underestimated. There is still a need for significant improvements and some aspects of the regime - particularly the treatment of vulnerable prisoners and those on the basic incentives level - are unacceptable. However, overall this inspection found improvements were being made and the prison had some encouraging plans for the future, although they were still too new to be judged during this inspection. We hope that by the time of our next inspection these plans will have borne fruit and the improvements we began to see on this inspection will have accelerated.

Jeremy Bamber Threatens CCRC With Legal Action

Following the recent refusal by the Criminal Cases Review Commission (CCRC) to refer the case of Jeremy Bamber back to the court of appeal, his legal representatives, McKay Law have submitted a 13 page pre-action letter to the Commission requesting that they re-assess the case within 14 days. The purpose of this letter is to advise the Commission that McKay Law have been instructed to issue proceedings against them for Judicial Review as a result of their failure to refer Jeremy Bamber's case back to the Court of Appeal which was notified to him on 25th of April 2012. The letter expresses legal concerns about the content of the Commission's Statement of Reasons and Press Release on 25th April 2012 which stated: "matters of pure speculation or unsubstantiated allegation constitute neither new evidence nor new argument capable of giving rise to a real possibility that the court of appeal will quash a conviction. Neither can such a real possibility arise from the accumulation of multiple substantiated allegations."

The letter from McKay Law states this was a "gross misrepresentation of the nature and content of the submission made" and further "risked substantially misleading the public as to the nature of those submissions. In particular, the submissions included opinions of eminent experts in their fields and under no circumstances was the Commission equipped or was it appropriate to express the view that it did."

Extract of letter - Summary of the Grounds for Judicial Review

That the Commission acted unlawfully in the sense that they applied the wrong test in determining whether to refer the case back to the Court of Appeal and/or failed to provide reasons as to why the test was not met

That the Commission failed to either raise additional queries in respect of the preliminary reports of the experts provided to them in January 2012 and/or failed to carry out their own inquiries

The decision was unreasonable in the sense that no public authority tasked with the function of reviewing whether the statutory test under the Criminal Appeal Acts 1968 was met could have reached the conclusion that the case should not have been referred back to the Court of Appeal in accordance with section 13 of the Criminal Appeal Act 1995 (the real possibility test).

Jeremy Bamber, A5352AC, HM Full Sutton, York, YO41 1PS

Hostages: James Cullinene, 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, 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 371 10/05/2012)

Liam Holden - Granted Murder Appeal Following Waterboarding Evidence

Henry McDonald, guardian.co.uk, Friday 4th May 2012

The last man sentenced to be hanged in the UK has won permission to appeal against his conviction for murdering a soldier in Northern Ireland, after evidence emerged of British army use of waterboarding torture during interrogations in the 1970s. Prosecutors offered no objection to an appeal by Liam Holden, whose 1973 conviction for murdering a member of the Parachute Regiment was based on a confession he said was extracted under torture that included waterboarding. Holden's legal team cited fresh evidence unearthed by Guardian reporter Ian Cobain about the use of waterboard torture techniques by the military at the time.

Speaking after Friday's hearing in Belfast, Holden's solicitor, Patricia Coyle, said Cobain's material, which will form part of a book, Cruel Britannia, covering the British military's use of torture from the second world war onwards, was significant in securing the appeal. Coyle said: "We have taken a seismic step towards overturning Liam Holden's conviction. The crown lawyer said they would offer no objection to holding the appeal, which is listed for June." The lawyer also released a statement on behalf of Holden, who served 16 years for a crime he said he never committed. It read: "My client welcomes the decision by the director of public prosecutions not to oppose the Criminal Cases Review Commission referral to the court of appeal on the basis that the verdict in his case from 1973 is unsafe. He has been protesting his innocence for almost 40 years. Despite this indication today by the director of public prosecution, my client may, however, wish to pursue the allegation of water torture/waterboarding. This allegation was first made by him in his trial in 1973."

The Public Prosecution Service (PPS) said that fresh evidence concerning the circumstances of Holden's detention by the army was central to the decision not to oppose the appeal. A PPS spokesman said the decision was made on the basis that material in a confidential annex of evidence compiled by the Criminal Case Review Commission had not been available to prosecutors at the time of Holden's trial. Had it been passed to prosecutors they would in turn have been obliged under law to pass it to Holden's defence team, allowing them to challlenge "the admissibility of statements of admission made by Liam Holden to the military and to police". The spokesman added: "The court of trial was therefore deprived of relevant material that might have led to a different outcome on the question of admissibility of the incriminating statements, which were the sole basis of the conviction. In those circumstances the director concluded that it would not be appropriate to oppose the appeal."

The jury refused to believe Holden's claim that he only confessed to the fatal shooting of Private Frank Bell in October 1972 in the republican Ballymurphy area of west Belfast under torture and duress. Bell had just turned 18 and had joined the Parachute Regiment six weeks earlier. He was the 100th British soldier to die in Northern Ireland that year. Holden said that after he was arrested he was taken to the nearby Black Mountain army base where he was beaten, burned with a cigarette lighter, hooded and threatened with execution. In addition, Holden, who was then a 19-year-old chef, said a towel was placed over his head and water poured slowly over his face from a bucket. "It nearly put me unconscious. It nearly drowned

me and stopped me from breathing. This went for a minute," he recalled. A short time later, Holden said he was subjected to the same ordeal again - an interrogation technique that later became, via Guantánamo Bay, notorious around the world as waterboarding.

Although Holden was found guilty of a capital murder the then Northern Ireland secretary, William Whitelaw, commuted his sentence to life. Since his release from jail in 1989 Holden has campaigned to clear his name.

No Justice for Kevin Nunn - Convicted Killer Refused Leave to Reopen Case

Bury Free Press, Friday 4 May 2012

Convicted killer Kevin Nunn had his bid to re-open his case turned down by top judges today. Nunn, of Woolpit, whose family have spent tens of thousands battling to clear his name, was convicted of murdering his ex-girlfriend Dawn Walker, 39, in November 2006 and is serving a minimum 22-year sentence. Ms Walker's defiled body was found near the River Lark, in Suffolk, in February 2005, but Nunn, now 50, has always protested his innocence, claiming there was no forensic evidence linking him to the crime. Court of Appeal judges rejected his conviction challenge in October 2007, but his 76-year-old father, Horace, a retired lorry driver, has never given up the fight to exonerate him, ploughing his £50,000 savings into his quest.

In London's High Court Nunn's QC, Hugh Southey, challenged a refusal by the Chief Constable of Suffolk and Crown Prosecution Service to allow his legal team to re-examine forensic evidence. Mr Southey said semen discovered on Ms Walker's body could not be attributed to Nunn as he had had a vasectomy. He wanted Nunn's own forensic scientists to re-analyse the evidence to see if they might find a new match for the semen traces, and so achieve a major breakthrough.

However, Sir John Thomas, & Mr Justice Haddon-Cave, threw out Nunn's legal challenge, saying none of the arguments advanced 'cast doubt on the safety of his conviction'. "What is essentially sought by the claimant is access to material to enable the case to be re-investigated and re-examined. The time for the investigation and examination was the trial." Sir John said Ms Walker, from Fornham St Martin, and Nunn had broken off a two-year relationship on February 2, 2005. Nunn claimed the split was amicable, but the judge said a number of neighbours 'heard sounds of argument coming from the direction of her home' the night before she disappeared.

The prosecution claimed Nunn killed Ms Walker after their row. At trial, Nunn claimed the killer was another man with whom Ms Walker had been involved. Nunn's sister Brigitte Butcher said outside court: "If I thought for one moment he was guilty I wouldn't be doing this".

Kevin Nunn: LA9547, HMP Garth, Ulnes Walton, Leyland, PR26 8NE

Justice for James Cullinane

In December 2009 James was sentenced to life with a minimum tariff of 14 years for the murder (which he has always denied) of his friend Stephen Williamson

Brief Outline: On the 15/4/2009, I went to the cash machine on Caldon Road, Irvine at 07:00 hrs and withdrew £200. It was my benefits payments which I had been waiting for as I hadn't received a payment for 3 weeks. I returned to the flat of Stephen Williamson where I had been living for the past 3 or 4 months. I had my own house only 10 minutes walk away, but stayed at Stephen's as I suffered from epileptic seizures and Stephen would keep an eye on me and we could pull our resources during the winter. I loaned Stephen £20 which he went to the Caldon Road shops with to buy cigarettes and bottles of cider. He started to drink the cider at about 08:15. I got washed and ready as I wanted to go into town to the "Iceland" super-

Most vulnerable prisoners had, at some time, feared for their safety in the prison. Problems with first night procedures were a significant factor in this. There were designated first night landings for ordinary and vulnerable prisoners but neither had the capacity required to cope with the flow of prisoners. This was bad enough for the general population but we found vulnerable prisoners located among the general population in their first week who had been forced to remain in their cells, unable to shower or associate. Most vulnerable prisoners had a very poor induction. Even after the first night and induction periods, the vulnerable prisoner wing did not have space for all and we found incidents of vulnerable prisoners who had been assaulted on the main wings where they had had to be located. Relationships between staff and prisoners on the vulnerable prisoner wing were good, but poor arrangements for securing the safety of vulnerable prisoners restricted their access to almost all other parts of the regime. They were less likely to be able to shower daily. They had very poor access to education, work and library provision, and no access at all to vocational training. Many did not even feel safe enough to attend religious services because these were held jointly with the main population. They had less access to some resettlement support and they felt stigmatised and threatened during visits. This was an unacceptable state of affairs and there was little sign the prison was addressing it in the determined way required.

The incentives and earned privileges scheme had been used to reinforce a zero tolerance approach to a range of bad behaviour. In practice, this was too often used as a crude punishment system with little emphasis on encouraging good behaviour. Of most concern was the designation of one wing landing as a 'reintegration unit' where prisoners on the 'basic' level of the scheme were held. Prisoners were placed on the basic level and in the unit for offences where an adjudication would normally be held but where the evidence was not sufficient to support formal charges. The unit was little different from segregation but without the procedural and governance safeguards segregation would require. In some aspects, the unit did not meet the minimum standards required by the prison service. Prisoners were not allowed association for the first 14 days they spent in the unit and, until the inspection, were not allowed a radio. Certainly, there was little evidence of the 'reintegration' the name implied. We found very vulnerable men on open ACCTs in the unit and others with meaningless targets where little effort was made to identify the reasons for their behaviour and where the regime was far too restrictive to meet their needs.

It was welcome that prisoners could spend more time out of their cells since our last inspection and that a greater range of activity was available. The quality of education, training and work opportunities was mixed and the good quality assurance processes that had been in place at the last inspection had not been sustained. The workshops did not lead to recognised qualifications and there was not enough steady contract work to provide a realistic working environment. Nevertheless, these problems had been identified and were being addressed. Roles and responsibilities had been reassigned and the prison was now well placed to implement its learning and skills strategy.

The prison's new reducing reoffending strategy was based on a thorough needs assessment but the strategy had not been in place long enough to assess its impact. The prison had developed good community links. However, resettlement resources were not adequate to meet the needs of the population held. There were significant backlogs of the reviews necessary to address prisoners' offending behaviour and little planning for remand or short-term prisoners. Housing services were stretched and some prisoners did not have accommodation confirmed until the day they were released; during the inspection just before Christmas, some prisoners expressed great anxiety that they would be homeless after release.

The challenge of making the improvements that HMP Liverpool requires should not be

with first night procedures were a significant factor

- designated first night landings for ordinary and vulnerable prisoners, did not have the capacity to cope with the flow of prisoners
- Inspectors found incidents of vulnerable prisoners who had been assaulted on the main wings. Poor arrangements for securing the safety of vulnerable prisoners restricted their aspect to almost all other parts of the regime, which was unacceptable.
- both violence reduction and suicide and self-harm monitoring procedures needed more consistent implementation on the wings and a greater emphasis on tackling underlying causes;
- the Incentives and Earned Privileges (IEP) scheme was too often used as a crude punishment system with little emphasis on encouraging good behaviour;
- one wing landing had been designed a “reintegration unit” for prisoners on the 'basic' level of the IEP scheme, which was little different from segregation but without the safeguards segregation would require;
- despite friendly interactions, mutual expectations between staff and prisoners appeared low;
- the prison struggled to keep old buildings decent and habitable;
- resettlement resources not adequate to meet needs of the population, with backlogs of the reviews necessary to address offending behaviour and little planning for short-term prisoners.

Introduction from the report: HMP Liverpool, known locally as Walton Gaol, is a large, local prison for remand and convicted men mainly from the Merseyside area. Previous inspections have found very little progress made in addressing some of the prison's deep-rooted problems and so it is to the credit of the current management and staff that this inspection found progress was being made, albeit painfully slowly and with some significant gaps.

In our survey, more prisoners than at our last inspection and at similar prisons told us that most staff treated them with respect and that they had a member of staff they could turn to if they had a problem. We observed generally relaxed and friendly interactions between staff and prisoners but mutual expectations appeared low. The prison struggled to keep old and sometimes literally crumbling buildings decent and habitable. A traffic light system had been introduced which now, at least, ensured cells in the very worst condition were taken out of use. Although, in our survey, prisoners from some minority groups reported less positively than the majority of the population, the prison's work on diversity issues had a new, positive impetus. There was an enthusiastic equalities team who were well regarded by prisoner diversity representatives, but it was now important that the new and comprehensive equalities strategy embedded further improvements in the work of the prison as a whole. Health services remained good.

Prisoners also told us that they felt safer in the prison than at our last inspection and perceptions of safety were now similar to other local prisons. For the population as a whole, the evidence generally bore out their perceptions. The recorded level of fights and assaults had fallen significantly since our last inspection. Levels of self-harm were relatively low and the average number of open ACCT documents (suicide and self-harm monitoring procedures) had remained constant. Despite this, there was no room for complacency. Both violence reduction and ACCT procedures needed more consistent implementation on the wings and a greater emphasis on tackling underlying causes. We found evidence that a problem of misplaced risk information identified by an investigation into a self-inflicted death earlier in 2011 was repeated on the arrival of another prisoner during the inspection. There had been three self-inflicted deaths since our last inspection and very sadly another death, which appeared to be self¬inflicted, took place during the course of the inspection itself.

market to stock up on shopping as there was nothing in the house. I was not drinking at this time. I was about to set off at 09:00 when Audrey Hepburn arrived at Stephen's, saying she had just had a big fall out with her partner Alan Mc Dade, who had kicked her out of the house and she had nowhere to go. I was always a bit wary of Audrey as she was a heroin addict and I didn't think it was a coincidence that she arrived on the day I got my benefits. Audrey knew more about my benefits than I did. She had a small back-pack with her which she said she had to hide; as it had her 'kit' in it (I presumed it was drugs). Stephen told her to hide it in the laundry basket in the spare room. I told Audrey I was going into town and she asked me if I would call into the local town court as she was supposed to appear there that morning at 10:30 and she didn't feel well enough to go.

I left to walk into town at about 09:30, a 20 minute walk. I firstly went to the court to pass on Audrey's message where I was told she was supposed to appear but accepted her message and would be in touch with her to arrange another date to appear.

I then went to 'Iceland' which was only about 100 yards from the court. I go there as if you spend £25 or more they will deliver your shopping for nothing, thus enabling me to walk back to Stephen's and saving a taxi fare.

I arrived back at Stephen's not long before the shopping was delivered, between 11:00 and 12:00. Stephen was already starting to show signs of, what I believed was, his drinking. Audrey had been drinking as well, which was surprising as she normally wouldn't drink. After I put the shopping away I had a couple of small glasses of cider but not much. At about 14:00 hrs Gary Mc Murtrie, the son of a close friend of mine, Lil Faddes, arrived. He was well known to the three of us, but especially Audrey as he is a heroin addict as well. He sat and had a couple of drinks, then asked me if I could lend him £10 till the following day, as he needed it to buy food. I told him I would not give him any money as I knew he would use it to buy drugs. I did however tell him he was in luck as I had just been for the shopping and I will give him some things to see him through till tomorrow, which I did.

At about 15:00 hrs, Stephen said he was going to need more cider, and would I go to the shops for him. I wanted to go to the bookies shop on Caldon Road anyway to place a bet on the Champions League football that night as we could watch it on the T.V. that evening. Audrey came with me to the Caldon Road shops, she went in for the cider and I went into the bookies shop next door. Audrey came into the bookies to get me, I had placed my bet for that night's football and had won £8.75 on the dogs. With my winnings I went into another shop and bought some flowers which had been reduced in price, and I thought they would brighten up Stephen's living room.

On the way back from the shops Audrey told me there were some terrible rumours going round about me and Stephen knew the person who had been spreading them, as it was one of his neighbours. Audrey said she would get Stephen to tell me who it was when we got back to the flat, I told her I wasn't particularly bothered as I don't listen to gossip.

When we got back to the flat Stephen and Gary had carried on drinking, Stephen was pretty well drunk by this time. We sat for a while before Audrey finally started insisting that Stephen tell me who this neighbour was, even though I said it didn't matter. She eventually bullied Stephen into telling me it was a guy called Iain Gillies who lived a couple of doors away who was responsible. Audrey then insisted that we go and have it out with this neighbour. I didn't want to go and Stephen could hardly walk. Anyway Audrey was determined that we should go and confront this man. I had nothing to hide so to keep the peace, I agreed to go and see him. Audrey and I left the house first followed by Stephen, a minute or so later.

Audrey knocked on the door and Mrs Gillies answered, not at all happy that Audrey was shouting that she wanted to speak to her husband. When this was going on I looked back over to Stephen's flat and saw Gary leaving with the small bag of shopping I had given him. Stephen was leaning against a fence in between where we were and where Gary was. The two women were arguing until Iain Gillies came to the door, I thought I didn't know this man but I recognised him as someone I knew from many years ago. What I remembered of him, was he was a quiet chap who was never any trouble. Audrey went back to the flat and I spoke to Iain briefly to tell him I'm sorry for any trouble and as far as I was concerned it was nothing to bother with and the matter was over with.

When I was still at the Gillies door, Audrey came running out of Stephen's flat shouting angrily "The bastards took everything" or words to that effect, witnessed by the Gillies'. I left the Gillies' to go and see what the problem was now, I passed Stephen who was walking toward the Gillies', crying saying he was sorry. I got back to Stephen's flat and Audrey was livid, saying Gary had taken her stuff. She was bawling and shouting going crazy. Stephen returned and she started shouting at him. I just went in to the kitchen out of the way as I didn't want involved in any more carryon. I simply lent on the sink and stared at the kitchen window. I could hear Audrey opening and shutting drawers and cupboards all over the flat and generally going ballistic. This went on for quite a while and I could hear Audrey and Stephen arguing in the living room.

Then suddenly it all went quiet and a few seconds later I turned round and saw Audrey standing at the kitchen door with a knife in her right hand. Audrey said to me "You say one fuckin' thing about this and you'll get it next". I walked around her and went in to the living room where I found Stephen lying face up on the living room floor. I went over to him and I could see some blood on the front of his T-shirt. I lifted his T-shirt and I could see what appeared to be an injury to his chest. I knew I had to get him help right away. As none of us had a mobile telephone, I could only think of going back to the Gillies' to ask them to call an ambulance, which I did. I returned to the flat right away, I didn't see Audrey again as I went straight into the living room to try and do what I could to help Stephen. He was still alive, he was breathing and gargling so I tried putting him into the recovery position, I didn't know what else to do. Both the Gillies' came to the door and I asked them to come and see if there was anything they could do to help. They both witnessed and confirmed that Stephen was still alive.

A few minutes later the police and ambulance arrived and took over. A policeman took me in to the kitchen and asked me what had happened. I was in a state of shock, I couldn't do anything more to help Stephen and I remembered what Audrey had said to me what would happen if I said anything. Audrey is friendly with all the local heavy villains in the area, indeed her partner Alan Mc Dade is a well known "hard man". So I told the policeman I had nipped out to the shops for a few minutes, leaving Audrey and Stephen on their own. When I returned I found Stephen alone on the living room floor and got him help. I thought Stephen was still alive and he would be able to tell the police what had happened.

I was taken to Saltcoats police station and interviewed but I just told them I didn't know anything. I couldn't do any more for Stephen and I was thinking about my own situation as I took Audrey's threats very serious.

It took the police 3 hours to get a hold of Audrey, even though her house is only 10 minutes walk away. Audrey is well known to the police and they were at her door regularly trying to get hold of her. Audrey had went to a friend of her's house, Brinley Kerr, where she supposedly sat for 3 hours without mentioning a thing about what had just happened, or indeed tried to get any help. When the

impossible to list the case within the custody time limit, that situation will be appreciated at an early stage, the case should then be fixed as soon as possible after the expiry of the limit and the application to extend can be made immediately, when the reasons for the extension are clear to all and there should then be no need for a separate, costly, hearing.

If the court fails to take the initiative, in my judgment the duty should fall on the Crown to press for a hearing date within the time limit allowed by the custody time limit. The duty of the defence is to provide the names of witnesses required in good time, so that dates of availability can be obtained."

As set out in Norman, it is the responsibility of the State through the judicial and executive branches to try defendants within CTL or to show good and sufficient cause why they cannot be so tried. There are cases where, because of the availability of defence counsel, a defendant does not want a case tried until after the expiry of CTL. There will be other cases for other reasons where the defendant is expressly content to wait. However in the absence of the express consent of the defendant given in open court or otherwise, the State cannot escape from its obligation to make an application and a court be satisfied that there is good and sufficient cause to extend a CTL; Lord Bingham made that clear in McDonald at pages 413-4.

The court said that it would place defence advocates in an invidious position and make the task of a listing officer even more difficult than it is, if defence advocates could not simply accept what was said as to the availability of court rooms or judges and await the application to extend the CTL. The advocate would otherwise have to cross-question the listing officer informally as to such matters. That would be a practice inimical to the good administration of justice which necessitates advocates and lawyers acting on what they are told by the listing officer as to available dates. The good administration of justice requires that in cases where there is no express consent to the fixing of a case outside its CTL that the defence advocate awaits the service of the evidence setting out the explanation for the unavailability of a court or judge or other matters that would provide good and sufficient cause to extend the CTL. In the absence of express consent to the extension of the CTL, the court must therefore direct the making of an immediate application and rigorously scrutinise the evidence to see if it is satisfied there is good and sufficient cause to extend the CTL.

They emphasised that it is essential that where a case is fixed outside its CTL, the guidance given by the court in 1999 is followed. If a case is fixed outside the CTL and there is no express consent to this, it is for the court itself to take the initiative in seeing that an immediate application by the Crown is made and heard as soon as is practicable.

This case demonstrates again the necessity of treating the CTL in each case and any application to extend it in the very serious manner required of the statutory provisions which Parliament, consistent with the long tradition of the common law, has enacted to ensure cases are tried speedily and those who have not been convicted are not deprived of their liberty beyond the time specified without good reason. A person should not to be deprived of his liberty where the State cannot meet the duty to try him speedily and within the time limit specified without detailed evidence that is then subject to vigorous and stringent examination to see if the State has established good and sufficient cause to deprive him of his liberty beyond that time limit.

Report on an unannounced full follow-up inspection of HMP Liverpool

Inspection 8th – 16th Dec 2011 by HMCIP, report compiled Feb 2012, May 2012

Inspectors were concerned to find that:

- vulnerable prisoners had, at some time, feared for their safety in the prison. problems

It was submitted that the judge had misdirected himself in considering the extension of CTL on the basis that this was not a routine case and therefore no more needed to be done than the listing officer had done. The submission was that the term routine was used to distinguish such a case from one of real complexity or one that required a specially authorised judge; in routine cases the Crown had to satisfy the court that every step had been taken to see if the case could be heard within the CTL, in particular by looking at the position in other courts where the case could conveniently be tried and contacting the Regional Listing Office and the Presiding Judges. The court was referred to the decisions in McDonald, Abu-Wardeh, Bannister, Gibson and McAuley.

In the court's view this argument was well-founded. It is important to emphasise that the primary task of the court is to apply the words of the statute to the facts of each individual case in accordance with the guidance given by this court; as Lord Bingham pointed out in McDonald at pages 414-415, this court cannot specify the circumstances which are capable or not capable of amounting to good and sufficient cause. It is, however, clear that the availability of resources is a factor that can be taken into account: see Gibson at paragraphs 29-31 and McAuley at paragraph 30. However, it has been made clear that the purpose of a CTL would be undermined, if the courts granted extensions in anything other than unusual circumstances. The word routine was used in the cases, starting with Bannister, to make clear that in the overwhelming majority of cases in the Crown Court the unavailability of a judge or court room would not generally in itself provide good and sufficient cause, absent other circumstances. It was only a case of real complexity or a case which required a particular judge, such as a High Court judge or a judge authorised to try murder or attempted murder that the unavailability of a judge or court room might well of itself go a long way to establishing good and sufficient cause.

In a case which can be tried by any experienced Crown Court judge or one where authorisations are given to most Crown Court judges, the purpose of the statutory provision and the long tradition of the common law in ensuring that cases are tried speedily would be undermined if the unavailability of a judge or court room was simply treated as amounting to good and sufficient cause, absent other circumstances. Other circumstances do not arise merely from the fact that the case involves some expert evidence. For example cell site evidence and DNA evidence are a feature of many cases and absent evidence of good reason for the unavailability of the expert, would not generally be a relevant factor.

The court found it necessary to emphasise again the necessity in every case that the court in an application to extend a CTL gives detailed scrutiny to the evidence to see if the Crown has proved that there is good and sufficient cause, such evidence must be served in advance of the hearing so that the defendant has the opportunity of examining it and then testing it in cross examination, if necessary. In the court's view the judge for those reasons approached the issue on the wrong basis and misdirected himself.

In R (Norman) v Worcester Crown Court [2000] 2 Cr App R 33, the court made very clear what was to happen in relation to the fixing of trial dates and the relationship to CTL. Smith J said: "In my judgment, there is a joint duty upon the prosecution and the court to recognise that fact of life, and to make early arrangements for the fixing of a trial date within the custody time limits. Ideally, the date of trial should be fixed at the plea and directions hearing. The directions will then be tailored to ensure readiness by that date. If, as will sometimes happen, it is not possible to fix the trial date on that occasion, the directions judge should direct that the trial date be fixed within a window of time before the custody time limit expires, and should give directions which will require the parties to come back before him, if for any reason that is not achieved. If it proves

police eventually got a hold of her at her house (Alan Mc Dade's), she answered the door in her pyjamas, even though she had only been in the house for a couple of minutes. When Audrey answered the door she said "I've been expecting the CID to come for me about this".

When interviewed at the police station she apparently told the police she saw me stab Stephen in the back. When she witnessed this she then said that left the room to go and look for her child's Rangers bedclothes. When Audrey returned to the living room she said she saw Stephen had been stabbed in the chest and a knife was lying beside him on the floor. Audrey said she then picked up the knife with a hair scrunchie and took it into the kitchen and placed it in the sink, then left the flat.

D.S. Dempster told me after Audrey had given her statement if I don't tell him it was her who stabbed Stephen I would be charged with Stephen's murder. I told them they can't do that as there could not be any proof it was me as I had not done anything. To which he replied that "he was the police and he would go out and get the evidence needed to prove it was me".

The police interviewed Gary Mc Murtrie early the next morning and he told the police exactly what he knew, which was just as I had previously told them. Two weeks later Gary Mc Murtrie after speaking to Audrey Hepburn gave a second statement to the police saying that he had seen me putting a wooden handled knife down the back of my trousers before going to the Gillies' house. This statement became the corroborative evidence the police required. When asked in court why he had not mentioned this in his first statement he replied "I don't know, I must have not remembered". .

The only evidence against me was from two heroin addicts who constantly contradicted one another in court and forensic evidence which was only contact bloodstaining from when I was trying to help Stephen.

Amazingly Audrey Hepburn was given immunity from prosecution, even though I eventually named her as the person responsible for Stephen's murder. In my initial statement I did not tell the police Audrey was responsible, that was for my own safety, but I did say that it was not me who attacked Stephen. As Audrey was the only other person there she should have been treated as a suspect.

The most damning "evidence" put to the jury, was four other charges, all which involved me using extreme violence toward Stephen. One even said I had previously stabbed him in the leg. I was only ever charged with one of these offences and only became aware of the other three when I received my citation.

All of these charges were introduced by the prosecution and the jury heard days of "evidence" regarding this violence, which portrayed me as having a dark and violent character. The only criminal record I have was a "breach of the peace" and I have no violent history of any kind. At the end of the trial and without any defence being made against these charges the prosecutor for no apparent reason withdrew the four charges and the judge acquitted me on all four of these charges. The judge instructed the jury to ignore all the "evidence" put to them involved in these four charges. The desired damage the advocate depute sought had already been done.

However even after the judges instruction the advocate depute continually referred to these charges in his closing speech, thus I feel reinforcing this character assassination on me to the jury.

I find it quite outstanding and frightening that despite the lack of any reliable, credible or forensic evidence the jury still returned a unanimous guilty verdict.

My submission to the Scottish Criminal Cases Review Commission (SCCRC) was refused at the end of March 2012. I have made a fresh submission to the SCCRC.

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"Murder most foul": The Right to Life Investigating Homicide

Alasdair Henderson, UK Human Rights Blog, 1st May 2012

R (Medihani) v. HM Coroner for Inner South District of Greater London [2012] EWHC 1104 (Admin)

In what circumstances is a criminal trial not sufficient to discharge the State's duties under Article 2, the right to life, towards a victim of murder? The High Court held last week in this tragic case that a Coroner unlawfully and unreasonably decided not to resume an inquest into the death of a teenage girl where her killer had been ruled unfit to plead at the Old Bailey and handed an indefinite hospital order. The right to life, protected by Article 2 of the ECHR, has been the subject of several major cases over the past few years, both in the UK courts and in Strasbourg, relating to the extent of the State's duty to investigate someone's death. In particular, the courts have emphasised and extended bit by bit the need for a proper examination of the circumstances of a death which occurs whilst a person is in custody, in a mental health institution or otherwise within the State's care or control.

We have covered two important (and very recent) decisions involving such situations here and here. This case, however, concerned a different and more unusual set of facts, where the questions that arose centred on whether the police had done enough to prevent the murder of a young girl who had reported death threats made against her by an older man.

Stabbed to death: Around 3.30pm on 2 June 2008 Thomas Nugesse, a 21-year-old man, stabbed to death Arsema Dawitt, a 15-year-old girl. Two months earlier he had assaulted Arsema and five weeks earlier Arsema and her mother had gone to the police to report that he had threatened to kill her. Nugesse handed himself into the police and was remanded in custody. On 5 June 2008 the District Coroner opened an inquest into Arsema's death and adjourned it pending the criminal investigation and proceedings. On 25 June 2008 Nugesse was found hanging in his cell having suffered serious brain damage. On 19 May 2009 he was ruled unfit to plead. On 20 May the jury heard evidence and concluded that he had deliberately and unlawfully killed Arsema. An indefinite hospital order was imposed.

The Coroner, having been informed of the outcome of the criminal proceedings, decided not to resume the inquest. The Claimant, Arsema's mother, made a complaint against the Metropolitan Police and in November 2009 the IPCC produced a critical report which concluded that "the messages and information given by the family…were not sufficiently acted upon". The Claimant asked the Coroner to reconsider her decision not to resume the inquest, but the Coroner refused, giving the following reasons: . . . . "I find that whilst there were failures in the way the police dealt with the allegation, as described in the report, there was nothing that they knew or ought to have known of a real or immediate risk to Miss Dawitt's life. The threats made appeared to have been made across the telephone rather than face to face, the assault was a "slap" which was later denied by Arsema when interviewed by the police School Liaison Officer. She also denied that she was being harassed. The report had been made 14 or 15 days after the alleged assault, and there was nothing to indicate that Arsema thought he would carry out his threats. The CRIS [crime report] indicated that she only wanted him "warned". Further there was no other intelligence or risk assessment to indicate any real or immediate risk posed by Thomas Nugesse to Arsema Dawit's life."

The law: Inquests can be resumed after criminal proceedings if, in the Coroner's opinion, there is 'sufficient cause' to do so. The State's investigative duty under Article 2 – which requires a wider investigation than a normal inquest – arises where the State arguably breached its substantive obligations under Article 2 and other proceedings have not satisfied the requirements for an independent investigation.

One aspect of the State's substantive obligations under Article 2 is that it must take pre-

in this case that we are dealing with an offence of greater harm. However it was submitted that despite the use of shod feet, which is a factor, albeit not a statutory factor, which indicates higher culpability as being tantamount to the use of a weapon, nevertheless this offence should, on the whole, be regarded as falling into category 2. For that purpose he relies upon the factor of lack of premeditation.

The definitive guidelines then go on to state that having started with the correct starting point, which depends upon an exercise of categorisation, the sentencing judge should then in an essentially familiar way consider aggravating features and mitigating features and should thereby arrive at the intermediate resting place before taking account of such matters as pleas of guilty, which do not arise in this case.

It was accepted that there were aggravating features, such as drunkenness, persistence in aggression, failure to respond to previous interventions and warnings, the location in and just outside a bar or public house, licensed premises, and the presence of significant numbers of people. All of those are matters which are properly taken into account and many, if not all, of them are specifically listed in the list of other aggravating factors included within the guidelines.

It was submitted that even after account is taken of the mitigation in this case, which is that there are no recent relevant previous convictions and that the judge was able to speak of the applicant as a man who more recently had what could be described as a positive good character, as well as having a close relative who relied upon him for care, nevertheless, if one starts at a starting point for category 1 of 12 years, it would not be possible to arrive at a final resting point right at the bottom of the category range of nine to 16 years as the judge did. In effect therefore this was miscategorisation on the part of the judge. One should instead start at the six year starting point of category 2. In those circumstances one would conclude that the judge's overall sentence of nine years' imprisonment at the very top end of that category was too high because it would make no allowance at all for mitigation.

The court found that the instant case should be regarded as lying uneasily on the cusp of category 1 and category 2, when it is much easier to see how, taking into account those very features of aggravation and mitigation to which we have referred, one ends up either at the very bottom of the category 1 range at nine years or at the very top of the category 2 range at nine years.

The court found this to be plainly a case of greater harm, even if not a case of life threatening injuries. It was a case where really awful as the harm was it has, at any rate after a year's time, settled down and can be spoken of at any rate in its physical consequences to have been overcome. So far as culpability is concerned, there was, indeed, the use of a shod foot, but that was not the only manner in which it may be that some of that really serious harm was caused.

The court found there was serious aggravation and some mitigation but did not regard the sentence of nine years as being manifestly excessive. Held: "Reading between the lines, we regard the judge as saying, in effect, that he was treating the offence as lying between the two categories, although we accept in express terms he put it in the top category. We regard it as properly lying on the cusp of the two categories. As a sentencing exercise on that basis there is nothing wrong with the nine years."

R (Raeside) v Luton Crown Court [2012] EWHC 1064 (Admin)

This is the judgment of the court in an application for judicial review of the decision of the Luton Crown Court to extend Custody Time Limits (CTL) under s. 22(3) of the Prosecution of Offences Act 1985 until 4 May 2012. The application raised two issues of practice.

In passing sentence the judge observed that the injuries that the appellant had inflicted with his fists and shod feet were truly horrific. The proper factual basis of sentence was that the appellant had consumed an amount of alcohol which had made him aggressive and offensive. The landlord had intervened inside the bar when the appellant had become involved in an altercation. The appellant had calmed down but continued drinking. He had then gone outside and begun a further altercation and then another one too. His victim, the complainant, had intervened to try and pacify him. Although the complainant initially went off, he returned and mounted his attack. He punched his victim twice which felled him and knocked him out. He then continued the attack as his victim lay unconscious on the ground, punching and kicking his head, not many times but more than once. Any suggestion, as there had been at trial, that this was an incident where violence was begun by the victim and that the appellant was defending himself but exercised excessive self-defence was rejected. The appellant's conduct in hiding from the police demonstrated that he knew he had done something seriously wrong.

The extent of the injuries placed the case broadly within the greater harm category of the Sentencing Guidelines. The appellant's use of shod feet to kick an unconscious man's head on the ground made it a greater culpability matter. It was therefore a category 1 offence, albeit at the lower end, bearing in mind that a foot was used rather than a separate weapon.

However, there were further aggravations. The appellant was drunk, he had already acted aggressively towards others, he had failed to respond to previous intervention and warning about his conduct. The location and timing were further aggravating features. The assault had happened outside licenced premises in the early hours and in the presence of significant numbers of people.

The starting point was therefore 12 years with a range of nine to 16 years. The appellant had previous convictions for section 20 and for actual bodily harm, but each was 22 to 30 years ago.

In mitigation, reference letters had been taken into account, many people thought highly of the appellant, and more recently he had what the judge described as a positive good character.

This was not a premeditated attack in the sense of being long planned but it was a culmination of the previous incidents in which the appellant had involved himself.

Reference had been made to an element of remorse. However, the appellant had pleaded not guilty and had been convicted. A pre-sentence report stated that the appellant offered some remorse for his actions, recognising in part the harm that had been caused, although he was preoccupied with the impact on himself and his own family. It was considered that further offending was unlikely. However, he was not willing to take full responsibility for his actions and maintained that he was not the initial aggressor. He was not assessed as someone who generally represented a high risk of harm to the public.

The ground of appeal was that the judge had been wrong to place the case into category 1 of the definitive guidelines and that the matter should have been properly placed within category 2. Inconsideration of this ground the court found it necessary to say something about the modern definitive guidelines for this offence.

Those guidelines divide the offence into three categories. Category 1, the highest category, requires both greater harm, that is greater harm in the context of an offence which already involves by its nature grievous bodily harm, and higher culpability. Category 2 involves greater harm in that same sense and lower culpability, or lesser harm and higher culpability. It might be expressed as either being greater harm or higher culpability.

Category 1 starting point is 12 years with a category range of nine to 16 years. Category 2 starting point is six years with a category range of five to nine years. There is no dispute

ventative measures to protect an individual whose life is at risk from the criminal acts of another. This duty arises where the authorities knew or ought to have known at the time of the existence of a “real and immediate risk to life.”

The decision: The Claimant argued that the Coroner’s decision not to re-open the inquest was unreasonable or wrong in law because there was sufficient cause to resume. She argued that there had arguably been a real and immediate risk to life, that the police had failed to take reasonable measures which would have avoided that risk, and that the criminal proceedings and IPCC report had not properly investigated this. Silber J agreed, holding that there was “ample evidence to justify a credible and deeply worrying threat to kill Arsema“. Dealing with the reasons given by the Coroner, he considered that: . . . . “…as to factor (i), the potency of a threat does and could not depend on whether it is made face-to-face rather than on the phone and so this cannot be a factor of definitive or of much weight. Factor (ii) needs to be considered in the light of the facts that this showed violence by a very angry man, who was threatening to kill his victim with whom he was or was likely to be infatuated. Turning to factors (iii) and (iv), the views of a 14 year old girl on the likelihood of a threat to kill being implemented (even if she knew of it) and her wish for Nugesse only to be warned must carry very little weight as her knowledge and opinion of the dangers confronting her cannot reasonably be relied on. I should add that I do not consider that the Coroner could or should have attached any weight to the delay by the claimant of 14 days in going to Kennington Police Station, bearing in mind the lack of experience of the claimant and Arsema in these matters in a country in which they had not lived for a long period.”

Silber J held that the police could arguably have taken steps to protect Arsema, including contacting Nugesse and assessing the risk he posed, or arresting him for assault and releasing him on bail with the condition that he could not approach Arsema. He also found that the criminal proceedings had not properly investigated the facts, because they had been focussed solely on Nugesse’s fitness to plead and the question of whether he had killed Arsema. Nor, in his view, had the IPCC report adequately discharged the State’s Article 2 obligations, because it had focussed on police conduct, and had not considered whether there had been a real and immediate risk to life or whether the police could have taken steps which would have prevented her death.

Analysis: The judge was careful to record his “admiration for the sympathetic way in which the Coroner considered the matter“, and thought that “it is quite likely that if the Coroner had had the benefit of the oral and written submissions which I have had, she would have reached the same conclusion as the one at which I have arrived“.

However, this is yet another incremental extension of the circumstances in which a fully Article 2 compliant inquest will be required. Even where there has been a murder trial, the State might still need to conduct a further independent investigation into the victim’s death. Indeed, in the key case of Middleton, as Silber J noted, Lord Bingham had said that whilst in some cases the State’s procedural obligation may be discharged by criminal proceedings “it is unlikely to be so if the defendant’s plea of guilty is accepted … or the issue at trial is the mental state of the defendant … because in such cases the wider issues will probably not be explored.“

There is good reason for this. The purpose of the Article 2 procedural obligation is to ensure that lessons are learned from any failures by the State to properly safeguard the lives of its citizens, so that the risk of tragic, horrible deaths such as that of poor Arsema occurring in future can be reduced. It can only be hoped that the full inquest will take place soon and that recommendations may be made that will prevent other young men and women suffering the same fate. [end]

Prolonged police detention of mentally-ill man without adequate medical care violated his Convention rights

In the Chamber judgment M.S. v. the United Kingdom(application no. 24527/08), which is not final", the European Court of Human Rights held, unanimously, that there had been a violation of Article 3 (prohibition of inhuman or degrading treatment) of the European Convention on Human Rights; it held, by a majority, that there had been no violation of Article 13 (right to an effective remedy) of the Convention.

The case concerned the detention of a mentally-ill man in police custody for more than three days. The Court held in particular that the applicant's prolonged detention without appropriate psychiatric treatment had diminished his human dignity, although there had been no intentional neglect on the part of the police.

Principal fact: The applicant, M.S., is a British national who was born in 1970. He was arrested in Birmingham in the early morning of 6 December 2004, after the police had been called to deal with him because, highly agitated, he was sitting in a car sounding its horn continuously. His detention at a police station was authorised under the 1983 Mental Health Act, which allows the detention of a person suffering from a mental disorder for up to 72 hours for the purpose of being examined by a doctor and receiving treatment. The police subsequently found Mr S.'s aunt at his address, seriously injured by him.

Following his arrest, a psychiatric specialist assessing Mr S. found that he suffered from a mental illness of a nature or degree warranting detention in hospital in the interests of his health and safety and for the protection of others. The assessment was confirmed by a second specialist. After a local psychiatric intensive care unit had informed the police that it would not be able to admit Mr S., efforts were made on the same day to place him in a clinic with a medium secure unit. However, in view of the fact that Mr S. might be charged with an offence and remanded in custody, a consultant forensic psychiatrist at the clinic did not consider that the clinic's involvement was immediately necessary.

Mr S. remained in police custody for more than 72 hours, locked up in a cell where he kept shouting, taking off all of his clothes, banging his head on the wall, drinking from the toilet and smearing himself with food and faeces. On the second day of his custody, the prosecution service concluded that there was insufficient evidence to charge him. After more than three days in detention, following the advice of the consultant forensic psychiatrist, Mr S. was taken in handcuffs to the clinic where he received treatment. In June 2006, Mr S. lodged claims against the National Health Service for negligence and for misfeasance in public office, complaining in particular that the delay in admitting him to the clinic had delayed his treatment and recovery. The district court rejected his claims and his appeal was dismissed by the county court in November 2007.

Complaints, procedure and composition of the Court

Relying on Article 3, M.S. complained about his being kept in police custody during a period of acute mental suffering while it had been clear to all that he was severely mentally ill and required hospital treatment as a matter of urgency. Relying on Article 13, he complained about the manner in which his case was examined.

The application was lodged with the European Court of Human Rights on 9 May 2008.

Decision of the Court / Article 3: There was no doubt that Mr S.'s initial arrest had been justified, given that, in his highly agitated state, he posed a danger to public safety and to himself. His initial detention in a police cell had been authorised under British law. It was undisputed between the parties that there had been no intention on the part of the police or the health authorities to treat him in a manner incompatible with Article 3, and the detailed detention record submitted to the Court evidenced real concern to see Mr S. transferred to a clinic.

The Court could not accept Mr S.'s criticism of the reaction of the clinic's medical personnel. The information provided by the British Government showed that the clinic's consultant forensic psychiatrist had not remained passive, but had been ready to assess and then admit Mr S., subject to adequate staffing arrangements being made. The Court further rejected Mr S.'s allegation that his intake of adequate liquid and food had not been ensured, as no neglect could be discerned in the police records.

However, the fact remained that Mr S. had been in a state of great vulnerability throughout his detention at the police station. As indicated by all the medical professionals who examined him, he had been in dire need of appropriate psychiatric treatment. That situation, which persisted until his transfer to the clinic on the forth day of his detention, diminished excessively his fundamental human dignity. Throughout that time, he had been entirely under the control of the State; the authorities had thus been responsible for the treatment he experienced. In that context, the Court referred to a report by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) of 2008, which expressed concerns that persons detained by the police in the United Kingdom were not always provided with appropriate psychiatric care. Furthermore, in Mr S.'s case, the maximum time-limit for the detention of a person in his situation had not been respected.

The Court accepted that the situation had arisen essentially out of difficulties of co¬ordination between the relevant authorities when suddenly confronted with an urgent mental health case, and it took note of the Government's submission that the case had led to improvements in the arrangements between the police and the health authorities. However, even though there had been no intention to humiliate Mr S., the Court found that the conditions he had been required to endure had reached the threshold of degrading treatment for the purposes of Article 3. There had accordingly been a violation of that article.

Article 13: The Court considered that an appropriate remedy had been available to Mr S. under British law. The two courts which had considered his case had assessed it in relation to three possible remedies, including a claim for damages under the Human Rights Act. That the outcome had not been favourable for him did not mean that the remedy was in principle ineffective. There had accordingly been no violation of Article 13.

Article 4: Under Article 41 (just satisfaction) of the Convention, the Court held that the United Kingdom was to pay Mr S. 3,000 euros (EUR) in respect of non-pecuniary damage and EUR 8,150 in respect of costs and expenses.

R v Cripps [2012] EWCA Crim 806

This appeal against sentence arises in the context of a pub fight and raises a question of categorisation for the purposes of the relatively new Sentencing Council Definitive Guidelines on Assault, in this case the section 18 offence of grievous bodily harm with intent. The appellant was convicted of causing grievous bodily harm with intent and sentenced to nine years' imprisonment.

Following altercations at a bar in which the complainant intervened, he was struck to the face by the appellant who was drunk. He fell unconscious to the floor where he was kicked to the face and head. The complainant sustained extensive fractures to the upper jaw, cheek bones, eye sockets and nose. 11 metal plates were used to reconstruct his face. His left eye socket was reconstructed with the use of mesh. His jaw was wired shut for six weeks.