a family life will act as a barrier to deportation only in "exceptional cases".

Then, on Wednesday 11th April, the Home Affairs Committee published a report on the work of the UK Border Agency, which interrogates UKBA's failure to deport certain foreign nationals given custodial sentences, before setting out "our basic view that no foreign national prisoner should be released without deportation being fully considered."

Going on these alone, you'd be forgiven for thinking that currently, foreign national prisoners are given a fairly easy ride by an over-liberal, under-efficient system, and that urgent changes are needed to stem the tide of those managing to frustrate attempts to expel them from the UK.

In fact, the system is already pretty well stacked against them. Rather than the wily manipulators the Home Secretary seems intent on casting them as, foreign national prisoners are a vulnerable, disenfranchised group, who often struggle to fully understand the complex criminal justice and immigration systems they are faced with, and for whom there is little support