It was contended on behalf of the Constabulary and the CPS that the correct approach was for the court to consider whether the Chief Constable had applied the correct legal test and, if he had, whether the decision could be said to be irrational. The court did not consider this to be the correct approach. Observance of the duty of disclosure in a criminal cause or matter is ultimately a matter for the court. Where a proper case has been advanced for disclosure or re-testing, it is for the court, in the event of a refusal by the police or CPS to disclose, itself to determine whether there should be disclosure or re-testing

In the court's judgment, there was nothing in the material put before them which cast doubt on the safety of the conviction or from which they could conclude that there were items which, if tested, might reasonably be anticipated to provide a result which might affect the safety of the conviction. There was therefore, nothing giving rise to a duty to make disclosure of the files of the Forensic Science Service or to enable material to be re-tested. In refusing the application, held: "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 that investigation and examination was the trial."

4) R v P, unreported (Prevention Order Quashed)

A conviction for breaching a sexual offences prevention order was quashed due to the terms of the order, as recorded by the court office did not correspond to the order made by the Judge in court.

Held: In all cases where an ancillary order was sought Judges should insist on prosecutors delivering a written document setting out in draft the proposed order so that the court could adopt or amend it as appropriate, and thereby reduce the risk of errors in translation. The written order could then simply be initialled by the Judge for recording by the crown court office.

Inquest into the Death of Paul Murphy in HMP Lincoln

The inquest into the death of Paul Murphy opened on Monday 14th May 2012, at Lincoln Crown Court, The Castle, Castle Hill, Lincoln LN1 3GA, before HM Coroner for Lincoln, Stuart Fisher. The inquest is scheduled to last for two weeks. Paul was 39 years old when he died on 13 June 2008 after being found hanging in his cell at HMP Lincoln. He had been moved to the Vulnerable Prisoners Wing as he had got into debt with other prisoners and feared reprisals. On 12 June he was made subject to his third ACCT document (Assessment, Care in Custody, and Teamwork – the system used for prisoners who are at risk of self harm) after expressing further fears of harm from others, displaying paranoid behaviour and threatening to cut his wrists. Overnight he was subject to minimal checks and not placed in a safer cell.

Paul's family hope that the inquest will explore the quality of the care he received on 12/13 June, and any possible links with a prison officer suspended the following month, and ultimately dismissed, for trafficking drugs and mobile phones within the prison.

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 372 (17/05/2012)

In Defence of Ray Gilbert - 31 Years in Prison - 16 Years Over Tariff

[This is the full text of a speech by Bruce Kent given at the 'Helping the Innocent: INUK Symposium on the Reform of the Criminal Cases Review Commission', Friday 30th March 2012]

Shortly after he retired as Chairman of the Criminal Cases Review Commission in 2008, Professor Graham Zellick said that where there is a 'lurking doubt' a claim of wrongful conviction should be referred to the Court of Appeal.

In the case of Raymond Gilbert, convicted in 1981 of murder, a brutal stabbing of an innocent young man, John Suffield a bookmaker, there are a whole series of doubts. They are not lurking. They are obvious and there for anyone who has studied the case to see.

I list some of them. To start with, why would a man given a 15 year tariff, who could have been released from prison years ago had he been a model prisoner, taken the necessary anger management courses, and admitted his guilt, nevertheless go on claiming that he did not commit the crime? He has now done over twice his tariff and even if all goes well with parole hearings it will still be several years before he gets out.

That is a general doubt. But there are many more specific ones.

His co-defendant in 1981, John Kamara had his case quashed in 2000 by the Court of Appeal. One strong reason was that the prosecution failed to give the defence a number of witness statements, which did not support the prosecution case and even contradicted witness statements, which were used. This failure applies as much to Gilbert's case as to Kamara's. Gilbert was not even picked out on an identification parade even though Kamara was.

Since Kamara's conviction was quashed another question arises at once. Kamara was only involved because Gilbert falsely identified him from a number of photographs shown to him by the police. If Kamara was not involved then who else was? The murder had to be a two-person crime. It involved probably forcible entry, tying up and then stabbing a young bookmaker in his betting shop. But the police say they are not looking for anyone else. Why not?

The most likely suspects were the two men who had a row with the bookmaker the day before and who threatened to return and sort him out. Their alibis were never subjected to the same scrutiny as were Gilbert's and Kamara's .So serious were their threats that John Suffield told his father how upset he was, and that he had decided to give up his job. He returned early on the fatal morning of 13th Feb '81 to meet a representative of Coral, who owned the shop, and to hand over the keys. However the Coral's representative was, tragically, late.

Why was Gilbert arrested? I imagine because he, a mixed race young man with little education, was a local petty criminal, known for robbery and gang fights, and might be worth questioning.

At no time, then or now, has there ever been ANY evidence - witness recognition, bloodstains, fingerprints, or a knife etc to connect Gilbert with what was a very bloody crime.

Indeed he had at first an alibi. He says he was in bed with his girlfriend, June Bannan, on the morning of Friday the 13th and only went out briefly to a local shop to buy cigarettes. The night before we know that he was in a club drinking and did not get back to her flat until well after midnight. Yet we are asked to believe that he was up by 7am??? to collect his accomplice and his knife and the tape used to bind the victim and make his way to the betting shop.

At first Bannan supported his claim to have been in bed with her that morning. But she was threatened with prosecution for obstructing the course of justice. We know that she was actually at some stage in the same prison van as Kamara. She changed her story and said that Gilbert had gone out for some hours on the morning of the murder

Interestingly the Judge, when the trial began in December '81 did not seem to notice a contradiction in Bannan's statements made after Gilbert had been removed from the court. She was produced as a witness when the court was hearing the case against Kamara. She was questioned about a row she had with Gilbert over allegations of having had sex with Kamara. She said that the row took place at about 11.30 am when both she and Gilbert were still in bed. However she could not remember the exact day but went on to say it ' may have been on the Friday morning at 11.30 am'.

That was Friday 13th the morning of the murder. In other words she was possibly reinstating Gilbert's alibi, apparently inadvertently, when she was being questioned. The Judge did not notice this contradiction. Why was Bannan pressured to withdraw the alibi she had first given and why did the Judge not notice her later contradiction?

If there was no evidence, why a prosecution? Because during the 48 hours during which Gilbert was held he was questioned at different hours of the day and night by two policemen and was told that Bannan had withdrawn her alibi. No lawyer was present and no taped record was kept. During these 48 hours Gilbert, certainly very scared, crumbled when he was told that Bannan had changed her story. He then made a confession, which in its final form he signed.

So that is that? Not at all. He repudiated the confession when he had access to a lawyer who said that Gilbert was ' disorientated' when he first saw him after the questioning.

The written confession shows clear signs of manipulation, omission and contradiction.

For instance the times when things were supposed to have happened were adjusted to fit in with the times that various witnesses said that they saw a struggle outside the betting shop. At first Gilbert said that the time when the attack started was ten minutes past ten am. He could give gave the exact time, he said, because he looked at Kamara's watch. But this did not fit in with witness evidence and in the signed version it becomes just after 9am.

Gilbert at first said he threw the murder weapon down a drain near the shop. No knife was ever found in the drain in the version which he signed he changed the story to say that he took the knife back to someone's house. There was a kitchen type knife there, as there would be in most households, but nothing whatever to connect it to the murder.

In an early answer to a question he said that the door to the bookmaker's was open and the two of them walked in and then attacked the bookmaker. In the signed version (fitting in with one witness statement,) the two of them attacked the bookmaker outside and, after a struggle involving a knife, got him to open the door. This does not correspond with the statement made by Detective Superintendent Olson on the 11th May 1981 that ' the front door of the betting office had been forced open'.

Another doubt arises over the milk bottle and paper which the bookmaker collected from a local shop as usual. The crime scene photograph show both these items on a bench or table, intact, inside the shop. Inspector Olsen, an early witness to the crime scene, stated that they had been placed 'neatly' there. But the signed confession describes a violent struggle outside the shop. It is impossible to imagine how the bookmaker would be able to keep holding the milk bottle while being violently attacked. It would have been dropped. It seems much more likely that the bookmaker entered his shop in the usual way, put down his bottle and paper

should be taken in circumstances such as in the instant case.

Held: “In our view the better and necessary course in the present case was, before receiving any verdict from the jury, to make some enquiry for the purpose of ensuring that the verdict which they wished to deliver was untainted by the bias apparently revealed by the note from the anonymous juror. It may well be that had the jury been informed of the general nature of that note and had they been asked to consider in further retirement whether their verdict could be conscientiously returned, the judge would have received an emphatic assurance from the jury. If she could not receive that assurance then it seems to us that her obligation would have been to discharge the jury. If she received that assurance in suitable terms then the verdict could be returned. As it is, the question for consideration by this court is whether the verdict which the judge elected to receive was safe. It was not safe if the fair-minded and informed observer would conclude, on the available evidence, that there was a real possibility or a real danger that the verdict was at least in part the product of bias.

We are in the end left with the suspicion that the impartial observer would perceive the real risk of bias. If that was so then the verdict cannot be safe. In our view there was such a risk, the appeal must be allowed and the conviction quashed.”

3) Nunn v Chief Constable of Suffolk [2012] EWHC 1186 (Admin)

The issue in these proceedings is whether, given the provisions made generally for investigating alleged miscarriages of justice, the claimant, a convicted murderer, was entitled to require the police and the CPS to make available to his advisers forensic material collected during the investigation. He wished for experts instructed on his behalf to be able to review that material to see if it lends further support for referring his case to the Criminal Cases Review Commission.

The claimant maintained his innocence (in respect to a conviction for murder) and instructed solicitors in relation to the making of an application to the CCRC. A forensic scientist was asked to consider whether there was any purpose in carrying out tests on items that had not been tested during the investigation or in re-testing items in the light of scientific progress since the investigation in 2005. The CPS was asked to provide disclosure as to whether items could be made available to the expert instructed for the purpose of DNA testing. The Constabulary responded to say that there was no statutory duty of disclosure.

In the court’s judgment, a person convicted of a crime has no right to further disclosure to facilitate his re-investigation of the case, any more than the state is under a duty to re-investigate. “It is necessary to show something that materially may cast doubt upon the safety of the conviction before the duty of the police and the CPS as set out in the Attorney General's Guidelines and the CPS Guidance arises. For example, if scientific advances enable tests unavailable at the time of the trial to be carried out on items which, if tested, might reasonably be anticipated to provide a result which might affect the safety of the conviction, then under the Attorney General's Guidelines and the CPS Guidance, the police and the CPS will be under an obligation to consider disclosure or to carry out a review.”

“As we have said, an important consideration to our decision as to the ambit of the duty of the police and the CPS is the establishment and funding of the CCRC by the Executive Branch of the State. We appreciate the concerns expressed about the funding position of the CCRC. However absent evidence that financial constraints imposed by the Executive were considered by the CCRC to be restricting its ability to discharge its powers, the availability of the CCRC as a remedy is a very powerful consideration in limiting the duty of the police and CPS to that which we have set out.”

'There are examples of children being moved to another home without important medication and appropriate hand-over details,' she said. It sometimes appears that the treatment these young people have received has contributed to their behaviour.' She added that the problem affected only a minority of children in care and said the situation had improved in recent years. What we are not saying is you should never bring a child before the courts,' she explained.

4 Cases to take Note of Reported by the Solicitors Journal CrimeLine Updater, 11/05/12

1) Charge/Conviction must be the appropriate 'statute' for the offence committed, if found that someone has been convicted under the wrong 'statue', conviction should be quashed an substituted with the appropriate 'statute'.

2) Juries, often the bane of MOJ's, in this case the judge failed to properly deal with complaints of bias from one of the jurors, accepted their verdict of guilty, which was quashed at appeal.

3) This is a legal opinion on the dismissal of Kevin Nunn's request to require the police and the CPS to make available to his advisers forensic material collected during the investigation.

4) Conviction quashed as order, as recorded by the court office did not correspond to the order made by the Judge.

1) R v Wiggins [2012] EWCA Crim 27 April 2012

The appellant appealed against his conviction for aggravated burglary contrary to s.10(1) Theft Act 1968. He had been found nearby burgled premises together with a taser gun. The judge had directed the jury that the appellant could be guilty of aggravated burglary even if they found that he had not entered the premises and had been in the alternative acting as a lookout.

The appeal was allowed. The purpose of s.10 was to prevent burglars taking weapons into premises. To be guilty of the offence it was necessary for the person to be in possession of the weapon at the time of entering the premises.

As the jury must have come to the conclusion that the appellant had committed the burglary, the conviction was substituted for an offence of burglary under s.9(1)(b).

2) R v Heward [2012] EWCA Crim 890

An appeal against conviction on the ground that there was a real risk that the verdict of guilty returned by the jury was influenced by bias. An unsigned note was sent by a juror which read as follows: "To Judge, I believe that the members of the jury are being unfair, and supporting their own race. I wish this will stay confidential."

Prosecuting counsel suggested to the judge that what was required was a strongly worded further direction to the jury as to their responsibilities and the necessity for impartiality in the course of their deliberations. However, a few minutes later the court received a further note informing the court that the jury had reached a verdict. Without further enquiry or discussion the judge announced that she considered she was under a legal duty to receive the verdict without further ado, which she did. It was submitted that the jury should have been discharged and the verdict returned was, in consequence of the judge's failure to discharge the jury, unsafe.

In the court's judgment, the judge was in error in concluding that she was there and then bound to receive the verdict which she was informed the jury had reached. Whenever the "necessity" arises, the jury or any member of the jury may be discharged and the responsibility is that of the judge whether one of the parties makes the application or not (see Azam [2006] EWCA Crim. 161 at paragraphs 48 to 50). In their judgment it was not incumbent upon the judge to discharge the jury or immediately to receive the verdict. In Orgles and Orgles 98 Cr.App.R 185 the court recommended the course of taking time to consider what action

and was then overpowered by people, perhaps already waiting in the inner room or who had forced the front door after the bookmaker had entered. But that is not the story in the signed confession and it is not what one passer by said she saw.

The bottle would certainly have smashed on the outside steps of the shop if the confession story were true. A juror raised this point with the Judge at the trial and all the judge could say was the he did not see how it mattered.

But by then he was summing up on the Kamara case and had probably forgotten the details of Gilbert's 'confession' statement. In fact he may not have even got the story accurately in the first place. At an earlier stage in his summing up he referred to the bookmaker's collection of his 'paper and mail' from a local shop, not his paper and milk bottle.

Another difference between the signed statement and the admissions preceding it is that there is no mention of the story first told, about the disposal of the stolen money. Gilbert first said he gave some of it to Bannan, which she used to buy some items of furniture. But she rejected this version of events and explained to the police where she legitimately got them. Perhaps she could prove this. Anyway in the signed statement there is no reference to Bannan getting any money and it is not clear what Gilbert or Kamara are supposed to have done with it.

The CCRC also suggested, in a previous report that Gilbert knew facts about the murder scene that only someone who had been there might have known. They dismissed the idea that the police might have 'fed' him some information. Why? The murder took place a few months before the Toxteth riots and the trial a few months afterwards. The racist atmosphere in the Liverpool police force at that time is now a matter of record.

The Chair of the Merseyside Black Police Association has recently reported ' make no mistake about it, the Police were abusing black people then (in 1981)'. Gilbert was of mixed race. Anyway if they thought they had their man it might even be understandable.

Nevertheless the murder was a major item of Liverpool concern that weekend. Gilbert was going to the police station every day to report and there would have been gossip. A range of people apart from the police would have seen the murder site. The event was prominent news in local papers. Gilbert knew the layout of the betting shop since he had been there infrequently as a customer in the past.

.Another significant sign, and perhaps the most important, of the unreliability of the signed confession is that it fails to mention that inside the main money safe there was an inner section with a time lock. The bookmaker could not have unlocked it even had he wished to do so. He did open the main safe with its ordinary combination lock. It had inside a small amount of petty cash but he could not open the inner section with its timed combination. This is probably what caused his death. The real robbers, knowing that he had already opened the main door to the safe, which also had a combination lock, probably thought that he was refusing to open the inner section of the safe and stabbed him to try to make him do so.

There is no mention in the signed confession of any inner section to the safe yet this would have been a critical factor in the crime. Why was it not mentioned? Perhaps Gilbert did not know about it simply because he was not there? Perhaps the police who were doing the questioning did not know about it either and therefore did not help to introduce it into the signed confession?

Another doubt in a different direction now arises. The bookmaker's father was urged not to attend the trial but Coral, the bookmaking firm, were present with their lawyer. The time locked safe section had a statement on it to indicate that it could not be opened, according to the bookmaker's cashier This would have been prudent for the protection of Coral's employees,

if not a legal requirement. Was the notice actually adequate? For failing to clearly mark the safe the firm might have been legally negligent. Was there some arrangement with the police by which this inner safe was not even mentioned in court?

So much for the ' confession'. Plenty of very obvious doubts. Nor must it be forgotten that a confession obtained under such circumstances of incessant questioning without anyone else present would never have led to a prosecution today.

Why did the jury not ask any questions about this confession?

Because they never had a chance to hear these doubts raised by the defence. No jury has ever heard Gilbert's defence. Why? Because in court, Gilbert made the biggest mistake in his life.

There were two attempts to get the trial moving when finally it came to court in December 1981. Twice Gilbert and Kamara pleaded not guilty in front of juries, which were then dismissed, for legal reasons. Again they pleaded not guilty in front of a third jury which had been sworn in. The trial then started. Yet after the prosecution had made its case and Gilbert was put in the witness box he suddenly sent a message to the Judge and said words to the effect that 'I am guilty.'

He was at once removed from the court and took no further part in the trial. What efforts his lawyers made to get him to change his mind I do not know. They do not seem to have stretched themselves on his behalf. Granted the lack of any evidence, he had a good chance of getting a not guilty verdict.

Gilbert gives several reasons for this sudden switch of plea.

The first - that he was being physically threatened by Kamara and Kamara's friends, who were also in the same prison. It was made clear to him that if he did not get Kamara off he would be injured. Actually by this change of plea he actually made things worse for Kamara.

The second - that he thought he was done for anyway having heard the prosecution case.

The third - that he was fed up with all the procedures, new juries etc and just wanted to get it all over with.

No defence on his behalf was ever presented. The inconsistencies in the confession were never pointed out. Only at the very end of the Kamara summing up did one juror ask about the miracle of the surviving milk bottle to be told by the Judge that he did not see how it mattered.

Does the guilty plea mean the end of the story? Not at all. The fact that false admissions are sometimes made is now a well-known legal phenomenon. Gilbert did make a further admission to Kamara's solicitor in January 1982 after his conviction, this time mentioning the inner safe and naming someone else as his partner in the crime. This may well have been another attempt to establish Kamara's innocence. Anyway by this time the existence and significance of the inner safe would have been public knowledge.

However, when Gilbert was put into a prison without Kamara and friends later that year, he again claimed innocence as he has since done consistently now for over thirty years.

This whole story has much more than a ' lurking doubt' attached to it. I believe, as do many others, that, at the very least, the Court of Appeal ought to have the right to decide on Gilbert's case. The CCRC ought to refer his case there. This is the wish of the murdered man's father who wants the issue to be decided in a court of law. He was himself told by the police at the time of a shoe print, not that of Kamara or Gilbert, which had been found at the crime scene.

At the moment efforts are being made to find out if any physical evidence remains which might carry DNA on it. This should have been sought from the moment that the significance of DNA became known. If Gilbert's DNA is not present then it would be almost certain that he was not there. If there is other DNA, apart from that of the murdered man, then that might even

up on the current range of tests were being traded; the high levels of prescribing of one divertible drug, Tramadol, needed to be addressed as a matter of urgency. There was a backlog of security searches. Nevertheless, objectively there were few violent incident and incidents of self-harm and use of force were low. The use of Listeners was excellent.

Living conditions were generally good and there had been some recent welcome improvements to facilities. Diversity work was generally sound but the under-representation of black and minority ethnic prisoners among those working out in the community and benefitting from the better accommodation these men enjoyed was a significant concern.

Nine out of 10 men were dissatisfied with the food - among the worst responses we have seen - and they were right to be so. Some food that was served was not fit for consumption. We observed meat products served while still frozen.

The levies deducted under the Prisoners' Earnings Act [40% of prison wage, deducted as pay back to victims of crime] had begun to mean, in a few cases, that prisoners could no longer afford to meet the travel costs of getting to work, which meant they lost the work and the resettlement opportunities. This was counterproductive and it would have been helpful if governors had had greater discretion about whether to take a prisoner's travel costs into account when calculating their net earning from which the levy would be deducted.

Until relatively recently, Standford Hill appears to have been coasting. Outcomes are reasonable in most areas but the prison is exposed by some significant areas of concern. Reassuringly, almost nothing we said in our immediate feedback to the new governor came as a surprise and work had already started to address the concerns we identified. It was overdue and it is to be hoped that a period of more stable management will enable the prison to make the rapid progress required. *Nick Hardwick, HM Chief Inspector of Prisons*

Care system 'criminalises children' by prosecuting for trivial matters

By Laura Clark, Mail Online, 11 April 2012

10,000 children taken into care, numbers have doubled in the past four years. Children's homes are ‘criminalising’ youngsters in their care over minor offences, Janis Cauthery a leading magistrate has warned. In an unusual move, condemned the care system for being too quick to resort to prosecution for behaviour such as pushing, shoving and breaking crockery. Youngsters being brought up by their families would simply be disciplined by their parents for these acts, without police involvement, argued the experienced youth court magistrate, who sits in Warwickshire.

She warned that those in care who face criminal proceedings risk being drawn into a ‘vicious circle’ of crime and joblessness which can go on to affect their own children. Writing in The Magistrate magazine, Mrs Cauthery said: ‘Many of the young people we see coming to court have never been in trouble before going into care. ‘These young people are often charged with offences that have occurred within the care home, including criminal damage (eg. to a door, window, or crockery) and assault (often on one of the carers involving pushing, shoving). This behaviour is mostly at the lower end of offending, and in a reasonable family environment would never be dealt with by the police or courts. We worry about these children being criminalised.’ She added: ‘Surely the home has a duty to try to help the young people and find other solutions rather than resorting to the courts for minor offences which, in a normal family environment, would not be thought of as offending behaviour.’

Mrs Cauthery, a member of the Magistrates’ Association Youth Courts Committee, went on to warn that poor treatment of children in care homes may contribute to anti-social behaviour.

Report on an announced inspection of HMP Standford Hill

Inspection 5–9 Dec 2011 by HMCIP, report compiled Mar 2012, published 08/05/12

Inspectors were concerned to find:

- the prison is exposed by some significant areas of concern
- under-representation of black and minority ethnic prisoners among those working out in the community and benefitting from the better accommodation these men enjoyed was a significant concern
- work to address the men's offending behaviour was too limited and of inconsistent quality
- we observed very little proactive engagement by staff
- A surprisingly high number of prisoners reported not feeling safe
- some evidence that diverted and other drugs which did not show up on the current range of tests were being traded
- high levels of prescribing of one divertible drug (can be used for other purposes), Tramadol, needed to be addressed as a matter of urgency
- Nine out of 10 men were dissatisfied with the food - among the worst responses we have seen
- and they were right to be so. Some food that was served was not fit for consumption
- We observed meat products served while still frozen.
- levies deducted under the Prisoners' Earnings Act [40% of prison wage, deducted as pay back to victims of crime] had begun to mean, in a few cases, that prisoners could no longer afford to meet the travel costs of getting to work, which meant they lost the work and the resettlement opportunities

Introduction: Standford Hill is an open prison on the Isle of Sheppey that had previously been jointly managed as a 'cluster' of Isle of Sheppey prisons. While some services were still shared, Standford Hill now had its own governor and after a period of too frequent organisational and management change was now settling down and focusing on making the improvements that were required.

At the time of this announced inspection the prison held 464 adult men, 80% of whom were coming to the end of long sentences. Preparing these men for law-abiding and productive lives back in the community should have been the prison's central purpose and a key part of the job of everyone who worked there. This was not always the case. One member of staff told us that Standford Hill was 'not a resettlement prison but an open prison with a resettlement department'. Resettlement work was fragmented and work to address the men's offending behaviour was too limited and of inconsistent quality. However, there were good and appropriate opportunities for men to take part in voluntary or paid work or education outside the prison.

A sense of disinterest too often permeated other aspects of the prison. Staff-prisoner relationships were polite and professional but prisoners reported, and we observed very little proactive engagement by staff. Officers routinely addressed prisoners by their surnames only. It is fair to say that officers were very thin on the ground and were tied down with administrative duties. Nevertheless, the lack of positive engagement had a number of practical consequences. A surprisingly high number of prisoners reported not feeling safe. First night procedures were weak and left men who had served long sentences in closed conditions apprehensive about the much greater degree of autonomy they had at Standford Hill. Fears about safety also reflected many men's insecurity about their position at the prison and staff provided insufficient reassurance. The prison should also have been concerned about the significant drop in the number of security intelligence reports received - if staff were not engaging sufficiently with prisoners, it would obviously make it less likely that prisoners would tell them what was going on.

Prisoners told us that drugs were difficult to obtain and the positive drug testing rate was low. However, there was some evidence that diverted and other drugs which did not show

now lead to the identification of the real killers.

The CCRC, granted all the doubts listed, should surely accept that this is a case, which ought, at once, go to the Court of Appeal. Yet it has consistently refused to refer it there.

Why not? The media prejudice against Gilbert has been consistent and substantial. Gilbert did involve, whatever the pressure, an innocent man who spent many years in prison as a result. Those who rightly campaigned for the release of Kamara had little concern for Gilbert and his possible innocence.

'Lose no sleep over Gilbert ' the public were once told on a major TV programme.

Yet there are too many doubts about Gilbert's conviction for the case not to be re-examined in detail by a Court of Law.

Bruce Kent, Friday 30th March 2012

Present location of Ray Gilbert: A6806AJ, HMP Wymott, Ulnes Walton Lane, Preston, PR26 8LW

Murder of Hilda Marchbank: Clues that could clear niece Susan May

Police failed to follow up evidence linking a red car seen at the crime scene to a heroin addict who burgled old people's houses *Eric Allison and Helen Pidd, guardian.co.uk, 07/05/12*

Susan May always denied murdering her aunt: It is almost seven years since Susan May walked out of Askham Grange prison in North Yorkshire after serving 12 years for a murder she insists she did not commit. Despite all those years of incarceration, there was a part of her that wasn't ready to walk free. "I came out with a heavy heart because I always thought I would only get out of prison with my conviction overturned," she said. Ever since her release, May has devoted herself to proving her innocence. Now the Guardian has discovered evidence suggesting police ignored vital clues supporting May's case that she did not suffocate her 89-year-old aunt, Hilda Marchbank, in 1992, in Royton, Oldham, Greater Manchester.

The Guardian has discovered that Greater Manchester police failed to follow up evidence pointing to a man whom police said was a "good suspect", whose name was given to detectives in an anonymous phone call shortly after the murder. Michael Rawlinson, a heroin addict, had convictions for burgling the homes of elderly people. In 2001, six years after Marchbank's death, he was killed in a drug-related dispute. The Guardian has also uncovered claims that police tried to persuade a witness to lie, apparently to eliminate other leads from the inquiry and concentrate on building a case against May. The witness, George Cragg, has been tracked down by the Guardian 20 years after the killing.

Campaigners for May say police seem to have instinctively believed she committed the crime - despite a lack of motive and a dearth of evidence to prove she beat her aunt around the face and suffocated her with her own pillow. May was convicted on the flimsiest of evidence, the campaigners say, comprising mainly three marks, said to be her fingerprints, that allegedly contained her aunt's blood. Fresh doubts have emerged in recent years about the testing method, about whether the marks are May's fingerprints - and even whether they contained human blood.

'Good suspect': For the detectives investigating the murder of Hilda Marchbank, it ought to have been a significant breakthrough: a near neighbour of the victim had seen a red Ford Fiesta outside the victim's house at midnight on the night she was killed in March 1992. Although the car was unoccupied, its engine was running for 15 minutes. Another neighbour had seen the car drive away soon after and gave a good description of three men in the vehicle. Marchbank was found next morning by May, her niece and carer, who was then 48.

The Guardian has learned of a further link to the red car: two days after the murder, an

anonymous caller gave police the names of two men, alleging they were the killers. Another anonymous caller, who rang six days before the murder, reported both men robbing an elderly woman in the area two weeks earlier. It transpired such a robbery had been committed and the details matched those given in the call. Rawlinson, one of the men named, had access to a red Fiesta, owned by his sister. The car was sold three days after the murder.

Detectives knew Rawlinson and the car were suspicious: in police files, he was described as a "good suspect". But Rawlinson was never treated as a serious suspect, according to May, who found herself accused of murdering the aunt she says she have loved and looked after. She claims police quickly made up their minds that she was responsible for the murder. Their reasoning? May had been in a clandestine affair with a local man but, when questioned by police, denied the relationship. "It was none of their business and nothing to do with Auntie's death," is how she explains the lie that she believes led to her serving 12 years of a life sentence for murder. The prosecution had tried bring up the "lavishing of presents" on the man she was having an affair with, using Marchbank's money. The judge told the jury to forget that claim, saying there was no evidence. May had power of attorney over her aunt's finances.

The police, far from following up the lead on Rawlinson and his possible accomplices, seem to have concentrated on eliminating him from their inquiries. They traced the owners of red Ford Fiestas in the Oldham and Rochdale areas. Their investigation led them to an Oldham man, Craig Turner. Coincidentally, Turner and two friends, George Cragg and Robin Walker, had been in the vicinity of the murder scene on the evening of the killing, 11 March. Two weeks after the murder, the three men were interviewed at Oldham police station. When tracked down by the Guardian recently, Cragg - now a Blackpool hotelier - said he and his friends were told from the start they were not suspects. Instead, they were asked about their movements on the night of 11 March.

They said they had gone in Cragg's white Ford Granada to a house near Marchbank's home to see a plumber who owed Cragg money. It wasn't the answer the police wanted, it seems. Cragg says police told him they needed to "eliminate the red Fiesta, we know who's done it, she's done it". He now believes police were referring to May. Cragg says two weeks later, two detectives came to his house and asked him again what car he had been driving when he visited the plumber. He repeated that he had been driving his white Granada. One officer, he says, then said: "Can you not say you were driving a red Fiesta?" Asked why they would want him to say this, one officer is alleged to have replied: "We have her bang to rights and we want to eliminate the red Fiesta." Cragg's wife, Julie, was present throughout this visit and says her husband's account is accurate. She says police "propositioned" her husband to lie, though he refused. The couple's statements have been passed to the Criminal Cases Review Commission (CCRC), which has invited May to resubmit her application for the case to be referred back to the appeal court.

Six weeks after the murder and a fortnight after May had been charged, police traced the red Fiesta belonging to Rawlinson's sister. Forensic samples were taken from the vehicle but never sent for laboratory testing. Years later, when the CCRC asked why May's lawyers were not told this car had been found, they were told the file had been placed in the wrong folder.

Rawlinson was questioned about his movements on the date of the murder. He said he and his girlfriend had been drinking at the house of a male friend from noon on 11 March until noon the following day. He said they had not left the house, watched TV or listened to the radio. His girlfriend and the man backed his alibi and the matter was left there.

Six years later, Rawlinson was murdered. In 2001, Campbell Malone, then May's solicitor, paid a prison visit to Gary Brierley, the man convicted of killing Rawlinson. According to

which it does not. The basis of the distinction is that a financial criterion, to which the principle is said to apply 'has in itself no meaning'. But if the financial criterion has no meaning, it must be irrational to apply it, and it may be the subject of judicial review. Yet it is clear that it does have meaning: it is a test of the liability of an applicant to become a charge on public funds. I see nothing meaningless or irrational in a rule requiring specified minimum financial means to be shown by an applicant for entry or leave to remain, and therefore I cannot see the basis for the distinction between those rules in respect of which 'a miss is as good as a mile' and those in relation to which a near miss may be regarded as close to a bull's eye.

"Lastly, paragraphs 134 and 128 of the Immigration Rules are part of a code that, as was held in Pankina, has 'a status akin to law' (paragraph 17 of Sedley LJ's judgment), and are made by 'an established legislative route' under section 3(2) of the Immigration Act 1971. The last sentence of paragraph 46 of the judgment in Pankina must, I think, be read as relating to practices of the secretary of state in the administration of that Act that have not been incorporated in the Immigration Rules...

"A rule is a rule. The considerations to which Lord Bingham referred in Huang require rules to be treated as such. Moreover, once an apparently bright-line rule is regarded as subject to a near-miss penumbra, and a decision is made in favour of a near-miss applicant on that basis, another applicant will appear claiming to be a near miss to that near miss. There would be a steep slope away from predictable rules, the efficacy and utility of which would be undermined...

"On appeal the tribunal must assess the strength of an article 8 claim, but the requirements of immigration control is not weakened by the degree of non-compliance with the Immigration Rules."

Second appeals: And then – if you lose before the First-tier and the Upper Tribunal, JD (Congo) and others v SSHD [2012] EWCA Civ 327 sets out the correct application of the second-tier appeals test given that section 13(6) of the Tribunals Courts and Enforcement Act 2007 states that permission to appeal from the Upper Tribunal to the Court of Appeal should not be granted unless the proposed appeal raises an important point of principle or there was some other compelling reason to hear the appeal. The threshold for a second appeal must be higher than for a first appeal; a real prospect of success is not sufficient justification for granting permission to appeal.

The court was wary of giving examples but commented that undue emphasis must not be laid upon the consequences being truly drastic but that very adverse consequences in combination with a strong argument that there has been an error of law could amount to some other compelling reason. In the absence of a strongly arguable error of law, extreme consequences for an individual will not suffice.

The second limb of JD dealt with the submission that where the Upper Tribunal had set aside the First-tier Tribunal's decision, the decision should always be remitted to the First-tier Tribunal to be remade rather than remake the decision itself. This was dealt with very briefly and with reference to section 12(2) of the 2007 Act (which confers broad discretion upon the Upper Tribunal) and to the senior president of tribunals practice directions and practice statements for the First-tier Tribunal and Upper Tribunal.

The Court of Appeal held that the emphasis in the practice statement on the desirability of the Upper Tribunal remaking the decision rather than remitting the case to the First-tier Tribunal was "an eminently sensible use of limited judicial resources within the UT and FtT and is wholly in accord with the senior president's obligation under section 2(3)(b) of the 2007 Act to have regard to the need for proceedings before tribunals; (i) to be fair, and (ii) to be handled quickly and efficiently". By Jane Coker, Solicitors Journal, 8th May 2012

and one father who was appealing against the refusal to revoke a deportation order made before the automatic deportation provisions came into effect. The panel that heard the appeals considered the impact and scope of ZH Tanzania [2011] UKSC 4, Ruiz Zambrano [2011] ECR 1-0000 8 March 2011 and C-256/11 Murat Dereci and others v Bundesministerum fur Inneres.

The panel considers the consultation document issued by the secretary of state in July 2011, 'Family migration', which, relying upon AP (Trinidad and Tobago) [2011] EWCA Civ 551 as authority, suggests that a starting point for discussion is that it is reasonable to assume that in automatic deportation cases the public interest will warrant deportation and that only in exceptional circumstances will it be a breach of the right to respect for private and family life to remove the person from the UK. The panel disagreed with this suggestion: a person sentenced to 12 months or more must be deported unless he falls within one of the exceptions and it can therefore be said that article 8 provides an exception to the presumption; it cannot be said that claims within the article 8 claim must themselves be exceptional.

Furthermore, the panel notes that article 8 claims by their very nature differ enormously from each other in terms of the nature and extent of the relationship, age, gender, nationality, immigration status, sentence, nature of offence and sentencing remarks. The panel firmly states that jurisprudence both in Strasbourg and the UK requires that attention should be given to all factors, including the seriousness of the offending, in the balance to be performed in the proportionality exercise.

Paragraphs 44-58 of the judgment set out the important principles to be considered when assessing proportionality of the decision; an appendix quotes the relevant sections of Maslov. The latter part of the judgment relates the relevant paragraphs of ZH and draws attention to the importance of best interests, how to assess this and considers the relevance of a British citizen child in terms of article 20 of the Transfer of Functions of the EU (as interpreted in Zambrano) and the subsequent decision of Dereci.

Although a lengthy judgment, the content and explanation provides an impressive analysis of all the matters that should be taken into account. Practitioners should utilise the analysis and format to ensure that the evidence put to the Home Office with applications or in submissions to the tribunal in appeals covers all relevant matters. British citizenship is not a trump card but nationality is important. It is not possible to require a child or spouse to relocate or to submit that it would be reasonable for them to do so. "If interference with family life is to be justified it can only be on the basis that the conduct of the person to be removed gives rise to considerations of such weight to justify separation."

Near miss argument: Miah and others v SSHD [2012] EWCA Civ 261 considered the so-called 'near miss' argument, namely where an appellant misses satisfying the requirements of the Immigration Rules by a small margin, the weight to be given to the maintenance of immigration control in assessing the proportionality of removal under article 8 should be diminished.

The court held: "It does not follow from the fact that the extent and quality of an applicant's family and private life in this country must be assessed [under article 8] that the degree of non-compliance with an Immigration Rule similarly falls to be assessed. One is always a matter of degree, requiring assessment; non-compliance with a rule may be a bright line question, admitting of an answer yes or no…

"The judgment in Pankina accepts that there are some rules that do not admit of a near-miss argument: those requiring academic and linguistic qualifications. It follows that there would be two classes of Immigration Rules: those to which the near-miss principle applies, and those to

Malone, Brierley said when he was arrested, police in Rochdale told him he "deserved a medal" because Rawlinson had "killed an old lady".

May's trial lawyers knew nothing of the sighting of the red car and its link to Rawlinson, nor of the anonymous phone call naming him as the killer. The trial jury, at Manchester crown court in 1993, was left equally in the dark. It found her guilty. In all her 12 years inside, May never wavered in her protestations of innocence. She refused to comply with offending behaviour programmes and other measures that lifers must normally follow in order to apply for parole. But in 2005, May was released, a week before finishing the minimum tariff of 12 years ordered by the judge, becoming the first prisoner to gain release "on time" while still denying the offence.

The former deputy head of Hampshire CID, Des Thomas, has written three critical reviews between 2009 and last year of the police investigation into the death of Marchbank. He said: "The evidence discovered by the Guardian may point to a pattern of behaviour which raises a reasonable suspicion that the investigation was prejudicial, if not overtly corrupt. "My own review, based on disclosed documents, revealed a number of apparent anomalies in the case. Combined with evidence located by the Guardian, these anomalies may point to an investigation, the principal purpose of which was to prove, by the selective use and non-disclosure of evidence, the hypothesis that Susan May was guilty of murdering her aunt. The original investigation report records [that] the red car and its occupants were never traced. This appears to be in direct contradiction to the evidence recovered by the Guardian." In his 2009 report Thomas said a "disinterested observer may conclude that some evidence had been manipulated to construct a case against Susan May". He added that a "number of police witnesses may have adjusted their evidence to fit a desired rather than valid outcome."

A spokesman for Greater Manchester police said the force would not be putting any of the officers who investigated the murder of Marchbank forward to comment. He said the case was tried at crown court and had been the subject of judicial appeals, which upheld the conviction. "The criminal justice system has been successively satisfied of her - May's - guilt and there is nothing further to say on the matter," he added.

Flawed evidence: May will also be asking the CCRC to consider new forensic evidence relating to marks on the wall of her aunt's home. Arie Zeelenberg, the former head of the fingerprint service at the Dutch national police agency, believes forensic evidence that helped convict May was flawed and is conducting a review on her behalf. In 2007, Zeelenberg advised the inquiry into the Scottish Criminal Records Office's fingerprint bureau, following the case of former policewoman Shirley McKie, who, in 2006, was awarded £750,000 from the Scottish Executive after being wrongly accused of leaving her fingerprint at a murder scene and lying about it. Professor Allan Jamieson, director of the Forensic Institute, has also lent his name to the challenge to the evidence that helped convict May.

Now 67, May survives on a small state pension and is in remission from breast cancer she feels was exacerbated by her incarceration. When she was released, she was unable to get work - "my conviction came up on every Criminal Records Bureau check" - and instead devoted her life to clearing her name. She is extremely thankful to the Craggs for speaking out. She said: "Despite 20 years passing since Auntie was murdered, I still firmly believe there are individuals who know something which could help clear my name and bring long awaited justice for my auntie. I may be free from prison, but remain locked up in this wrongful conviction and will never stop fighting to clear my name." May's case has twice been rejected by the court of appeal, most recently in 2001. Last year, the CCRC refused to refer her for a third time.

Now, with the evidence supplied by the Guardian about Cragg's claims about the meeting and other new material, the commissioners have invited her to resubmit her claim.

May's mother - Hilda Marchbank's sister - died about a year after the conviction. With other relatives, she supported her daughter wholeheartedly. Michael Mansfield QC, who represented May during her second appeal in 2001, has written to the CCRC underscoring his "firm belief" in her innocence and asking the commission not to close its door on her.

"I loved my auntie," May told the Guardian. "The worst thing has been the idea people believed I could have hurt her." Additional research by Mischa Wilmers

Kenny Richey: Former death row Briton given new jail sentence

A Scottish man released from prison after spending two decades on Ohio's death row is heading back to prison. Kenny Richey was sentenced to three years for threatening the judge who prosecuted his original case. Richey pleaded guilty to a felony retaliation charge last month. He admitted he had been drinking heavily before he left a threatening phone message from his Mississippi home last New Year's Eve. Richey was on death row for 21 years after being convicted of starting a fire that killed a two-year-old girl in 1986. A US court determined his lawyers mishandled the case, and he was set free in 2008 under a plea deal.

Inured to prison life: In March 2009 in an interview, Kenny said he had become inured to prison life and at times wished he was back inside. He told Real Radio Scotland: "It sounds crazy but I actually miss it. I don't know what it is, I just feel that I want to be in again, I guess I miss the routine and the discipline. Over the years I think I've picked up the American traits. There's an arrogance I can't stand, to be honest with you. I don't really like the person I've become. I tend to hate myself actually. I don't subconsciously seek any trouble. I try to avoid trouble as much as possible. I don't go out looking for fights or anything else. They come to me."

Behind Bars: Are the courts adopting a new approach in fitness to plead cases?

By Jeannie Mackie, Solicitors Journal, 8th May 2012

Jeannie Mackie considers the likely consequences of an appeal decision that a mental element can be part of the act to be proved in fitness to plead cases Mentally disordered defendants, with or without an accompanying mental disability, have rather a rough ride in the criminal justice system. The Criminal Procedure (Insanity) Act 1964 as amended is intended to make that journey more humane, and is used where a defendant is so unwell or so disabled that they cannot meaningfully take part in a criminal trial.

Where a defendant has been declared, by a judge, on medical evidence, to be unfit to plead, the proceedings then, technically, stop being a criminal trial and become a fact-finding exercise. Under section 4(a) of the Act the jury are asked to make a finding that he “did the act or made the omission charged against him as the offence”. If the facts of the offence are proved, then the disposal is a hospital order, a supervision order or an absolute discharge – it is not a criminal conviction, and the disposal is not a ‘sentence’ in the normal meaning of the word. But the procedure itself, good intentions aside, seriously limits the scope for challenge to the prosecution case: the mental element of offences is, put bluntly, taken out of the equation and all the Crown has to prove is whether the act complained of was done.

But that may be changing: the Court of Appeal in R v Martin Burke [2012] EWCA Crim 770 upheld an appeal where an unfit defendant argued that his offence of necessity included a mental element the Crown had not proved. The case concerned voyeurism, an activity

which surprisingly was not a specific criminal offence until made so by the Sexual Offences Act 2003. Under section 67(1) of the Act the particulars are that a person for the purposes of sexual gratification observes another doing a private act, knowing that that person did not consent to being observed for the defendant’s sexual gratification.

The judge at first instance had directed the jury that all they had to find was that there was observation (that is, more than a passing glance) of a private act. A young man, with no previous convictions, had been seen lying on the floor of changing rooms in a swimming pool looking under the cubicle doors at young boys who were getting undressed. His case, in as much as it could be put, was that he had a sore back and was lying on the ground to relieve it, and that seeing the boys was incidental to that. The jury were specifically directed that they did not need to decide what his motive was, or whether he knew what he was doing was wrong or inappropriate. So, out of the four elements of the offence, only two – the physical act of observation and the private act – had to be established.

Excluding the mental element: The exclusion of the mental elements from this procedure was thoroughly thrashed out in R v Antoine [2001] 1 AC 340, a case where a defendant had been found unfit to stand trial for murder. The issues for the court were, first, whether all the elements of murder charged against the defendant had to be established (including the mental element) for the purposes of the jury’s determination of whether he did the act or made the omission, and, second, whether in that case the defendant could rely on diminished responsibility.

Antoine was the House of Lords’ contribution to a debate that had lurched the other way in a case called Egan, which indicated that all the elements of a theft charge had to be proved in a fact-finding section 4a case, including dishonesty. Antoine effectively said that an unfit defendant could not have his cake and eat it: he could not avoid a criminal trial and criminal sanctions because of his mental state, and then use that mental state again within the section 4a procedure. No defence based on any mental element could be used. Other defences such as accident, mistake or self-defence could be mounted but only if there was independent evidence enough to raise it as an issue.

The issue in Burke was what was the ambit of ‘mental element’ in a case of voyeurism? The Court of Appeal decided that because the mischief that section 67 was meant to tackle was observation for the purposes of sexual gratification – as opposed to observation for any other purpose – the purpose and the act together constituted the facts that had to be proved. Together they made up the injurious act. Consent was immaterial to the injurious act – that mental element need not be proved.

Does this case have application for other fact-finding exercises under section 4a? Maybe, particularly where an offence is dependent largely on a person’s state of mind – which is just as much a fact according to the court as any other more physical act.

Immigration Update - Deportation of Convicted Foreign Nationals

Jane Coker reviews the latest deportation cases raising article 8 issues

Deportation of foreign criminals has been in the media regularly over the last few months. A clear analysis of the issues to be taken into account and their assessment, including the relevance of ‘Britishness’ and EU considerations, is set out in Sanade and others (British children – Zambrano – Dereci) [2012] UKUT 00048 (IAC).

The cases in this appeal concerned two fathers of young British citizen children who resisted deportation under the automatic deportation provisions of section 32 of the UK Borders Act 2007,