Ireland Minister for Justice published the results of the stock take on 12 November, highlighting the areas in which progress had been made since 2010 and issues of concern to prisoners and management. The report was based on free access to Maghaberry Prison and its prisoners, as well as contact with the prison authorities, the Prisoner Ombudsman and prison officer representatives. Any documentation requested was made available.

The independent assessors highlighted the murder of a prison officer, Mr. David Black, in November 2012 by so-called dissident republicans as a significant challenge and a breach of the principles underpinning the agreement. Ongoing threats against members of the Northern Ireland Prison Service and officials dealing with prison welfare have further complicated relations and damaged trust between the prison service and prisoners. All threats against those working in prisons and with prisoners in Northern Ireland are unacceptable. The recent stock take was accepted by the prison service and the relevant prisoners and opens an opportunity to resolve outstanding matters in order that the unimplemented elements of the Roe House agreement may be put in place. The independent assessors recommend a time limit of six months for the resolution of the outstanding issues involved.

3 Police Officers to be Charged Over Death of Thomas Orchard

A Devon and Cornwall Police custody sergeant and two detention officers are being charged with criminal offences as a result of an Independent Police Complaints Commission (IPCC) investigation into the circumstances surrounding the death of Thomas Orchard. The IPCC provided files of evidence to the Crown Prosecution Service (CPS) relating to the actions of a custody sergeant, two custody detention officers, three police officers, and a custody nurse who were involved in the detention and restraint of Mr Orchard in custody on 3 October 2012. After receiving the files and further work being undertaken by the IPCC, the CPS has decided that the following officers should be charged with unlawful act manslaughter, gross negligence manslaughter and misconduct in a public office: - Jan Kingshott - Custody Sergeant - Simon Tansley - Detention Officer - Michael Marsden – Detention Officer The IPCC has also investigated whether the police officers and detention officers who came into contact with Mr Orchard prior to his death have cases to answer for misconduct. Decisions regarding whether any disciplinary proceedings will be taken against these individuals are being considered. Following consultation with the CPS, the IPCC is continuing its investigation into the role played by Devon and Cornwall Police, as a corporate entity, in the circumstances which led to Mr Orchard's death. We are working in conjunction with the Health and Safety Executive who continue to investigate offences under the Health and Safety at Work Act 1974. We are keeping Mr Orchard's family updated as this work progresses

Hostages: Jamie Green, Dan Payne, Zoran Dresic, Scott Birtwistle, Jon Beere, Chedwyn Evans, Darren Waterhouse, David Norris, Brendan McConville, John Paul Wooton, John Keelan, Mohammed Niaz Khan, Abid Ashiq Hussain, Sharaz Yaqub, David Ferguson, Anthony Parsons, 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, John Twomey, Thomas G. Bourke, David E. Ferguson, Lee Mockble, George Romero Coleman, Neil Hurley, Jaslyn Ricardo Smith, James Dowsett, Kevan Thakrar, Jordan Towers, Patrick Docherty, Brendan Dixon, Paul Bush, Frank Wilkinson, Alex Black, Nicholas Rose, Kevin Nunn, Peter Carine, 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, Carl Kenute Gowe, Eddie Hampton, Tony Hyland, Ray Gilbert, Ishtiaq Ahmed.

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MOJUK: Newsletter 'Inside Out' No 509 (25/12/2014)

How to Become a Convicted Serial Killer (Without Killing Anyone) Justice Gap

Remember the t-shirt 'Join the British Army: go to interesting places, meet interesting people, and kill them'? Well it is kind of similar but a bit more sinister. You are not going to join the army. Nope, you are going to join the nursing profession.

1. Become a nurse - Make sure you are not quite the usual run-of-the-mill nurse. It doesn't matter in what way you are different as long as it's noticeable – or example, you are a guy or a bit better educated than most other nurses. Or you came to nursing after a previous career preferably in something a bit fishy. Have a big mouth, get a reputation for standing up for yourself and kindly pointing out when other people seem to be making big mistakes, even if they are (God forbid) doctors.

2. Now sit back and wait - Sooner or later you are on a ward where people often die. They do have such wards in hospitals, you know. Wait a bit longer. Wait for an unexplained cluster of cases. Actually, as any statistician can tell you, unexpected clusters of cases are exactly what you should expect when events are completely random and completely independent of one another. Remember those three airliners crashing in three days, just a few weeks ago?

Statisticians will also explain that when things are slowly changing in hospital environments – the seasons, new staff with new habits regarding how to classify events on NHS forms, new policy (for example, close down one ward to save money and get a new kind of patients on old wards) etc – the phenomenon of big gaps and tight clusters is strengthened. Psychologists and neuro-scientists will tell you about cognitive biases. The events are not actually independent. One event triggers more being noticed and registered.

3. Now the trigger: an unexplained death a paranoid doctor. equals, spark and gunpowder. Let's look at the gunpowder first. The key doctor. Well, in a stressful situation, everyone is paranoid, right? It's another of those damned cognitive biases. Just because I'm paranoid doesn't mean they're not all out to get me. So let's not use the word 'paranoid'. Let's say, stressed or suggestible.

Now the spark. The key event. We also need an event to trigger the doctor's thinking – the spark which causes the gunpowder to explode. This should be a notable unexpected occurrence which is associated with that equally notable nurse we were previously talking about – the odd one who always seemed to be there when there was some kind of upset. The one with the big mouth and the odd background. This is easy. What we also need is an unexpected death. That is easy too. Why unexpected? Because people had made the wrong diagnosis or were not aware of the full facts even if they were right there in the patient's dossier (had no time to go through that stack of paper yet). Notice, if someone is critically ill and about to die, they are going to die, today or tomorrow or the next day but typically the exact moment of the next crisis is not predictable. Well, in hindsight yes, but not in advance.

Doctors may have said things to family (for example, '… he/ she is doing well, should go home next week') when they really meant: '… this is close to the end, nothing more we can do, better to die at home'. That can even be hospital policy. Not everyone has full information. In fact, almost nobody does. There is no full information. Everyone has snippets, often out of context, often wrong. Now everything has clicked in someone's mind and the link is made between the scary nurse, the disturbing event … and we had a lot more cases like that recently (for example, the 'seasonal bump' in respiratory arrests: seven this month but usually it's just one or two.

4. The hurried trawling expedition - The spectre of a serial killer has now taken possession of the mind of the first doctor who got alarmed and he or she rapidly spreads the virus to his close colleagues. They talk together and agree to do some work. They start looking at other seemingly similar recent cases and they let their minds fall back to other odd things which happened in recent months and stuck in their minds. The scary nurse had also stuck in their minds, and they connect the two. They go trawling and soon they have 20 or 30 'incidents' which are now bothering them. They check each one for any sign of involvement of the scary nurse and if he's involved the incident quickly takes on a very sinister look. Hindsight, right? On the other hand if he was on a week's vacation then obviously everything must have been OK and the case is forgotten.

5. The hurried medical conference - Another conference, gather some dossiers – half a dozen very suspicious cases to report to the police to begin with. The process of 'retelling' the medical history of these 'star cases' has already started. Everyone who was involved and knew something about the screw-ups and mistakes says nothing about them but confirms the fears of the others.

Medical collegiality. That's a relief. There was a killer around, it wasn't my prescription mistake or an oversight of some complicating condition. The dossiers which will go to the police (and importantly, the layman's summary, written by the coordinating doctor) does contain 'truth' but not the 'whole truth'. And there is even more truth outside the hospital dossiers (a culture of lying, the covering up of mistakes). Anyway a lot of the information in the dossiers is wrong, corrupted; misclassifications galore, important documents are lost, important forms never got filled in properly. Medical care is not an exact science. According to recent NHS statistics many men are in NHS hospitals because of pregnancy – their own pregnancy see here.

6. The police - The police are called in, an arrest is made, there is of course an announcement inside the hospital and there has to be an announcement to the press. Now of course the director of the hospital is in control – probably misinformed by his doctors, obviously having to show his 'damage control' capacities and to minimize any bad PR for his hospital. The PR department, the management, the legal department, are all working full throttle in this damage control exercise. The whole thing explodes out of control and the media feeding frenzy starts.

A witch hunt, followed by a witch trial. Then of course there is also the bad luck. In the case of Ben Geen it was the syringe. It was alleged that between December 2003 and February 2004, at least 17 patients suffered respiratory arrests for unknown reasons, and Geen was on duty during these incidents. He was arrested in 2004 and an empty syringe found in his pocket. He had a perfectly good innocent explanation for why the syringe was there, which moreover corresponds to what was actually in it, but you won't find that reported in the media. Instead you will find statements that it contained a toxic combination of drugs … pure fantasy.

This is what Wendy Hesketh (she's a lawyer, writing a book on the topic) wrote: 'I agree with your view on the "politics" behind incidences of death in the medical arena; that there is a culture endorsing collective lying. Inquries into medico-crime or medical malpractice in the UK seem to have been commandeered for political purposes too: rather than investigate the scale of the actual problem at hand; or learn lessons on how to avoid it in future, the inquiries seem designed only to push through current health policy.'

'The establishment wants the public to believe that, since the Shipman case, it is now easier to detect when a health professional kills (or sexually assaults) a patient. It's good if the public think there will never be 'another Shipman' and Ben Geen and Colin Norris being jailed for 30 years apiece sent out that message; as has the string of doctors convicted of sexual

degrading and humiliating experiences for a prisoner. There are other issues regarding controlled movement, the isolation of prisoners, health care and education. It all led to an 18 month dirty protest by republican prisoners. We have also met loyalist prisoners with similar issues regarding health care and controlled movement.

In the past eight years there have been investigations and reports with recommendations that have not been implemented, leading to the most recent stock take. When we visited in August, there were expectations among the prisoners we met that the stock take would lead to real change. Approximately three weeks ago, we returned and there was disappointment at the lack of real progress on the issues raised. Have the issues relating to prisoners and their rights ever been addressed at any of the meetings? If not, will the Taoiseach ensure they are addressed in the interests of a conflict-free environment in prison and society?

Another issue which previously affected republican prisoners and is now affecting loyalist prisoners is the revocation of licences which can be revoked based on closed information, which makes it very difficult for prisoners to try to defend themselves. There may eventually be a Parole Commissioners of Northern Ireland hearing which could be cancelled at the last moment. If release is eventually granted, it is with very stringent conditions. Our group is also concerned with miscarriages of justice similar to those suffered by the Birmingham Six and the Guildford Four. The late Gerry Conlon took up the issue of the Craigavon Two. The two men concerned have been in prison for a number of years, despite the fact that the case was not proved against them; it was reliant on the word of a very dubious witness and the forensic evidence was contradictory and discredited. However, the men will be in prison for another two years while they wait for their case to go before the UK Supreme Court.

These issues cannot be left unaddressed because they undermine peace and stability. Regardless of one's view of the Good Friday Agreement, nobody wants Northern Ireland and the Republic of Ireland to return to violence. We need real engagement, discussion and dialogue with those who disagree with the Good Friday Agreement, both republicans and loyalists, because they feel abandoned and let down. We also require real engagement on prisoner issues and implementation of recommendations reached in agreements. In the interests of fair peace and justice, I ask that these matters be part of talks that take place with the authorities, particularly with the Northern Ireland Minister for Justice and the Secretary of State for Northern Ireland.

Enda Kenny: The Northern Ireland Prison Service, is responsible for implementing prison policy there, as the Deputy is aware. A comprehensive review was chaired by Ms Anne Owers, from which flowed the Hillsborough Castle Agreement which was published in October 2011. The review set out a path for the prison system in the North. Implementation of the 40 recommendations made in the agreement is due for completion next year. Progress is being overseen by an independent group which reports on progress every six months. Ms Owers recognised that Maghaberry Prison was unable, as the Deputy said, to meet the challenge of providing appropriate security and for sufficient and relevant activities for its long-term and short-term prisoners, including those in prison for paramilitary offences.

In the summer of 2010 republican prisoners in Maghaberry Prison's Roe wing protested about conditions. An agreement between prisoners and prison management, known as the Roe House agreement, was concluded in August that year and four independent assessors were appointed to assist in its oversight and delivery. On the recommendation of the Prisoner Ombudsman, Mr. Tom McGonigle, the independent assessors carried out a stock take of the implementation of the Roe House agreement in August and September. The Northern

is wrong. It is assumed to be an ingredient of all criminal offences although some minor statutory offences are punishable irrespective of it]

Detention of Asylum Seekers Not at Risk of Absconding Unlawful

The Court of Appeal ruled Tuesday 16th December 2014 that a second element of the Home Office's detained asylum process is unlawful. The Court found that the detention of asylum seekers who are not at risk of absconding whilst their appeals are pending is unlawful. The ruling is the second Court of Appeal defeat in a week for the government's immigration policy, following Monday's ruling that the guidance on legal aid for immigration cases is unlawful. The charity Detention Action had challenged the lawfulness of detaining asylum-seekers during their appeals purely on the grounds that their claims could be processed quickly. Detention Action argued that asylum-seekers who are found to pose no risk of absconding should be released while their appeals are processed.

The Court of Appeal upheld Detention Action's appeal on the grounds that the policy on detaining asylum seekers during their appeals is not sufficiently clear and transparent. Further, the Court made an alternative finding that, on the material before it, the policy is not justified. Lord Justice Beatson found that: "after the Secretary of State's decision and pending appeal, detention in the fast-track by the application of the "quick processing" criteria cannot be said to be justified and is therefore not lawful". That the evidence before the court: "does not provide the sort of substantial fact-based justification that the Supreme Court… indicated would be needed to justify an interference with a fundamental right."

The Home Office has indicated that it has begun re-assessing the detention of all asylum appellants currently going through the Fast Track. It has indicated that it will assess all asylum appellants on the Fast Track, and release all who are not at risk of absconding. It expects to have made those decisions by 19 December 2014.

Detention Action's Director Jerome Phelps said: "We welcome this judgment. Depriving someone of their liberty for administrative convenience is a grave step under any circumstances. Asylum seekers making appeals are in a situation of enormous stress. Where there is no risk that they will abscond, keeping them locked up cannot be justified. Given that the Fast Track has now twice been found to be operating unlawfully, we urge the government to undertake a fundamental review of the whole process."

Sonal Ghelani of the Migrants' Law Project, the solicitor acting for Detention Action, said: "It appears that the Home Office has been detaining asylum seekers unlawfully for their appeals for the last six years. It cannot be right or fair that the Home Secretary, as a party to an appeal, is entitled to detain her opponent when the effect of detention is to make the appellant's conduct of the appeal much more difficult and therefore to make it less likely that he or she will be successful."

Detention Action - 20 Years Supporting People in Detention & Campaigning for Change

Ongoing Issues Relating to Prisoners in HMP Maghaberry

Maureen O'Sullivan (Speaking in Dail Eireann/Irish Parliament: One of the issues is strip searching which continues, despite all of the technological advances made. There are some particularly horrendous examples; for example, a prisoner in Maghaberry Prison was handcuffed to a warder in order to attend a hospital appointment. Although the appointment was cancelled before he left the prison, he was strip searched before being returned to his cell. We have other examples of prisoners who when appearing in court are handcuffed the whole time, but who nonetheless are strip searched when they return to prison. It is one of the most

assault but statistics have shown that a GP would have to have a killing rate to rival Shipman's in order to have any chance of coming to the attention of the criminal justice system. In fact, the case of Northumberland GP, Dr David Moor, who openly admitted in the media to killing (sorry, 'helping to die') around 300 patients in the media (he wasn't "caught") reflects this. I argue in my book that it is not easier to detect a medico-killer now since Shipman, but it is much more difficult for an innocent person to defend themselves once accused of medico-murder.'

Is this fiction? No it is real life. Truth is stranger than fiction. - This is the true story of Lucia de Berk, Ben Geen, Colin Norris, and Susan Nelles. This can happen to another innocent nurse, somewhere in the world, today. And when I say in the world I mean: in England, Scotland, or Wales; in Canada, Germany, France; in Norway or Denmark … Perhaps even in America (they seem to have more real serial killers there, but perhaps that is because they ahve the death penalty).

And here's the bad news: because of medical collegiality no medic is ever going to speak up about this. There will not be a legal 'new fact'. There is no reason whatever for the legal system to review the case. You're sunk mate, up shit creek without a paddle. Better to admit guilt and get the horror over with bit sooner.

Ben Geen: 'Last-Ditch Attempt' for Nurse Fighting Murder Conviction *Justice Gap*

Some 18 or more patients suffered respiratory arrests and respiratory depressions while Ben Geen was on duty in the period between December 2003 and February 2004, including two who died in January 2004. Geen, described in the press as 'a thrill-seeking nurse', was arrested and an empty syringe was found in his pocket which was tested for the presence of a muscle relaxant. According to a Times report 15/12/14, his legal team argued 'that the respiratory arrests suffered by patients were not the "extremely rare" events portrayed at his trial'. Mark McDonald, his barrister, said Geen had been imprisoned for 'crimes that were never committed but created to fit the circumstances'.

'A last-ditch attempt' is presently being made by Geen's supporters to persuade the Criminal Cases Review Commission to refer the case to the Appeal Court which has already upheld the conviction once. Jane Hutton, of the University of Warwick, told the Times that evidence given at the original trial was 'of no value in supporting a conclusion there was an unusual pattern, nor a conclusion that any unusual pattern was not a chance event'. Apparently, the CCRC has said that there was 'a cogent and compelling body of evidence' pointing to his guilt — 'notably the syringe in his pocket and the sudden decline of some patients after contact with him'. Dr Malcolm Benson, an ex-medical director at the John Radcliffe Hospital in Oxford who reviewed 5,000 sets of patient notes to help to identify victims, said it was the "unexplained nature of the [respiratory] arrests rather than the number" that convinced him that crimes had taken place. Geen had been the nurse in all the suspicious incidents.

A circular proof -'Ben did not get a fair trial,' argues Richard Gill. He reckons that the evidence against Geen was 'illegal' and 'scientifically flawed'. 'The "proof" of his crimes is a circular proof. Each link in the circular chain is sealed by medical experts, many of whom are complicit, who should have been considered as suspects or, at best emotionally concerned and involved witnesses; not as independent forensic scientists,' he comments. He argues that Dr Benson would have had his own concerns about the reputation of the Radcliffe medical trust. 'He becomes involved because his colleagues at Horton General are hysterical about a possible serial killer. The police are called in to investigate a possible crime – but is the crime murder, or is it a false accusation of murder against an innocent nurse?'

The statistician cites the case of Lucia de Berk, a Dutch paediatric nurse who spent six years of a life sentence in jail for murdering seven people before being released. 'Why do we know beyond reasonable doubt that Lucia is innocent? Because an independent multidisciplinary scientific team of medical specialists, toxicologists were finally allowed complete access to complete medical dossiers of key cases,' Gill says. 'They discovered that the alleged incident in each of those cases was entirely natural – though in each case there was a heap of medical errors and all kinds of important information had earlier been withheld from the courts.'

'Just as in the Lucia case, this case starts with the hospital handing over the murderer,' Gill argues. 'After that it is just the job of "the law" to find the murders, and prove that the murderer committed them.' 'Usually, murder cases start with an evidently murdered person. And the police are called in to find out who did it. Now it is the other way round. The police are completely dependent on the story told by the medics. As we know, "medical collegiality" means that that story will be very consistent. No one will break ranks and tell a different story.'

Gill takes challenges the assertion that Geen had been the nurse in all the suspicious incidents." 'Of course, he was. I suspect that Geen simply being there led to an incident of some kind being called an "incident" at all, and then led to it being called "unexplained", and from there it became "suspicious".' This, he says, was also how it went on in the case of Lucia de Berk. 'There are numerous cases for which Geen was convicted where it is absolutely clear medically that nothing weird happened at all,' he says. 'Unfortunately Ben will never get a fair trial till some medical experts start speaking out on his behalf. I am afraid that their ranks are closed. How did Lucia get a fair re-trial? There was a medical whistle-blower, well placed in society and with inside knowledge who fought for seven years.'

TV Investigation Casts Doubt Over Conviction Of Colin Norris *Mark Daly BBC News*

The case of Scottish nurse Colin Norris is an immensely troubling one: a cold-blooded medical killer without an obvious motive; convicted on largely circumstantial evidence. Norris, from Glasgow, was found guilty in 2008 of murdering four elderly patients and attempting to murder a fifth at two hospitals in Leeds. He was jailed for a minimum of 30 years. My relationship with his case started back in 2011. My latest Panorama/BBC Scotland Investigates is the second programme I've made on it. And there is now even more reason to question the convictions. I've investigated miscarriage of justice cases before, but never when the person claiming innocence is a serial killer. I was immediately sceptical. But over the years, alongside the brilliant producer Louise Shorter, I have become ever more concerned about these convictions.

This was a case based on science. There was no other evidence. No empty syringe, no fingerprints on a vial, no witnesses. Suspicion fell on Norris because on the night that Ethel Hall collapsed, he had told colleagues that he thought she didn't look right and might not last the night. Former colleagues of his would tell me that is the kind of thing heard in nurses stations up and down the country every day of the week. But it's what focused West Yorkshire's police's attention on Norris right from the off. Ethel Hall's blood showed high levels on insulin, suggestive of poisoning. From there, the police worked backwards, doing an historic trawl through patient records, retrospectively looking for cases of unexplained hypoglycaemia while Norris had been on shift. The lead detective in the investigation had recently finished a review of the case of medical serial killer Dr Harold Shipman - and West Yorkshire police suspected they had another serial killer on their hands. They found another four cases - but the only evidence was that they'd had unexplained low blood sugar and Norris was on shift at the time. It was enough - he was convicted.

When the Committee reported previously on the subject, it recommended that the Crown Prosecution Service produce guidance to prosecutors on joint enterprise charging decisions, which the CPS did in December 2012. In this report the Committee considers the impact of that guidance. It also considers statistics compiled by the CPS for 2012 and 2013 on murder and manslaughter cases with two or more defendants, as well as information on the use of joint enterprise assembled by academics, journalists and campaigners.

The Committee concludes that the guidance for prosecutors contains a comprehensive and detailed account of the law as it stands, but when it comes to assessing the impact of the guidance the Committee says that the available information enables only the most tentative conclusions to be drawn about whether prosecutors are avoiding overcharging. The Committee recommends the introduction of arrangements to provide much fuller information about the use of the doctrine in the future.

Sir Alan Beith said: "Given the degree of concern which exists about the operation of joint enterprise, we say it is not acceptable for the main authorities in the criminal justice system to give such limited attention and priority to the recording and collation of fundamental information about the use of the doctrine. We also call for research to provide information covering the last five years, and for the CPS to monitor and analyse the way prosecutors are following the guidance in cases where the joint enterprise doctrine is used."

Preliminary findings from Cambridge Institute of Criminology research provided to the Committee show that the proportion of Black and mixed race young men serving very long sentences for joint enterprise offences is much higher than their representation in the general population or the overall prison population. Some witnesses to the inquiry used the metaphor of a 'dragnet' to describe the operation of joint enterprise, claiming that it was hoovering up young people from ethnic minority communities who have peripheral, minor or in some cases even non-existent involvement in serious criminal acts, along with the principal perpetrators of those acts, and imposing draconian penalties on them.

Sir Alan Beith added: "Joint enterprise remains a highly controversial subject amongst lawyers, academics and others. We heard from campaigners who believe that it has resulted in widespread miscarriages of justice. At the same time review of the law will have to be handled carefully so as not to cause distress to victims and their families.

It is noticeable that Black and mixed race young men are disproportionately represented among those convicted under joint enterprise. Some have argued that the doctrine has an important effect in deterring young people from getting involved in criminal gang activities, but others are sceptical about this. We say in our report that there is a real danger in justifying the joint enterprise doctrine on the basis that it sends a signal or delivers a wider social message, rather than on the basis that it is necessary to ensure people are found guilty of offences in accordance with the law as it stands."

The subject of the report: The doctrine of joint enterprise dealt with in the report does not cover cases where more than one person jointly commit a crime; nor does it cover cases of traditional secondary liability where one person assists or encourages another person to commit a crime. The report concerns cases in which, where two or more people participate in a joint venture to commit a crime and one of the participants commits another crime which others involved had foreseen he might commit, those secondary participants may be charged with the second offence. The report focuses particularly on murder cases, where the mandatory life sentence removes much judicial discretion to give proportionate sentences to secondary participants. The threshold of foresight for establishing the mental fault of secondary participants in such cases is sometimes known as the Chan Wing-siu principle, after the 1985 case in which it was enunciated. [*mens rea: Criminal intention or knowledge that an act

"For the last four years I have fought for justice for Jimmy and our five children," said Adrienne Makenda Kambana. "It is hard for me to understand how the jury reached this decision with all the overwhelming evidence that Jimmy said over and over that he could not breathe." The jury was not told that an inquest last year returned a verdict of unlawful killing in the case. Neither was the jury told that the inquest had heard that two of the guards – Hughes and Tribelnig – had a string of racist "jokes" on their phones. Hughes's phone had 65 texts containing what the coroner, Karon Monaghan QC, said contained "very racially offensive material".

Urgent Review Needed of 'Joint Enterprise' Law in Murder Cases

Justice Committee, expresses 'Disquiet' at the actual functioning of the law of joint enterprise - it should not be possible to charge with murder, but only with manslaughter or a lesser offence, secondary participants in joint enterprise cases who did not encourage or assist the perpetration of the murder - proportion of Black and mixed race young men serving very long sentences for joint enterprise offences much higher than their representation in the general population

The evidence which we have heard in this our second inquiry into the subject has increased our disquiet at the functioning of the law on joint enterprise. We are no longer of the view that it is satisfactory for a consultation to be held on the Law Commission's previous proposals on joint enterprise. We now recommend that the Government should request the Law Commission to undertake an urgent review of the law of joint enterprise in murder cases, considering the appropriateness of the threshold of foresight and considering the proposition that it should be possible to charge secondary participants in joint enterprise cases with manslaughter or a lesser offence, but not murder, if they did not encourage or assist the murder.

Some witnesses to the inquiry used the metaphor of a 'dragnet' to describe the operation of joint enterprise, claiming that it was hoovering up young people from ethnic minority communities who have peripheral, minor or in some cases even non-existent involvement in serious criminal acts, along with the principal perpetrators of those acts, and imposing draconian penalties on them.

Joint Enterprise Follow up Fourth Report of Session 2014-15. The Law Commission should review the common-law doctrine of joint enterprise in murder cases as a matter of urgency, says the Justice Committee in a follow-up report published today, 17th December 2014.

After examining developments in the three years since publication of its previous report on joint enterprise, including new information on numbers of prosecutions, convictions and appeals in joint enterprise cases and on the ethnic breakdown of those convicted under the doctrine, the Committee says the Law Commission should be asked to consider in particular the mental element or *mens rea threshold for establishing the culpability of secondary participants in joint enterprise cases. The Committee also says that the Law Commission should consider the proposition that it should not be possible to charge with murder, but only with manslaughter or a lesser offence, secondary participants in joint enterprise cases who did not encourage or assist the perpetration of the murder.

The Committee Chair, Rt Hon Sir Alan Beith MP, said: "There are clearly cases in which joint enterprise is necessary to ensure that guilty people are convicted. But the Committee's disquiet at the actual functioning of the law of joint enterprise has grown since we inquired into the subject in 2011. We are particularly concerned about joint enterprise in murder cases. The mandatory life sentence for murder means that an individual can be convicted and given a life sentence without the prosecution having to demonstrate that they had any intention of murder or serious bodily harm being committed, and where their involvement in a murder committed by someone else was minor and peripheral. In murder cases judicial sentencing discretion is strictly limited by statute".

His mother, June Morrison, was in the public gallery at Newcastle Crown Court to hear the verdict six years ago. She told me: "I felt as if my world was closing in, it was horrible, I couldn't believe what I'd heard. It was horrendous. I thought my world had ended." Had she ever doubted her son's innocence? "Never. Never. Because I know my son. I've just got to keep going and keep going until we eventually let people know that there has been a miscarriage of justice here and he is not guilty. He is innocent."

The case that Colin Norris has been the victim of a miscarriage of justice is building. During this latest investigation, we spoke to a variety of experts. Two of them, both eminent in their field, believe there could be a natural explanation for Ethel Hall's blood test result - a rare condition called insulin auto immune syndrome. At trial, this rare condition was positively excluded by no fewer than seven experts, who believed it was too rare, and did not fit the clinical picture.

But Prof Terry Wilkin, from the University of Exeter, says: "If you're asking me the question, does insulin auto immune syndrome fit with the facts of the case as reported, then yes it does." Prof Wilkin, alongside a mathmetician colleague, also seriously questions whether an injection of insulin would even be possible to produce the levels of insulin found in Ethel Hall's blood. Our investigation hears from several experts, all questioning the veracity of the scientific work done to convict Colin Norris.

What began as a mother's plea to investigate her son's case in 2011, has led me to question not only whether a completely innocent man could be serving 30 years in prison, but also, whether anyone was murdered in this case at all. I wanted to know whether a jury today would have come to the same conclusion as in 2008.

Only 12 people could answer that question - and one of them agreed to talk to us and to look at our evidence. Colin, juror number eight, told me: "[The new evidence] just throws a new light to it. I mean it could, if that evidence was … available at the time, I mean, I think they would have threw the case out to be honest. "Very doubtful that we come to the right conclusion. Very doubtful." Norris's case is currently with the Criminal Cases Review Commission, which has been looking at the case since our first programme in 2011. We will be making our new evidence available to the commission.

Prison Communications Inquiry - Serco Still Out of Control

Steps taken by the National Offender Management Service (NOMS) to prevent prisoners' phone calls to MPs being listened to or recorded in future have been largely, but not wholly effective. The technical measures that have been taken are effective but depend on the accuracy of the data that is inputted and so human error remains possible. Insufficient action was taken to ensure that one private sector provider, SERCO, who use a different telephone monitoring system to public and other private sector providers, had introduced equivalent measures.

On 11 November 2014, Secretary of State for Justice Chris Grayling asked HM Chief Inspector of Prisons to investigate the circumstances surrounding the interception of telephone calls from prisoners in England and Wales to the offices of Members of Parliament, had been recorded, and in some cases listened to, by prison staff. And to make recommendations to ensure that there are sufficient safeguards in place to minimise the risk of such calls being recorded inappropriately in the future. The first stage of the inquiry (Now complete) was to undertake a review of urgent, practical steps which NOMS are currently taking to minimise the risk of recording or listening to calls inappropriately in the future. The second stage of the inquiry will look at the circumstances of how these telephone calls came to be recorded in the past. The second stage will be completed early in 2015.

Source: Prison Communications Inquiry by HMCIP 28/12/14

Horncastle, Blackmore, Marquis and Graham - ECtHR Reject Their Claim

Conclusion of judicial dialogue between ECHR and UK courts on use of hearsay evidence

In Chamber judgment! in the case of Horncastle and Others v. the United Kingdom (application no. 4184/10) the European Court of Human Rights held, unanimously, that there had been: no violation of Article 6 §§ 1 and 3 (d) (right to a fair trial and right to obtain attendance and examination of witnesses) of the European Convention on Human Rights. The case concerned four applicants' complaints that in admitting victims' written statements as evidence against them at their criminal trials the domestic courts had violated their right to have examined witnesses who gave sole or decisive evidence against them.

The Court reiterated the principles established in its Grand Chamber judgment in Al-Khawaia and Tahery v. the United Kingdom(application nos. 26766/05 and 22228/06) in which it had agreed with the domestic courts that a conviction based solely or decisively on the statement of an absent witness would not automatically result in a breach of Article 6 § 1. Where hearsay evidence was sole or decisive, the question was whether there were adequate counterbalancing factors in place, including strong procedural safeguards, to compensate for the difficulties caused to the defence.

In relation to the first two applicants, the Court found that even assuming that the written statement of the victim had been "decisive", there had been sufficient safeguards in domestic law to protect their right to a fair trial. In relation to the second two applicants, the Court concluded that the statement had been neither the sole nor decisive basis of their conviction and, accordingly, that there had been no violation of their defence rights.

This judgment concludes the judicial dialogue on the admissibility of hearsay evidence in criminal trials which commenced with the delivery of this Court's Chamber judgment in Al-Khawaja and Tahery. The Supreme Court, when hearing the present applicants' appeal, examined that judgment and invited the Grand Chamber to accept a request to rehear the case. The subsequent Grand Chamber judgment in Al-Khawaja and Tahery agreed with the Supreme Court that the sole or decisive rule should not be applied in an inflexible way.

Principal facts: The applicants, Michael Christopher Horncastle, David Lee Blackmore, Abijah Marquis and Joseph David Graham, are British nationals who were born in 1980, 1981, 1978 and 1981 respectively. They are currently in detention. In November 2007 Mr Horncastle and Mr Blackmore were convicted of causing grievous bodily harm with intent by a unanimous jury verdict. Their victim had given a written statement to the police identifying his attackers but had died before trial from an unrelated illness. The statement was admitted in evidence against the applicants. On 12 May 2008 Mr Marquis and Mr Graham were convicted of kidnapping a woman from her home. During the kidnapping they had threatened to harm her. The victim and her husband initially made written statements to the police but later refused to appear as witnesses at trial because they were scared for the safety of their families. The victim's statement was admitted in evidence against the applicants but the judge refused to admit the statement of her husband.

The applicants appealed their convictions to the Court of Appeal but their appeals were rejected in May 2009. They then appealed to the Supreme Court which also rejected their appeals in December 2009. Relying on Article 6 §§ 1 and 3 (d) (right to a fair trial and right to obtain attendance and examination of witnesses), the applicants complained that by admitting the victims' written statements at trial the domestic courts had violated their right to have examined witnesses who gave sole or decisive evidence against them. The application was lodged with the European Court of Human Rights on 7 January 2010.

ticular maintaining relationships with their children. But Women Moving Forward, a group of women offenders in Manchester has told me that a tightening of release on temporary licence provisions is making it more difficult for them to have time with their children. Will the Minister take a look at this situation, which is not just important for reducing reoffending among those women, but is in the interests of their children?

Simon Hughes: I am completely persuaded by the argument that women need more time with their children. We are expanding the capacity for that in all prisons. I will be up in Greater Manchester next month meeting colleagues and I am happy to meet the hon. Lady in Manchester with colleagues. We are clear that women in prison need to have maximum time with their children, and that children need to be protected as much as possible from the adverse effects of having their mother away from them.

Meg Munn: In the previous Session of Parliament, the Justice Committee identified that under this Government the progress made in implementing the recommendations of the Corston report on women prisoners had stalled. What has happened in the past year to address that and to make sure that the different needs of women, particularly in preventing reoffending, are being properly addressed by this Government?

Simon Hughes: There is a list of steps that the Government are taking. We have legislated to make sure that women's interests are specifically provided for in the rehabilitation process. There have to be specific programmes to meet the needs of women. We have made sure that in each of the women's prisons there will be the capacity for women to have spaces outside the walls on a gradual programme, so that they can be rehabilitated more quickly. I am clear that the needs of women are entirely different from the needs of men in prison, not least because of their family responsibilities, and that is written through—as through a stick of rock—all that we are seeking to do in relation to women in custody.

Justice Blindfolded? The Case of Jimmy Mubenga

Following the acquittal on 16 December of the G4S guards carged with the manslaughter of Jimmy Mubenga, the judge told the jury that they were not to be concerned if they later read about material that was ruled inadmissible at the trial. At the very beginning of the trial, reporting restrictions had been imposed which prevented any media reporting of the unlawful killing verdict, the coroner's report or the virulently racist tweets and other evidence of racism on the part of the security guards, pending legal argument as to whether the jury could be allowed to hear this evidence or not. Later in the trial, the judge ruled that the jury should not hear any of this evidence.

Hearing about the huge volume of horrible racist tweets and jokes received and re-sent by Terrence Hughes, and the small number by Tribelnig (none were on Kaler's phone), would, defence lawyers argued, 'release an unpredictable cloud of prejudice' in the jury, preventing a fair trial. The judge acceded to the argument – so the jury reached its verdict in ignorance both of the previous jury's conclusions and of the evidence of racist attitudes held by one or more of the men tasked with restraining Mubenga on the plane.

His widow Adrienne, said she was "shocked and disappointed" by the acquittal of three private security guards who were charged with his killing. Terrence Hughes, 53, Colin Kaler, 52 and Stuart Tribelnig, 39, worked for G4S on contract to the Home Office, and were accused of manslaughter by forcing the 46-year-old father's head down and restricting his breathing as a British Airways flight prepared to take off at Heathrow airport on 12 October 2010. A jury at the Old Bailey cleared them of the charges on Tuesday after a six-week trial.

8 - with regard to the monitoring of the applicant's correspondence No violation of Article 34: Just satisfaction: 12,000 euros (EUR) (non-pecuniary damage) and EUR 4,000 (costs and expenses)

Botched Lethal Execution of Clayton Lockett Described as 'A Bloody Mess'

A grisly execution of a US criminal in Oklahoma that did not go according to plan has been detailed for the first time since the ineffective lethal injection was administered eight months ago. A medic had repeatedly attempted to insert an intravenous line in the groin of prisoner Clayton Lockett but pierced an artery by accident and was sprayed with blood, according to a document filed in Federal District Court on Friday, as reported by The New York Times. Lockett, a murderer and rapist who was 38-years-old when he was killed by the state, was also said to have been writhing around, clenching his teeth, groaning in agony and had even tried to lift his head off the pillow just minutes after he was pronounced unconscious by doctors, before he died of a heart attack 43 minutes later.

"It was a bloody mess," said Anita Trammell, the warden of the Oklahoma state prison where the execution took place on 29 April at 6.23pm, as recorded in an interview with state investigators. After the doctor had realised that there was no drugs left for the execution and that the needle was too short to reach the veins, Lockett's heart had stopped and no efforts were made to resuscitate him, The New York Times said. Lockett had a long history of crime since he pleaded guilty for burglary at 19 for which he received seven years. In 1999, he kidnapped, beat and shot 19-year-old Stephanie Neiman before watching his accomplices bury her while she was still alive. In 2000, he was convicted of murder, rape, forcible sodomy, kidnapping, assault and battery for which he was sentenced to death by lethal injection, which has the highest failure rate of all methods of execution at 7.1 per cent.

Several officials acknowledged, according to the court brief, that they had no contingency plans in case Lockett failed to die. His execution was supposed to be followed two hours later by that of Charles F. Warner, who was convicted of raping and murdering an infant in 1997, but the state immediately suspended his execution and those of others to investigate what had went wrong. Officials say they have improved training and procedures, and Warner is now scheduled to die on 15 January next year, followed by three other convicts on 29 January, 19 February and 5 March.

Officials have said they plan to use a three-drug combination similar to that used for Lockett with midazolam sedative, but at ten times the dose used, followed by a paralysing agent and one that stops the heart beating. The lawyers seeking to delay the planned executions have claimed that the use of midazolam amounts to unconstitutional experimentation on humans and they plan to call upon medical experts in the hope to prove that multiplying the sedative dosage would not necessarily work. Midazolam was also used during the execution of murderer Joseph Wood in Arizona, in July, that lasted nearly two hours while the prisoner gasped for breath as the executioners repeatedly injected more of the drugs.

Rehabilitation of Women Offenders

Kate Green : What steps he is taking to rehabilitate women offenders.

Minister of Justice Simon Hughes: The coalition Government are clear that reducing reoffending through effective rehabilitation of previous offenders is the most effective way to cut crime and reduce the victims of crime. As the hon. Lady knows, female offenders disproportionately have short sentences. The new reforms will for the first time mean that all those leaving will have targeted support on release. We are reconfiguring the women's estate so that women spend the bulk of their time, if they are in prison, near where they will be released so that they have the best links with the community.

Kate Green: The Minister will be aware that maintaining good relationships with one's family while in custody is a particularly important factor in rehabilitation, and for women in par-

Decision of the Court: The Court noted that it had consistently underlined that the admissibility of evidence was primarily a matter for national law and courts to regulate. The Court's task was to ascertain whether the proceedings as a whole had been fair. It reiterated that Article 6 § 3 (d) enshrined the principle that all evidence against the accused had to be produced in their presence at a public hearing so that it could be challenged. In its Grand Chamber judgment in the case Al-Khawaja and Tahery v. the United Kingdom (application nos. 26766/05 and 22228/06) the Court had set out two requirements following on from that principle. First, there had to be a good reason for non-attendance of a witness. Second, a conviction based solely or decisively on the statement of an absent witness could be compatible with the right to a fair trial if there were sufficient counterbalancing factors, including the existence of strong procedural safeguards, to permit a fair and proper assessment of the evidence.

The applicants did not challenge the domestic law controlling admission of absent witness evidence, accepting that there were strong safeguards designed to ensure the fairness of criminal proceedings in the United Kingdom, but questioned whether these mechanisms had been properly applied in the decisions in their particular cases. As explained in Al-Khawaja and Tahery, the questions for the Court in each case were: whether there had been a good reason for the witnesses' non-attendance; whether the witness statements had been "sole or decisive"; and, if so, whether there had nonetheless been adequate counterbalancing measures.

Mr Horncastle and Mr Blackmore - The Court accepted that the death of the victim had made it necessary to admit his statement if his testimony were to be considered. The Court's starting point in determining whether the victim's statement had been decisive for the applicants' conviction was the judgments of the domestic courts. The trial judge said that the prosecution case depended on the victim's statement while the Court of Appeal accepted that the applicants' convictions had been based lito a decisive degree" on the statement. However, the Court considered it to be more than arguable that the strength of the other incriminating evidence in the case, in particular the admissions by the applicants that they had been present at the victim's flat on the night that he had been attacked, was such that the statement had not been decisive in the sense that it had determined the outcome of the case.

However, even assuming that the statement had been "decisive", the Court was satisfied that there had been sufficient counterbalancing factors to compensate for any difficulties caused by its admission, including the legislative framework regulating the circumstances in which hearsay evidence could be admitted and the possibility for the applicants to challenge its admission. The domestic law safeguards had been applied appropriately by the trial judge and, when taken in combination with the strength of the other prosecution evidence and the careful directions given by the trial judge, enabled the jury to fairly and properly assess the reliability of the victim's statement. Accordingly, there had been no violation of Article 6 §§ 1 and 3 (d) in respect of Mr Horncastle and Mr Blackmore.

Mr Marquis and Mr Graham - The Court was satisfied that there had been a good reason for the failure of the victim to attend trial to give evidence. The trial judge had made appropriate enquiries into the nature, extent and grounds of the victim's fear. The threats made to her during the kidnapping and the fact that she would risk imprisonment rather than testify had persuaded him that she was "petrified, genuinely in distress". All available steps had been taken to secure her attendance. The trial judge's refusal to admit the written statement of her husband, on the ground that the judge was not satisfied that his absence at trial was due to fear, demonstrated the care and diligence with which the judge had approached his task.

In assessing the sole or decisive nature of the statement, the Court began with the evaluation of the evidence by the domestic courts. Significantly, the Court of Appeal had not considered the evidence of the victim to be decisive. Other, independent evidence was available, including CCTV footage of Mr Graham outside the victim's home at the time of the kidnapping, undisputed telephone record data showing calls from Mr Marquis' phone to the victim's husband on the night of the kidnapping and evidence that the applicants had checked into a hotel on the night of the kidnapping with the car they had stolen from their victim.

The Court therefore concluded that the victim's statement had not been the sole or decisive basis for the applicants' convictions. It was therefore unnecessary to examine whether there had been sufficient counterbalancing factors. There had, accordingly, been no violation of Article 6 §§ 1 and 3 (d) in respect of Mr Marquis and Mr Graham.

War on Terror Paranoia Creep @ ECtHR?

[MOJUK having read through the judgement Ibrahim & Ors V UK and in particular the dissenting opinion of Judge Kalaydjieva, more than suspect that the majority of judges have let the war on terror, blind themselves to proper diligence in making the decision they have. Immediately below extract from Guardian article, below that full text of Judge Kalaydjieva. This is not a final judgement unless the appellants choose it to be, they can and should ask for a full chamber judgement, which is their right.]

Failed London 21/7 Suicide Bombers Lose ECtHR Appeal *Owen Bowcott, Guardian*

Three men who attempted to carry out suicide bombings on the London Underground in July 2005 have failed to overturn their convictions. The European court of human rights ruled that Muktar Said Ibrahim, Ramzi Mohammed and Yassin Omar received a fair trial. The men, who are Somali nationals, had complained that there had been a delay in allowing them access to a solicitor. The three 21/7 bombers were refused access to a lawyer initially so they could be subject to “safety interviews” – urgent interrogations carried out with the aim of protecting life and preventing serious damage to property. The procedure is permitted under the Terrorism Act 2000 and enables questioning to take place in the absence of a solicitor and before detainees have had the opportunity to seek legal advice.

Ibrahim and Others v. the United Kingdom: European Court of Human Rights held, by six votes to one, that there had been: no violation of Article 6 § 1 and 3 (c) (right to a fair trial and right to legal assistance) of the European Convention on Human Rights.

Dissenting Opinion Of Judge Kalaydjieva

The applicants in the present joined cases argued (see paragraph 169 of the judgment) that “the right to legal advice was not merely a protection against coercion and ill treatment: there was a clear link between the right to legal advice and the right against self-incrimination running through the case-law of the Court both before and after Salduz” (see Salduz v. Turkey ([GC], no. 36391/02, ECHR 2008). They furthermore maintained (see paragraph 170) that “there was no relevance in the distinction drawn by the Government between telling lies and making incriminating admissions or staying silent ... Any such distinction had no basis in domestic law or the Court's case-law”. The principles set out, in particular, in the case of Saunders v. the United Kingdom (17 December 1996, § 71, Reports 1996 VI) “made it clear that the right not to incriminate oneself could not reasonably be confined to admissions”. In their view such a distinction “would have uncertain and unpredictable consequences”.

I regret the fact that the majority of my learned colleagues seem to have failed to address

plinary action against her should she try to identify herself as a woman in any way. The prison’s stated reason for doing this was that her risk of re-offending was too high and that to permit her to live and be treated as a woman would increase that risk. This reason has been maintained despite her changing her name by deed poll, and despite the prison doctors diagnosing her with gender identity disorder and referring her to a gender identity clinic.

Ms K approached the prison law team at Leigh Day, who have launched a judicial review claim against the Prison Service challenging the prison’s refusal. The basis of the challenge is that the refusal is unlawful as it breaches their own policies, and amounts to a breach of her human rights and to unlawful discrimination.

Benjamin Burrows, a solicitor in the prison law team at Leigh Day, said: “Ms K has made a difficult, yet clearly reasoned, choice in wishing to live in her acquired gender. This choice has been recognised by the doctors at the prison, but the prison itself is refusing to do so. The reasons given for this are spurious at best. However, the law offers protection to people who make this choice. That protection should be given to everyone, regardless of whether they are a prisoner or not. The fact that Ms K is being denied this protection is unlawful, and is causing her a great deal of distress.” Ms K is also being represented by Jude Bunting, a barrister at Doughty Street Chambers, who is a recognised expert in prison, human rights and discrimination law.

Dimcho Dimov - Shackled to his Sick Bed for Nine Days Breach of Article 3

A Bulgarian national Dimcho Yordanov Dimov (application no. 57123/08), born in 1968 is currently being held in Varna Prison (Bulgaria). The case concerned Mr Dimov's immobilisation for nine days on a bed at the Varna Prison medical centre, with his wrists and ankles shackled, and the restriction and monitoring of his correspondence by the prison management.

On 29 April 2008 the prison governor ordered the immobilisation of Mr Dimov, who suffered from behavioural disorders, after he indicated his intention to self-harm. The following day, he signed a formal undertaking not to engage in acts of self-harm. He nevertheless remained shackled to his bed until 7 May 2008, a period of nine consecutive days, during which he was unchained only three times a day to go to the toilet and have meals. In June 2009 he lodged a complaint against the prison staff with the Varna regional prosecutor's office, which opened an investigation into the matter. In July 2009 the prosecutor made an order discontinuing the proceedings, which was unsuccessfully challenged by Mr Dimov. In the meantime, on 17 May 2008, the prison management had refused to dispatch a letter from Mr Dimov to the European Court of Human Rights, in which he expressed his intention to lodge an application; the reason given was that it was for Mr Dimov to pay the postal charges. The prison management also placed their stamp on several letters which Mr Dimov sent his representatives in 2008 and 2009 and added written notes on two of them.

Relying on Article 3 (prohibition of inhuman or degrading treatment) of the European Convention on Human Rights, Mr Dimov complained that he had been immobilised for nine days on his bed in Varna Prison and that no effective investigation had been carried out into his complaint. Under Article 8 (right to respect for private and family life), he also complained that the prison authorities had monitored his correspondence and had refused to dispatch one of his letters to the Court at their own expense. Lastly, Mr Dimov complained of the authorities' refusal to provide his representatives with documents relating to his immobilisation and to dispatch one of his letters to the Court at the prison's expense, thus hindering his application to the Court, in breach of Article 34 (right of individual application).

Violation of Article 3 (inhuman treatment) Violation of Article 3 (procedure): Violation of Article

ties..."

Muhammed Hamid: A8114AG, HMP Gartree, Gallowfield Road, Market Harborough, LE16 7RP

Deaf Prisoner Receives Substantial Compensation for Discrimination

The serving prisoner, known as "Mr N", became deaf whilst in prison. Even with the help of hearing aids for both ears, he still had difficulties in participating in almost all aspects of prison life. These difficulties included being able to communicate properly with other prisoners, prison staff and family and friends. Mr N raised the difficulties he was experiencing repeatedly with the various prisons where he has been an inmate. He did not know what could be done to help him overcome these difficulties, so he asked for his needs to be assessed by a deaf specialist and for any appropriate aids or services to then be provided. However, in response, Mr N's requests were either ignored by the prison or the prison said that it was not their responsibility. On the few occasions that they did respond to his request, he was transferred to another prison before anything was done. The result of which was that the whole process of raising his difficulties started all over again.

This was not only frustrating and isolating, but it also threatened to impede Mr N's sentence progression. To be able to show a reduction in his risk, he needed to complete an offending behaviour course. However, the course was a group course and involved group discussions and role play. Neither of which he could do without help. Faced with the prison's seeming indifference to his difficulties, Mr N instructed Benjamin Burrows, a solicitor in the prison law team at Leigh Day, to bring a claim for discrimination. The claim, which was brought under the Equality Act 2010 against the Ministry of Justice, argued that the failure to adequately assess and provide for his needs amounted to unlawful disability discrimination. Happily, shortly after the claim was brought, the Ministry of Justice facilitated the assessment of Mr N's needs and the provision of a number of aids and services. This included a personal listener, which is worn around the neck and works with a hearing aid to amplify speech. In addition, the Ministry of Justice agreed to pay him substantial compensation in recognition of their failures.

Commenting on the settlement, Benjamin Burrows, a solicitor in the prisoner law team at Leigh Day said: "Mr N had a clearly recognisable disability and had easily recognisable difficulties as a result. These difficulties were all-pervasive. Yet, when he raised them, they were trivialised or he was made out to be needy. Mr N's case showed a complete lack of understanding by the prisons and their staff of their obligations under the Equality Act 2010. These obligations are pro-active. As such, they should recognise difficulties or potential difficulties a prisoner is having, and do something about them. They cannot do what they did in Mr N's case which is to simply bury their heads in the sand or to blame someone else." Mr N's claim was funded by the Legal Aid Agency, and he was represented by Nick Armstrong, a barrister at Matrix Chambers.

Legal Action Launched by Transsexual Prisoner

The prisoner, known as "Ms K", is a male-to-female transsexual. Since her childhood, she has felt as if she was "a woman trapped in a man's body". However, she felt unable to disclose these feelings to others through her fear of rejection and of abuse should she do so. Nonetheless, after years of wrestling with these feelings, she, last year, made the life-changing decision to disclose her transsexualism. At this time, Ms K was serving as a prisoner. She told the prison that, as a transsexual person, she wished to under the gender reassignment process to change her body physically from that of a man to that of a woman. She also told them that, in the meantime, she wished to live as and be treated as a woman. This included being referred to by her female name and wearing female clothes and make up.

However, the prison refused to recognise Ms K as transsexual and threatened disci-

these complaints jointly as raised by the applicants. As in Gäfgen v. Germany ([GC], no. 22978/05, ECHR 2010), the complaints of insufficient safeguards for the privilege against self-incrimination were separated from the allegations that the police had deliberately impeded access to defence lawyers until after the applicants had been questioned and had made statements concerning the offences of which they were suspected.

While the case-law of this Court sees the privilege against self-incrimination as one of the basic principles of Article 6 of the Convention, there is little doubt that the "minimum right to legal assistance" enshrined in Article 6 § 3 (c) serves as one of the basic guarantees for the protection of this privilege. In the present case, the majority agreed with the domestic authorities and the Government that "the police were concerned that access to legal advice would lead to the alerting of other suspects" (see paragraph 201) and were satisfied that, at the time of the "safety interviews", the delayed access to legal advice was justified by "the need to obtain, as a matter of critical urgency, information on any further planned attacks and the identities of those potentially involved in the plot, while ensuring that the integrity of the investigation was not compromised by leaks", a need which "was clearly of the utmost compelling nature" (see paragraph 200). While I am fully aware of the difficult and urgent situation, which called for "safety interviews" for the purposes of obtaining information that was urgently necessary to remove imminent danger and save the lives of many, I find myself unable to follow the argument that preventing access to a lawyer may be justified for the purposes of "ensuring that the integrity of the investigation was not compromised by leaks". This argument appears to be broadly dismissive of the very essence of the right guaranteed by Article 6 § 3 (c), being potentially applicable to any investigation proceedings, and reflects a generalised view that lawyers constitute a threat to justice by definition.

I also regret that there is no analysis as to whether or not the situation with which the applicants were confronted during the "safety interviews" - the applicable legal framework, which appears to leave no space for the right to remain silent, the erroneous or omitted cautions against self-incrimination, taken together with the absence of legal assistance -, amounted to "coercion or oppression in defiance of the suspect's will". A proper analysis of this situation may lead to the conclusion that, taken together, these circumstances inevitably trap suspects in a situation where both their silence and their lies may be lawfully interpreted to their detriment, thus leaving space only for confession. The compatibility of this situation with the principles in Saunders is questionable. It appears that in this regard the majority were satisfied with the observation that they were neither arrested, nor subjected to any ill-treatment. I am not convinced that this suffices for the purposes of ruling out "coercion" within the meaning of the Court's case-law. In this regard I would simply mention the principles reiterated in Gäfgen (cited above, § 168) where, with regard to "the use of evidence obtained in breach of the right to silence and the privilege against self-incrimination, the Court reiterate[d] that these [were] generally recognised international standards which [lay] at the heart of the notion of fair procedures under Article 6". The Grand Chamber continued as follows:

"Their rationale lies, inter alia, in the protection of the accused against improper compulsion by the authorities, thereby contributing to the avoidance of miscarriages of justice and to the fulfilment of the aims of Article 6. The right not to incriminate oneself, in particular, presupposes that the prosecution in a criminal case seek to prove their case against the accused without resort to evidence obtained through methods of coercion or oppression in defiance of the will of the accused (see, inter alia, Saunders v. the United Kingdom [GC], 17 December 1996, § 68, Reports 1996-VI; Heaney and McGuinness v. Ireland, no. 34720/97, § 40, ECHR 2000-

XII; and the judgment in Jalloh, cited above, § 100)."

Finally, the case raises yet again the issue of appropriate remedies in cases of infringement of the privilege against self-incrimination. Instead of clarifying the scope of this privilege and the appropriate remedies for its infringement, in the case of Gäfgen the Grand Chamber focused its examination on the Article 3 aspects of the case, albeit noting the provisions of other international instruments and the views of other courts concerning the "exclusionary rule" established for the protection of the privilege against self-incrimination. In this regard the Grand Chamber admitted that "in its case-law to date, it has not yet settled the question whether the use of such evidence will always render a trial unfair, that is, irrespective of other circumstances of the case".

Having found that, in breach of the law, the fourth applicant Mr Ismail Abdurahman had been deliberately questioned without a proper caution against self-incrimination, the majority deemed it sufficient that this "did not give rise to undue prejudice to his defence rights" and in fact left the assessment of appropriate remedies to the national criminal courts.

In failing to analyse both whether the circumstances in the first three cases amounted to coercion to self-incrimination and what the appropriate remedies should be in established circumstances of self-incrimination, i.e. in the case of the fourth applicant, under the Convention rather than domestic law standards, I ask myself whether this Court's scrutiny was at all necessary or appropriate, or was it in fact redundant, as falling outside the scope of the Court's competence and even encroaching upon the domestic authorities' margin of appreciation?

Transforming Rehabilitation - Many A Slip Twixt Cup and Lip *HM Inspectorate of Probation's*

Changes to probation services under the government's Transforming Rehabilitation programme had exposed and created a number of challenges in information-sharing, IT and processes that needed close attention. The speed of its implementation had in itself caused operational problems, and the changes have also exposed some pre-existing flaws.

The report, Transforming Rehabilitation - Early Implementation: an Independent Inspection setting out the Operational Impacts, Challenges and Necessary Actions by HM Inspectorate of Probation published 15/12/14, relates to findings from inspections undertaken between April and September 2014. In particular, inspectors looked at the newly created interface between the National Probation Service (NPS) and Community Rehabilitation Companies (CRCs).

Prior to June 2014, probation services in England and Wales were delivered by 35 Probation Trusts working under the direction of the National Offender Management Service (NOMS). The Ministry of Justice (MoJ) introduced a programme, Transforming Rehabilitation, to change the way those services were delivered. A newly created National Probation Service was set up to focus on work with high risk of serious harm offenders and providing advice to courts on sentencing. Most other work with low and medium risk of serious harm offenders is now delivered by Community Rehabilitation Companies. The NPS came into existence on 1 June 2014. The CRCs were also set up at that point as companies in public ownership. Staff who had previously been employed by probation trusts were assigned to the two new organisations and all existing cases were allocated to the two organisations as well.

Overall, inspectors found that, as in any business, splitting one organisation into two separate organisations had created process, communication and information-sharing challenges that did not previously exist. Many of those issues will remain a challenge for some time to come and need close attention. A number of the findings relate to issues that already existed before 1 June 2014 and the process of implementing change had exposed existing shortfalls in systems, processes, practice quality, consistency, leadership and management. Those probation areas that had been struggling to deliver a quality service prior to TR are now finding it hardest to adapt and cope with the challenges brought by the reforms.

Inspectors were also concerned to find that: - there remain significant challenges in getting the court end processes working as they should; - the lack of staff in some areas of the NPS was having a detrimental impact on the delivery of some of the services being provided; - the relationships between the two new organisations in each area varied in terms of the extent they worked together to resolve communication issues; - IT continues to provide a predictable challenge and the complexities of a number of new tasks and the lack of integration of IT systems was frustrating; - the matching of staff resources to the workload has been challenging and there were significant gaps, especially in courts, in the early weeks; and - often when staff have looked to their senior leaders for reassurance, support and guidance during this period of change, this has been lacking, and the nature of communication and staff engagement from the top to the bottom needs urgent attention.

Free Mohammed Hamid Campaign

"The prosecution and system are the ones that have no heart. They try their best to make me look like an evil person regardless of whose feelings they hurt. They know full well I am not what they are trying to say I am so they have to cut in to the middle of my conversation to make me look bad.

"They know full well how 7/7 emotionally affects the public so they played on the public's emotions to fuel their evil plot and schemes. They did not take into account the feelings of the victims and families of the victims before they decided to put out such a statement in the manner in which they tried to make it look.

"They know that I don't agree with the 7/7 or 9/11, they know I dont believe in killing innocent children and people, they know that the full transcripts aren't saying what they are trying to say, they know I am not what they say I am but yet still they did. Why?

"They arrested us knowing full well we aren't terrorists so what did they do, they tried to paint a picture and in doing so did not care about the emotions or feelings of the general public or families.

"These people are the terrorists..." - Mohammed Hamid

Mohammed Hamid is one of the many victims of Britain's 'war on terror' languishing in prison. He was arrested, along with fourteen other men, in the wake of the 2005 London bombings and charged with 'providing terrorist training'. On 26th February 2008 Hamid was found guilty of 'providing terrorist training' and 'soliciting murder' and sentenced to an 'indeterminate sentence for public protection' with a tariff (minimum term) of seven years, after which he will only be released if the Parole Board declares he is sufficiently low risk to be freed.

Hamid is a victim of a miscarriage of justice predicated on the same Islamophobia and Islamophobic agendas of Imperial conquest that drive the so-called "war on terror". Mohammed maintains he is innocent of any crime, so demonstrating such a 'change' is virtually impossible. Along with other supporters, Mohammed's daughter Yasmin has launched a campaign to demand freedom for her father. In a public statement Hamid's daughter, Yasmin Cass, said: "...My father Mohammed Hamid, a 54 year old father and dawah carrier, was sentenced in 2008 to an "IPP" (Imprisonment for Public Protection). He was singled out for his beliefs - which included challenging the government's version of events regarding 7/7. He is a man who loves people and people love him right back. Our home has been torn apart by his absence and it is worse knowing he is an innocent man, 'Imprisoned for Public Protection', for the crimes of calling non-Muslims to Islam, playing paint-ball, and helping local communi-