Three Judges Sacked and a Fourth Resigns for Viewing Pornography

District judge Timothy Bowles, immigration judge Warren Grant, and deputy district judge and recorder Peter Bullock have been removed from judicial office following an investigation into an allegation that they viewed pornographic material on judicial IT equipment in their offices," a statement from the JCIO said. "The lord chancellor [the justice secretary, Chris Grayling] and the lord chief justice [Lord Thomas of Cwmgiedd] were satisfied that the material did not include images of children or any other illegal content, but concluded that this was an inexcusable misuse of their judicial IT accounts and wholly unacceptable conduct for a judicial office-holder. "A fourth judge, recorder Andrew Maw, was also found to have viewed similar inappropriate material via his judicial IT account. The lord chancellor and the lord chief justice would likewise have removed recorder Maw had he not resigned before the conclusion of the disciplinary process." Maw worked at Lincoln county court, Bowles at Romford county court, Bullock on the north-eastern circuit, and Grant at the Immigration and Asylum Chamber, first-tier immigration tribunal, based at Taylor House, in central London.

Witness-informing Threatens Fairness, Law Society Warns

Informing witnesses of the general nature of a defence case could jeopardise the fairness of the trial, the Law Society has said in response to a consultation on draft prosecution guidance. The Crown Prosecution Service guidance, Speaking to Witnesses at Court, sets out the role played by prosecutors at or before court to ensure witnesses give their best evidence. It states that prosecutors should not provide the detail of, discuss, or speculate on the specific questions a witness is likely to face or discuss with them how to answer the questions.

But witnesses can be informed about the general nature of the defence case where it is known, such as mistaken identification, consent, self-defence or lack of intent. However, the Society believes this could create a 'significant risk' that some witnesses will tailor or embellish their evidence. It said: 'There is a balance to be struck between providing information to the witness that may improve their experience in giving evidence, on the one hand, and risking the fairness of the trial by alerting the witness in advance to those aspects of their evidence which are challenged, on the other.'

The first response of the witness to the defence case, the Society said, was important 'in assessing the witness's veracity', which could only be ascertained by the jury or magistrates by observing their demeanour in court. 'If this element of surprise is removed by informing the witness beforehand is lost, it will allow the witness to "dig in their heels" and to attempt not give an objective account of what they saw [or heard].' Introducing the change, the Society further argued, would shift the adversarial system of criminal justice towards a more inquisitorial system.

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, Miran Thakrar, Jordan Towers, Patrick Docherty, Brendan Dixon, Paul Bush, Frank Wilkinson, Alex Black, Nicholas Rose, Kevin Nunn, Peter Carine, Paul Higginson, Thomas Petch, 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 521 (19/03/2015) - Cost £1

Alexander McGuffie - Conviction Quashed - Major Failure in Disclosure

[MOJUK would ask readers to go through the full transcript, is this a tale of bent coppers. The officers in this case have been involved in other cases and were subject to an investigation/Whitewash by the IPCC. The IPCC investigation into Jeans, Dunne & Green, was concluded on 8 April 2013. 'Whilst noting inconsistencies, it was decided there was no evidence to demonstrate that the officers had fabricated their accounts or that there had been an agreement to manufacture evidence or to commit perjury. It was accepted that there had been failings as regards the administration of the logs (e.g. times and dates had not been properly recorded; the absence of certain officers from the debriefing exercise had not been noted, resulting in a misleading impression; procedures relating to a debriefing were not followed; a "Z line" was not put through blank pages). It was concluded that there was no case to answer as regards misconduct and no further action was taken. As a result, there are no disciplinary or misconduct findings against any of the officers concerned.'MOJUK does not know if Alexander McGuffie is still behind bars or there will be a retrial, if anyone knows the location of Alexander, please let MOJUK know. We have reason to believe the result may have bearings on other 'Miscarriages of Justice'.]

McGuffie & Anor, R. v (Rev 1) [2015] EWCA Crim 307 (05 March 2015)

On 2 December 2011 in the Kingston-upon-Thames Crown Court before HHJ Campbell and a jury, the applicants Alexander McGuffie and Adrian Weekes were convicted unanimously on a retrial of one count of being knowingly concerned in the fraudulent evasion of a prohibition on the importation of cocaine (a class A drug), contrary to section 170(2) Customs and Excise Management Act 1979 and section 3(1) Misuse of Drugs Act 1971. They were sentenced 9 December 2011 and, following successful appeals to this court against sentence on 28 January 2013, their final sentences are 12 years' imprisonment for McGuffie and 10 years' imprisonment for Weekes. Renewed applications against conviction were heard on Thursday 5th march 2015. Weekes got shafted again but McGuffie had his conviction quashed, following extract verbatim from the handed down Judgement!

44. It is suggested there has been a major failure in disclosure. McGuffie was unaware during his trial that two of the police officers who he suggested had played a part in creating false and manufactured observations had been criticised in a recent case by another judge for breaching various guidelines in their handling of observation records and were the subject of an investigation for misconduct. It is emphasised that McGuffie's evidence at trial involved a clear denial of any involvement with those arriving from Barbados and that if this material had been known to trial counsel, he may have presented the case differently, particularly as regards officers Breen and Jones.

45. The trials of McGuffie, on the one hand, and Green and others, on the other, were prosecuted by and presided over by different members of the bar and different judges.

46. Following the complaints, officers Jeans, Dunne and Green were investigated by the Independent Police Complaints Commission ("IPCC"). The investigation was concluded on 8 April 2013. Whilst noting inconsistencies, it was decided there was no evidence to demonstrate that the officers had fabricated their accounts or that there had been an agreement to manufacture evidence or to commit perjury. It was accepted that there had been failings as

regards the administration of the logs (e.g. times and dates had not been properly recorded; the absence of certain officers from the debriefing exercise had not been noted, resulting in a misleading impression; procedures relating to a debriefing were not followed; a "Z line" was not put through blank pages). It was concluded that there was no case to answer as regards misconduct and no further action was taken. As a result, there are no disciplinary or misconduct findings against any of the officers concerned.

47. Undaunted by those limited criticisms, Mr Bennathan emphasises that this is a case in which the same team of observation officers have been the subject of a "series" of complaints, and that these complaints were outstanding at the time of the instant trial. It had been alleged that the members of the squad had lied and created false entries and it is suggested that the existence of these complaints should have been disclosed, regardless of the IPCC's later findings.

67. During the trial there was considerable focus by counsel on behalf of McGuffie on the contents of the log and its reliability. In order to demonstrate the extent to which this was of concern to this applicant, we have summarised the main references to this document by the judge during the summing up.

68. DC Jones initially went to the wrong terminal (the North Terminal). An entry on the log for 6.28 set out: "White male, ginger hair, blue Ralph Lauren polo shirt, blue jeans, trainers. Waits in main arrivals hall at Gatwick airport reading The Sun." In an addendum, entered at the debriefing round about 18.00, it was added that "This male was seen at 05.40 initially. He later met a female and left Gatwick airport." DC Jones in evidence said he reported this to Officer Parry at 5.40. However, until Jones gave evidence during the first trial there was nothing to indicate that this related to events at the North Terminal. The judge observed that this may "show at the very least a rather cavalier attitude on the part of Mr Jones. And you may think that at the debriefing he should have made it absolutely clear that at the time that he saw that man he was in the North Terminal rather than the South Terminal". The judge added that this evidence "may just cause you to think about other evidence that Mr Jones has given".

69. The entry at 7.07 states that Jennifer and Richard Weekes were met by a white male. A later addendum puts the position very differently. It describes McGuffie looking at Jennifer and Richard Weekes and walking alongside Jennifer Weekes, before walking towards the car park. DC Jones said that he could not remember if he actually used the word "meet" on the radio system to Ms Parry. He said that Jennifer Weekes and McGuffie did not walk up to each other, but he acknowledged her arrival when they looked at each other. There is no reference, however, in the addendum of this mutual acknowledgement.

70. DC Cleves testified that at 7.07 Jennifer Weekes pushed her baggage trolley through arrivals. She walked along the railings parallel to Mr McGuffie, who was on her left hand side. They were looking at each other and DC Cleves suggested "I saw Jennifer Weekes look at Mr McGuffie. She raised her left arm with her fist clenched and then lowered it, while maintaining eye contact with Mr McGuffie."He said that McGuffie's reaction to her gesture was to smile.

71. There was no mention of that event in the 7.07 entry on the log. Instead, it was added later. During cross-examination, DC Cleves agreed that this observation was critical, and he said he passed this information to DC Parry (who was keeping the log) as soon as possible, to the best of his memory. He was, in reality, suggesting that she was responsible for not recording this information. However, when questioned during the first trial he said "I believe I did tell someone that day, I can't recall who. Probably on the journey from Gatwick." He was accused by defence counsel of lying. He agreed that part of the discussion at the debriefing was to the effect that McGuffie had not met Jennifer Weekes and was not part of the convoy going back to London.

the undivided support of the relevant professional community, an essential consideration in the assessment of expert testimony. Despite the lack of substance, claims that the baby has been shaken can result in draconian consequences in the Criminal and Family courts. Those found in either type of court to have abused children will be unlikely ever again to be allowed to care for their own or anyone else's children. The letter states that "Many courts are making insufficiently informed and consequentially, frequently wrong decisions with dire and chronic consequences for parties who may well have done nothing wrong."

Some courts however are becoming aware of the problem. Mr Justice Mostyn, agreed with the position that "the triad is an indicator of injury only, not of how it occurred." In the U.S., District Judge Matthew Kennelly noted in the Del Prete case that the available evidence "arguably suggests that the claim of shaken baby syndrome is more an article of faith than a proposition of science." The signatories to the letter call for sensible debate about SBS in the courts, which they claim in many cases is currently being suppressed

Prisons in England and Wales 'to Get Drug Scanners'

A new generation of drugs scanners is to be purchased for UK prisons, the BBC understands. Justice Secretary Chris Grayling is said to have made the decision because of continuing problems with drugs being smuggled into jails. It comes as independent think tank the Centre for Social Justice released a report saying the X-ray scanners had been a "game changer" in US prisons. The machines could "revolutionise" searches in the UK, the CSJ added. The cost of installing the scanners in every UK prison is estimated to be about £15m. Manual searches are currently conducted in most prisons, making it difficult to detect illegal substances and so-called legal highs that have been swallowed or concealed within someone's body, according to the CSJ. The low-dosage X-ray machines would be able to do so, however. As well as being smuggled by visitors, prisoners and corrupt staff, drugs are also sent through the post or thrown over prison walls, BBC hreporter Danny Shaw said. He added, drugs had been a problem in prisons for "several decades". Less than 100 visitors trying to bring drugs into prisons were identified through searches last year, the CSJ said.

Supreme Court Reverses Informed Consent Ruling: Sidaway is Dead

In the mid-1980s a majority of the House of Lords in Sidaway decided that it was on the whole a matter for doctors to decide how much to tell patients about the risks of treatment, and that therefore you could not sue your doctor in negligence for failing to inform you of a risk if other reasonable doctors would not have informed you of the risk. Thus the principle that the standard of medical care is to be determined by medical evidence (which all lawyers will know as the Bolam principle) was extended to the quality of information to be provided to a patient about a given treatment. The Supreme Court, reversing the judgments at first instance and on appeal, has now unequivocally said that Sidaway should not be followed.

Prisons: Civil Disorder

The National Offender Management Service's National Tactical Response Group (NTRG) is a specialist resource to assist both public and private sector establishments in safely managing and resolving serious incidents in prisons. NTRG was called out on two hundred and twenty three occasions in 2014. While NTRG staff have the specialist skills required to deal with such incidents they are also frequently called to attend as a precautionary measure with the vast majority of such incidents being dealt with very quickly with minimal disruption to the prison.

Shaken Baby Claims may be Linked to Miscarriages of Justice

"I am frankly quite disturbed that what I intended as a friendly suggestion for avoiding injury to children has become an excuse for imprisoning innocent parents." Dr Norman Guthkelch. Britain's first Paediatric Neurosurgeon, Dr Norman Guthkelch wrote the seminal paper, 'Infantile Subdural Haematoma and Its Relationship to Whiplash Injury' published in the British Medical Journal in 1971, from which the concept of Shaken Baby Syndrome [SBS] originated. He worked for many decades in the British National Health Service and then moved to the Pittsburgh Children's Hospital in the US in the 1970's.

Now in his 90's, he has become deeply concerned over how the concept is being used. The science behind SBS he says is "greatly premature and sufficiently invalid." SBS he says, is merely an hypothesis. "There is nothing wrong in advancing such hypotheses; this is how medicine and science progress. It is wrong, however, to fail to advise parents and courts when these are simply hypotheses, not proven medical or scientific facts, or to attack those who point out problems with these hypotheses or who advance alternatives." Of the original article he says, if he had known, that it would be used as "the whip with which innocent mothers would be beaten", he would not have written it.

"Many courts are making insufficiently informed and consequentially, frequently wrong decisions with dire and chronic consequences for parties who may well have done nothing wrong." A group of 35 international experts have expressed their deep concern that Shaken Baby claims may be linked to Miscarriages of Justice. The experts from a wide range of fields including medicine, child protection, psychology, epidemiology, biomechanics, physics, engineering, research, medical journalism, law, social work and criminology have signed an open letter to draw attention to the problem. They state that the construct of what is commonly known as Shaken Baby Syndrome [SBS] is not backed by solid science. It has variously morphed into Shaken Impact Injury, and other similar variants, but it has never been scientifically validated. SBS and its variants have been conceptualised in several ways. Generally speaking SBS involves the 'Triad' of symptoms of retinal haemorrhages, subdural haemorrhages and ischaemic encephalopathy being interpreted as signs of child abuse.

Parents and carers in many countries have been falsely accused of injuring or killing a child and face allegations of child abuse, manslaughter or murder when the claims of SBS have been made. Many such accused parents and carers are given long prison sentences and their children are permanently removed from their families. In some jurisdictions, they can even be sentenced to death. The letter states that it can be shown in many such instances that the evidence of the prosecution experts alleging death or serious injury from SBS is demonstrably flawed. The scientific basis for the assertion that these injuries are the consequence of deliberately inflicted violent shaking is highly contentious. Biomechanical evidence has shown that shaking a baby without contacting a surface would only produce the triad of injuries in association with other injuries to the neck and spinal column that are typically not found in alleged SBS cases. Over the past decade it has been found that many of the accused parents/caregivers do not fit the conventional profile of those who commit child abuse and the pattern of injuries has been found to result from alternative histories than shaking. The scientific and academic literature shows that the construct of SBS is open to significant critique. SBS is lacking in scientifically-conducted validation and forensic rigour. To date, the scientific research which has been conducted, casts considerable doubt on the SBS construct. Moreover, while this diagnosis continues to be used, babies are denied the investigations they need to establish the correct cause, treatment and prevention of recurrence, of their symptoms and signs.

The experts who signed the letter also point out that the SBS hypothesis does not have

72.The accuracy of the log was clearly relevant to the issue of whether the officers who contributed to the observation evidence in the present trial - including DC Breen and DC Parry (who were involved in the observations in both cases) - may have created a false account at to what occurred at Gatwick Airport. Indeed, those events were at the centre of the case against McGuffie. To a significant extent, the prosecution's allegations depended on the accuracy of the account by the officers as to what they saw shortly after the arrival of Jennifer and Richard Weekes at Gatwick airport. The log, including the later addenda, was a key component of this material. Critically, DC Parry compiled the log in the present case and in Green and others. The allegations against McGuffie would have been seriously undermined if the jury had decided that the log was potentially unreliable, in the sense that false information had deliberately been included or added to it. This raised the issues of whether i) the observing officers reported the events reliably to DC Parry who was making the log, ii) DC Parry faithfully recorded the information on the log as it was passed to her and iii) misleading addenda were entered onto the log during the debriefing session or at some other time.

73. As the judge observed to the jury, there were a number of anomalies as regards the observation evidence in the present case: the alterations to the log were extensive; the evidence of the officers was inconsistent; and notable detail, relied on by the officers in evidence, was lacking in the original section of the log. In our judgment, it would have been open to a jury to conclude that the events rehearsed above as regards the essentially contemporaneous case of Green and others tended to indicate that two key officers in the instant case (DCs Breen and Parry) were prepared to break the rules as regards compiling observation logs. Furthermore, there is a sustainable basis for a court to conclude that DC Breen had taken steps to persuade two local officers to give false observation evidence that linked the fishing boat with the holdalls that were later discovered. Although not all of the officers in the present case had been involved in Green and others, the history to the observations in that case may have undermined, in a general sense, the reliability of the evidence as regards what occurred at Gatwick in the present trial.

74. Evidence which tends to indicate that police officers have fabricated observations in an overlapping case is not evidence simply going to credibility if a sustainable line of defence for an accused is that the same officers (or some of them) fabricated evidence of a similar nature to that relied on in the current proceedings. As set out above, under section 100 Criminal Justice Act 2003, evidence of the bad character of a person other than the defendant is admissible, with the leave of the court if, and only if, it has substantial probative value in relation to a matter which is in issue in the proceedings and is of substantial importance in the context of the case as a whole. The fact that a complaint had been made in Green and others was, of itself, of little value, but it should have acted as a trigger to alert the officers that there was material that was relevant in the present trial as bad character evidence as to whether the officers (or some of them) had provided unreliable observation evidence.

75. The introduction of evidence of the bad character of a witness is not necessarily dependent on formal adjudications having been made against that individual (see R v Miller [2010] EWCA Crim 1153; [2010] 2 Cr App R 19, at paragraphs 20 and 21). Instead, it will usually be necessary for there to be "sound material" (as opposed to "kite flying and innuendo") that establishes the alleged bad character. In the present circumstances, it is a question of whether there was sufficient connection between the evidence in the two cases such as to mean that the observation evidence in the case of Green and others had substantial probative value in relation to a matter which was a matter in issue in the proceedings, and was of substantial importance in the context of the case as a whole (see section 100 Criminal Justice Act 2003).

76. As set out above, during this case counsel for McGuffie focussed significantly on the detail

of the observations and the entries in the log, and the criticisms of the evidence in the first Isle of Wight trial would potentially have thrown light on whether there had been similar failings in the instant case. This went to one of the issues in the case, namely whether the observation evidence was accurate and whether the jury ought properly to rely on it. Counsel acting for McGuffie would, in all likelihood, have adopted different tactics if he had realised that DC Breen's reliability and honesty as regards observation evidence was open to doubt following the events in Green and others. Mr Scobie QC, then appearing for the applicant, exploited the differences between DC Jones and Breen, on the one hand, and DC Cleaves, on the other, as regards the latter's evidence that Jennifer Weekes's raised a clenched fist and had eye contact with McGuffie, and whether he smiled. Armed with the material from Green and others, it is likely he would have adopted a more forthright attack on the evidence of the three detective constables, Parry, Breen and Jones.

77. This was a strong case against McGuffie, but we are unable to conclude that the jury would inevitably have convicted the applicant if the observation evidence in Green and others had been properly explored. We stress that a criminal trial should be focused on the central issue or issues in the case and it should not be diverted by subsidiary or collateral matters which only have indirect or marginal bearing on the allegations the accused faces. That said, it is impossible to be confident that the jury would have convicted this applicant if they had known about the facts and the circumstances of the observations in the Isle of Wight trial, given it was proximate in time and there were close similarities in circumstances.

For these reasons, we grant leave and quash McGuffie's conviction. We will hear submissions as regards a retrial. Before departing from McGuffie's case, we observe that since the uncontradicted evidence presented to this court is that the original CCTV footage was destroyed 30 or 31 days after these events, there is no merit in that discrete ground of appeal.

http://www.bailii.org/ew/cases/EWCA/Crim/2015/307.html

IPCC's Conclusion Irrational and Therefore Unlawful

High Court Clarifies IPCC Power To Reopen Investigations: In the linked cases of R(Demetrio) v IPCC and R(Commissioner of Police for the Metropolis) v IPCC, the High Court allowed Mr Demetrio's claim, finding that the IPCC's conclusion in relation to one of his complaints was irrational and therefore unlawful, and dismissed the Commissioner's claim, holding that the IPCC was lawfully entitled to reopen its investigation into that complaint.

The claims arise out of an investigation by the IPCC into the circumstances surrounding the arrest of Mr Demetrio on 11 August 2011. Mr Demetrio complained, amongst other things, that while he was detained in handcuffs in the back of a police van he was assaulted, including by being strangled, and racially abused. He managed to record some of his interaction with police officers on his mobile phone. That recording showed that a police officer said to him 'the problem with you is you'll always be a nigger', and that another, when challenged by Mr Demetrio saying 'you tried to strangle me', replied 'No, I did strangle you.'

The IPCC investigation concluded in respect of these allegations that a police officer, PC Alex MacFarlane, had a case to answer for the racist abuse, but that there was no case to answer in respect of the allegation that Mr Demetrio had been strangled. At the misconduct hearing of PC MacFarlane, where he was dismissed without notice, a new IPCC Commissioner heard the evidence in relation to the strangling allegation and became concerned about the IPCC's conclusions in that regard. In due course, the IPCC decided to reopen the investigation. The Metropolitan Police Commissioner brought judicial review proceedings arguing that the IPCC

CPS Failed to Get its' Act Together - POCA Confiscation Order Quashed

This was an appeal by Lodvik Guraj a convicted criminal against an order for confiscation on the grounds of serious non-compliance by the prosecution with the procedural requirements contained in the Proceeds of Crime Act 2002 ("POCA"). The appeal raised a short but important issue. Whether a substantial breach of section 15 (2) of POCA in conjunction with a substantial breach of section 14 has the effect of rendering the subsequent confiscation proceedings invalid, even if they are completed within two years. The breach of section 15 (2) is significant because that triggers the operation of section 14 (12) and prevents the prosecution from relying upon section 14 (11).

50. In this case there were lamentable delays by the prosecution. They failed to serve any section 16 statement in Oct/Nov 2012, as they should have done. Instead they let the whole matter go for a year. Even after that the prosecution dragged their feet. Their section 16 statement (when eventually served) was 14 months late. On 2 occasions there were abortive hearings, which resulted in wasted costs orders against the CPS. 51. The judge in his judgment of 09/06/14 noted that the CPS ought to have applied for a further postponement under section 14 in December 2012, when it was apparent that the original timetable could not be met. The CPS failed to do so. The judge rightly characterised this as a serious procedural error at page 10G of his judgment. Nevertheless he considered that this error was capable of remedy within the two-year period specified in section 14 (5) of POCA.

52. We do not agree. Section 14 (8) provides that a period of postponement can only be extended if an application for extension is made before the period of postponement has ended. In this case the application to extend was made long after the period of postponement had ended.

53. In the ordinary way that would not be fatal to the prosecution. The saving provision of section 14 (11) would come to the rescue. But section 14 (11) does not apply in the present case. That is because on 12th July 2012 the court had wrongfully made a forfeiture order in breach of section 15 (2).

54. At one time we inclined to the view that the Court of Appeal's decision in Donohoe might avail the prosecution. But that is not correct. In this case, unlike Donohoe, the prosecution needs the balm of section 14 (11) in order to retrieve its position.

55. It is of course right that we must strive to give effect to the objects of POCA and the intention of Parliament, as the House of Lords stated in both Knights and Soneji. The difficulty for the prosecution, however, is that part of Parliament's intention is now expressed in section 14 (12) of POCA. That is a mandatory prohibition which, as the Lord Chief Justice stated in Neish, cannot be ignored. Forfeiture orders should not be made when confiscation proceedings are under way. If forfeiture orders are made in such circumstances, then the prosecution will be held more strictly to the time limits contained in section 14.

56. If one applies the helpful test suggested by Lord Carswell in Soneji at [67], it can be seen that there has most certainly not been substantial observance of the time limits by the prosecution. We do not base our decision on the "substantial performance" test. We merely note that in the present case that test, suggested by Lord Carswell, leads to the same results as that indicated above.

57. We acknowledge that in this case, unlike Iqbal, the two-year period had not expired on the date when the court made its confiscation order. Nevertheless we conclude that the combination of delays and breaches by the prosecution was such as to deprive the court of the power to make a confiscation order.

58. Whilst some of our comments may seem critical of the CPS, we do appreciate that that organisation is over-worked and stretched. If the prosecution is unable (for whatever reason) to carry through confiscation proceedings efficiently, the consequence may be, and in this case is, that large sums are lost to the public purse.

59. In the result, we allow the appellant's appeal and quash the confiscation order.

Prisoners Votes - Not in this Life time: Despite continued consideration of the issues it is clear that a consensus will not be reached in this Parliament given the strongly held views across both Houses. Therefore the Government will not introduce legislation on prisoner voting rights in this Parliament. Lord Faulks, Wednesday 11th March 2015

Karen Walsh Can Introduce Fresh Evidence (CPS Failure to Disclose) *BBC News*

A pharmacist jailed for murdering her neighbour can introduce fresh evidence as part of a bid to clear her name. Maire Rankin, 81, was found dead at her home in Newry, County Down, on Christmas Day 2008. Karen Walsh was later found guilty of her murder.

The Northern Ireland Court of Appeal ruled her lawyers can introduce evidence to support claims someone else may have been in the victim's home shortly after she was killed. Senior judges granted permission on Thursday for Ms Walsh's legal team to rely on expert opinion that three telephone calls made to Mrs Rankin's house within 45 minutes of the latest estimated time of her death were probably answered.

Lawyers for Ms Walsh, 48, argue that the material was not properly made available at her trial and could undermine the prosecution case. She is seeking to overturn her conviction for murdering Mrs Rankin in the early hours of Christmas Day 2008. The 81-year-old victim was found dead in the bedroom of her Dublin Road home. Mrs Rankin, a devout Catholic, had suffered up to 15 broken ribs and been beaten with a crucifix given to her as a wedding gift. Evidence of a sexual assault - thought to have been carried out to cover the killer's tracks - was also discovered.

Ms Walsh is currently serving a minimum 20-year prison sentence. She had worked in Dublin but often stayed at a house she owned next door to the victim. During her trial, the prosecution claimed she arrived at Mrs Rankin's home already drunk and with a bottle of vodka. It was alleged that the mother-of-one then flew into a rage and attacked the pensioner after being chastised about her drinking and told to go home to her young son. Despite being found guilty of murder Ms Walsh has continued to protest her innocence.

As part of her appeal defence lawyers have obtained a telecommunications expert whose opinion is that three calls to Mrs Rankin's in a 15-minute period either side of 10:00 GMT on Christmas morning were answered. Ms Walsh's lawyer contended that the phone records held within a police intelligence unit were not properly disclosed at trial. Seeking permission to have the material admitted into the appeal, he claimed it potentially undermined the prosecution case that no-one but his client was in the victim's home that morning.

A prosecuting lawyer claimed the new evidence was of no help to Ms Walsh because it was impossible to prove whether the calls were answered. He said that the victim's daughter Brenda gave evidence at trial about making several calls to her mother that morning that went unanswered. Calling for the defence to spell out their case, the prosecution lawyer said: "What exactly are you alleging? You can't just float things and say that looks very mysterious."

Responding to his query, appeal court judge Lord Justice Gillen said: "Somebody was in the house other than the accused and could that person have been the person responsible for the murder? That's what their case is." The three judges, headed by Lord Chief Justice Sir Declan Morgan, ruled that it was in the interests of justice to admit the evidence. With the telecommunications expert now due to testify at the appeal later this month, Sir Declan said: "As matters stand the (his) evidence needs to take into account the trial evidence, including that of Brenda Rankin that she made a call at or about the material time which was not answered. "If there's no challenge to that, as there is not at this stage, the expert will have to deal with that as a fact which is an accepted fact."

had no power to reopen the investigation because it was functus officio, essentially that the IPCC had performed its function and had no power to revoke or modify its previous decisions. Mr Demetrio brought his own judicial review proceedings arguing that the IPCC conclusions in respect of the strangling allegation were irrational and should be quashed.

The High Court allowed Mr Demetrio's claim and dismissed the Commissioner's. The Court held that the IPCC was not functus officio. The IPCC was therefore lawfully entitled to reopen the investigation into the complaint and its earlier decisions not to recommend or direct disciplinary action were not irrevocable. The Court also held that the IPCC's original conclusion in respect of the strangling allegation was irrational and should be quashed.

This judgment provides welcome clarification of the IPCC's power to reopen investigations and to revisit previous decisions with regard to disciplinary action. It also provides clarification of the approach that a court should take when analysing an IPCC report for public law error. Rejecting the Commissioner's submission that a decision will only be irrational if it is one no reasonable investigator could have reached, the Court made clear the relevant test is whether there is a logical connection on an objective analysis between the available evidence and the conclusions reached; where there is not the conclusions may be found to be irrational. The Commissioner has sought permission to appeal the decision in his own case.

Michael Oswald of Bhatt Murphy Solicitors, who acted for Mr Demetrio said: “The decision is welcome as it means that this very serious aspect of Mr Demetrio's complaint may finally receive the proper scrutiny it so plainly demands. However, it is worrying that the Metropolitan Police Commissioner was so determined to avoid that scrutiny that he tried to persuade the High Court to prevent the IPCC from reconsidering the matter. It is telling that the Court noted that 'the arguments advanced by the [Metropolitan Police] Commissioner take little or no account of the public interest in the effective investigation of alleged police misconduct [and that] the Commissioner's approach could have the effect of protecting officers from criminal sanction.”

The full judgment is here: http://www.bailii.org/ew/cases/EWHC/Admin/2015/593.html

Mr Demetrio was represented by Michael Oswald of Bhatt Murphy Solicitors and Ms Alison MacDonald of Matrix Chambers

JF & Anor, R. v [2015] EWCA Crim 351 (10 March 2015)

On Monday, 10 June 2013 the appellants JF (a boy then aged 14Ω) and NE (a girl then just aged 16) and two other young persons, AL and MM, visited a derelict building which had been a Sea Cadet centre in Croydon. They went into the basement, set fire to a discarded duvet, which was on top of a pile of discarded tyres. Once it was smoking, they left. The smoking duvet melted on to the tyres which then caught light. Within five minutes thick, acrid smoke filled the basement rooms. It killed a homeless Polish male who was in the building at the time. JF and NE were arrested and subsequently tried at the Crown Court at Croydon before HH Judge McKinnon, the Recorder of Croydon, on a count of manslaughter through an unlawful and dangerous act and a count of arson, being reckless as to whether life was endangered.

On 27 June 2014 both were convicted of manslaughter but acquitted of arson being reckless as to whether life was endangered and convicted of the alternative and lesser offence of simple arson. On 18 August 2014 both received a sentence of three years detention for each of the offences of which they had been convicted. They appeal by leave of the Single Judge against their conviction for manslaughter and the sentences passed. The issue on the appeal against conviction for manslaughter was whether the judge had correctly directed the jury

on intent and foreseeability. We dismissed the appeal against conviction, reserving our reasons to be given at a later date. For reasons we then gave we allowed the appeal of each appellant against sentence, quashed the sentences of 3 years detention on each count and substituted a 24 month Detention and Training Order on each count.

As we have set out the judge concluded that it was not possible to distinguish between the appellants and sentenced them both to three years detention. In the light of their background as set out in the reports before the judge and the seriousness of the offences of which they were found guilty, we do not think it can be said that the sentence was manifestly excessive.

However, as we explained when allowing the appeal against sentence, NA who will be 18 on 21 May 2015, had made very significant progress at the secure facility in which she has been detained. At the age of 18 she would be moved from the under 18 facility operated under the supervision of the Youth Justice Board, but if she had only a short period of a sentence to complete she would remain at that facility and be supported by the Youth Offending Service Team on release. It was plainly in the interests of rehabilitating her and protecting society from the commission of further offences by her that she not be moved, given the very significant progress made and the obvious risks to her continued progress by the different environment of an institution for those over the age of 18. In the light of those considerations and other matters drawn to our attention, we quashed the sentences of detention and substituted Detention and Training Orders of 24 months on each count. As the culpability of the appellants was the same, parity required that we take the same course in relation to JF.

Uninvestigated Northern Ireland killings 'Tarnish UK's Reputation' *Owen Bowcott*

The government's failure to carry out adequate investigations into killings more than 20 years ago involving the security forces in Northern Ireland has been condemned by a parliamentary watchdog. In a report praising the UK for implementing most judgments from the European court of human rights in Strasbourg, the joint committee on human rights (JCHR) warns that delays in a few cases are tarnishing the country's international reputation. The committee highlights three areas of insufficient progress: lethal force cases from the 1980s and 1990s during the Troubles, retention of suspects' DNA in Northern Ireland and prisoner voting rights. The report notes: "The effective investigation of cases which are the legacy of the Troubles in Northern Ireland has proved a particularly intractable problem in practice because it is so intimately bound up with the much larger question of dealing with the past in a post-conflict society." Many of the cases where inquests or inquiries were repeatedly delayed, such as the killing of the Belfast lawyer Pat Finucane, involve allegations of collusion with the security forces.

Promises made in the Stormont House agreement last year may eventually deliver justice, the committee says, adding: "We are particularly concerned by the prospect that it may be two years before the new historical investigations unit starts its work. As well as having fewer resources at its disposal than its predecessor, the legacy investigations branch cannot itself satisfy [human rights] requirements … because of its lack of independence from the police service. We also recommend that the parties to the agreement publish a more detailed plan [with] … more specifics about how the delays in legacy inquests will be overcome, and more detail about precisely how the additional £150m over five years will be allocated, including whether any additional resources will be made available to coroners in Northern Ireland."

On the standoff over prisoner voting – where the ECHR has ruled that some inmates should be able to vote – the committee points out that Strasbourg's judgments "are not merely

criminality, the police have a duty to investigate it. Gambaccini took the point but stressed that there had to be a balance to be struck between the effective investigation of crime and the impact of those police powers on innocent people. 'There is, has always been and always will be a way of dealing with genuine offenders. It is called the law and you do not need a witch hunt to enforce the law,' he said. And, the MPs asked, what of a 28-day limit on pre-charge bail? 'I enthusiastically support that because I have come to realise that in cases such as mine – and, of course, I do not speak for the entire corpus of work of the police – it seems to me that, with the exception of underfunding, there is no possible excuse for further delay in leaving somebody out to dry.'

Young Offender Rehabilitation Staff Criticised *BBC News*

Work to stop young offenders committing more crimes after their release from custody is hampered by "distrust" among the staff responsible, inspectors say. A report by three inspection bodies said workers at custodial institutions and those responsible for preventing reoffending in England and Wales were "too often suspicious of each other". This sometimes led to a "passive acceptance of failure", it added. The Youth Justice Board said it was already addressing many issues raised. The report, by the Care Quality Commission, Ofsted and HM Inspectorate of Probation, examined "resettlement services" for young offenders - those aged 10-17.

Inspectors found a "surprising amount of distrust" between staff working with young people in custody and youth offending teams which "stay in touch" during custodial sentences then work with offenders after their release. In some cases this led to a passive acceptance of failure; for example that accommodation could not be arranged within an appropriate timescale, or that vague education, training and employment plans were good enough," the report said. Neither set of staff seemed prepared to challenge each other on behalf of the child."

The report also found: Too many children had been arrested again within months or even weeks of their release. - Much of the work done in custody was "not linked to giving children the best chance to stop offending". - Some "promising" local resettlement projects exist, but resettlement work "often started too late". - There were examples of "excellent work" in custody and in the community, leading to successful resettlement and no reoffending The report said preparation in the community while an offender was still in custody was "not proactive. Sometimes, having meetings and putting plans on a database had become ends in themselves; children recognised that and had become frustrated and disengaged," it said. Figures from 2013 suggested more than two thirds of children reoffended within 12 months of release, and of 29 children tracked by the report only a quarter "fully complied with their supervision".

Chief Inspector of Probation Alan MacDonald said: "These are shocking statistics. We have known for at least a decade what helps children leaving custody to stop offending. Too few of these children are being provided with what they need to lead crime-free lives. He said resettlement work must start sooner, especially to ensure accommodation and work or training. It is possible for the lives of many children who have offended to be turned around," he said. It will need all the component parts to work to ensure children get the right support they need to stop offending and that, importantly as a result, there are fewer victims of crime."

Lin Hinnigan, chief executive of the Youth Justice Board which oversees youth justice services, said: "The successful resettlement of young people leaving custody is a key priority for the YJB and we welcome the findings within this report." She said she was "pleased" the YJB's strategy "is already aligned to, and addressing, many of the issues that the report raises". The YJB was putting resettlement "at the heart" of its work, she added.

'You Don't Need a Witch Hunt to Enforce the Law' *Michael Etienne, The Justice Gap*

'A science fiction case'. That was how Paul Gambaccini referred to the police investigation into the now-dropped allegation of historic sex abuse made against him which led to '12 months of trauma'. The veteran BBC DJ was giving evidence to the Home Affairs Select Committee on the operation of police bail in a one-off session which took evidence from the Chief Constable of Nottinghamshire Police, Chris Eyre and the Director of Public Prosecutions, Alison Saunders. 'I faced the full weight of the state with unlimited financial resources for 12 months for no reason,' Gambaccini told MPs. 'It was a completely fictitious case. It was a science fiction case. It required time travel and I do not have a time machine.' Gambaccini said that it was 'astonishing' because the police knew it was 'a nothing case' and 'indeed had known it was a nothing case because, without my knowing it, they had investigated it for four and a half months and dropped it seven weeks before I was arrested'.

The DJ is backing a 28-day limit on the use of police bail. Gambaccini was arrested on suspicion of historical sexual abuse and placed on bail for a year before the case against him was dropped in October. He reckoned that lost earnings and legal fees came to more than £200,000. There is currently no limit on the length of time police can place someone on pre-charge bail and so people have no rights of protest and are at the mercy of the police force that arrests them. It is reckoned that more than 70,000 people are presently languishing on bail and more than 5,000 for more than six months. The Home Office has recently concluded a consultation on its proposal to introduce an initial statutory time-limit on pre-charge bail to 28 days (for critical analysis of that proposal see Liberty's response here).

Human flypaper: Paul Gambaccini, one of a large number of celebrities investigated as part of Operation Yewtree, was invited to give evidence to the MPs alongside his solicitor Kate Goold, a partner in the criminal law team at Bindmans LLP. He was first arrested in December 2013, re-bailed five times before the CPS decided to drop the case in October last year. The police argued that it was necessary to retain the DJ on bail pending further enquiries despite evidence suggesting that the CPS felt that the case was going nowhere at least as early as May 2014. 'Each time a reason was given but it was always opaque,' the DJ told MPs. 'We were told in March that they were seeking information, but they would not tell us what it was. Then in May they were seeking information from third parties, but they would not reveal [in general terms, who those third parties were]. Then on 30 June when they jumped to the bail date of 7 July they said that it was to re-interview my accuser, which surprised me because I did not know if someone, having failed to get a good bite of you the third time, gets a second bite.'

The DJ claimed that his re-bailing coincided with developments in other high profile cases such as Rolf Harris and Max Clifford. The Committee chairman paraphrased him as saying that it was 'a concerted attempt to link you to other cases unconnected to you in order to use the oxygen and publicity to somehow see if perhaps other people might come out to make similar accusations'.'You are exposed in the first place so that other people will accuse you because in the mutation of the British justice system that has occurred in the last few years, from the centuries-old, internationally-respected, objective, evidence-based system to the subjective rumour-and-accusation-based system, evidence is no longer required. Only people who agree.' Gambaccini quoted Stephen Fry describing this as 'the flypaper tactic' where 'they put up a human being as a piece of flypaper and see what gets attracted to it'. The DJ revealed that he was dropped 'instantly' from all but one of his long-standing media engagements. For the time he was on bail, he earned nothing whilst having to meet his legal fees of £200,000. As David Winnick MP pointed out, where an allegation is made of

advisory" and that "states are under a binding legal obligation to implement them". The government's reluctance to implement the 2005 Hirst judgment on votes for inmates "undermines its credibility when invoking the rule of law to pressurise Russia – and other countries in a similar position – to comply with international human rights obligations", the JCHR said.

The committee singles out stories in the Daily Mail, the Telegraph and the Sun as incorrectly portraying the UK's human rights record. The report says: "In fact, the proportion of cases which the UK loses in the ECHR is not 75% or 60%, as these press stories claimed, but closer to 1%. The newspaper stories did not take into account the large number of applications against the UK which are rejected by the court as inadmissible. "We draw parliament's attention to the significant downward trend in the number of judgments which have found the UK to be in breach of the ECHR."

Commenting on the JCHR report, the director of the Prison Reform Trust, Juliet Lyon, said: "More than 10 years ago, the ECHR first ruled that the UK's blanket and indiscriminate ban on sentenced prisoners' voting was unlawful. Since then, tens of thousands of people in prison have been denied the right to vote in local, national and European elections. This will be the third general election held in breach of the European convention. The repeated and unnecessary delay to the execution of the judgement should be a source of shame to successive governments. Ministers have flouted human rights law, faced substantial financial penalties, ignored the advice of prison governors, bishops to, and inspectors of, prisons and taken up parliamentary time and taxpayers' money in order to stop sentenced prisoners from acting responsibly by voting in democratic elections."

Extradition Procedures May Breach UK Human Rights, *Owen Bowcott, Guardian*

UK extradition procedures may breach human rights and those facing removal should encounter fewer obstacles in obtaining legal aid, according to a House of Lords report. In a detailed examination of law and practice, peers found no "systemic problem" but highlighted flaws – particularly in the way assurances given by foreign states seeking suspects were not always being honoured. The protracted nature of extradition cases, the absence of a requirement for prima facie evidence, use of the European arrest warrant (EAW) for sometimes trivial offences and harsh US detention conditions have all made the regime the subject of fierce political controversy. The 150-page study by the House of Lords select committee on extradition law acknowledges that recent changes have improved the way in which cases are handled – especially the introduction of a "proportionality bar" to prevent EAWs being enforced for minor allegations. But the report suggests that assurances volunteered by extraditing countries – to guarantee decent treatment of detainees – may not be kept. Prison conditions promised in different cases by Lithuania, Poland and Trinidad and Tobago had not been respected, peers noted.

"Arrangements in place for monitoring assurances are flawed," the report states. "It is clear that there can be no confidence that assurances are not being breached, or that they can offer an effective remedy in the event of a breach. The UK has an obligation to avoid foreseeable risks of human rights breaches … Without an effective monitoring system we cannot know whether assurances do in fact avoid the risks foreseen by the courts. Therefore, it is questionable, in our view, whether the UK can be as certain as it should be that it is meeting its human rights obligations."

On the question of whether legal aid should be readily available for those contesting removal to a foreign jurisdiction, the report observes: "Extradition proceedings are different to other types of criminal law in not pronouncing on individuals' guilt, but instead deciding whether or not they should be sent to other jurisdictions to stand trial." Peers dismissed a cost-benefit analysis previously provided by the government to an earlier review as "neither a sufficient nor a credible response to the concerns raised about means-testing for legal aid".

A fresh exercise should be undertaken, the report urges, and unless it "very clearly favours" retaining means-testing then the interests of justice should take precedence and legal aid should be provided to suspects automatically. The select committee report does not recommend reintroducing a requirement for prima facie evidence to be presented to a UK court before extradition can be authorised. "We believe this would be a retrograde step," peers state. "We conclude that the existing law and practice provide sufficient opportunities to prevent inappropriate extradition."

Lord Inglewood, the chair of the select committee, said: "The committee's investigation has found that there is no systemic problem with the UK's extradition regime. It provides a suitably swift extradition system to support the administration of justice, whilst ensuring that there are safeguards for those whose extradition is sought. [However] the government must examine the practice of extradition taking place on the basis of assurances from the issuing state. Assurances are given when there is a real risk of a person's human rights being breached if they are extradited. I am disturbed that the main case for not retaining legal aid in this area appears to be an economic one, with little regard for the interests of justice. This is especially worrying as extradition can be a harsh and distressing process frequently affecting people who have yet to be tried for a crime. We conclude that the EAW is a vital tool in fighting crime across the EU but we recognise that it has been in the past overused and, on occasions, misused. We want the government to work with the European commission and other member states to make sure EAWs are used as an instrument of last, rather than first, resort."

Ombudsman Sets Out Lessons to Halt Rise in Prison Suicides

There is no simple answer to why the number of prisoners committing suicide rose so sharply last year, but the rise was unacceptable, said Nigel Newcomen, the Prisons and Probation Ombudsman (PPO). Today he published a thematic report on lessons to be learned from investigations into self-inflicted deaths of prisoners in 2013/14. In his most recent Annual Report, the Ombudsman reported a 64% increase in self-inflicted deaths in custody investigated by his office. This latest report, Learning from PPO Investigations: self-inflicted deaths of prisoners - 2013/14 looked at 84 of 89 self-inflicted deaths in prison between April 2013 and March 2014 and compared the issues that arose to the year before.

PPO investigations into those deaths found that: - there were self-inflicted deaths at 53 different prisons, 56% more than the previous year, including prisons where there had not been self-inflicted deaths for many years, sometimes ever; - prisoners were more likely to have been in their first month of custody; - more prisoners had spent less than two hours out of their cell in the days before their deaths, although nearly twice as many had spent over five hours out of cell; - fewer prisoners who died in 2013/14 had been convicted or charged with violent and sexual offences; - the investigations identified a number of concerns about early days in prison, including poor risk assessment on reception and weaknesses in first night support, induction and access to mental health services; - weaknesses in the implementation of prison self-harm and suicide procedures (ACCT) continued to be a serious problem; - some cases reflected the cumulative impact of disciplinary punishments, reduced privilege levels and segregation; and - a number of investigations found evidence of bullying relating to substance misuse, including several cases where prisoners had been taking new psychoactive substances, such as spice and mamba.

The lessons that need to be learned are: - staff working in prison receptions should actively identify known risk factors for suicide and self-harm and not simply act on a prisoner's presentation; - relationship breakdown and violent offences against family members are known risk

offending which included offences of robbery and attempted robbery. He was part of a gang and seemed set on a life of crime. He was sentenced by the trial judge to a tariff of 15 years which was reduced on appeal to 13 years less 412 days spent on remand. I can only advise reduction in his tariff if he has made exceptional and unforeseen progress during his sentence. The reports on him are favourable and he has clearly made progress. But that progress is no greater than would have been hoped. His latest Tariff Assessment report confirms his good progress but there is, it is said, offence focussed work which is still needed in a custodial setting. It is clear from the reports that he does not qualify at this stage for any tariff reduction. His tariff expires on 18 March 2020. At present there will be no alteration.

Review of the Tariff in the case of Sean Andre Mason

[Andre Mason - was convicted alongside two of his fellow gang members for killing a 22-year-old student. Yasin Abdirahman, was stabbed in the chest and head near his home in Southall, West London, in September 2007. He died eight days later of brain injuries.]

Mr Justice Collins: Mr Mason was born on 24 September 1992. On 3 September 2007, some three weeks before his fifteenth birthday, he took part in a gang attack on an individual which resulted in his death. The attack was intended to deal with someone who had offended the gang but the victim was not that person. He was wholly innocent. The fatal wound was from a knife which penetrated his brain. Mr Mason was not the ringleader nor did he administer the fatal wound but he was convicted of murder on the basis of joint enterprise. His tariff was reduced on appeal from the 13 years imposed by the trial judge to 11 years.

Until last year, Mr Mason's behaviour in custody had been relatively poor. He had received 11 adjudications for various breaches of prison discipline, some including violence. A lengthy OASys assessment dated 30 April 2014 regarded his risk to the public in the community as high. He had completed a Thinking Skills programme in August 2013. There were many positive signs and he had engaged well and done what was required of him. But anger remained a problem. It was unfortunate that towards the end of the course he was involved in an incident on the wing in which he assaulted an inmate.

In June 2014 he was transferred to Full Sutton, a high security institution, because of concerns about his behaviour. He had been involved in violence. He received a negative Tariff Assessment Report on 8 July 2014, but, as the reporting officer noted, he had only known Mr Mason for under a month and was largely depending on reports.

I have seen submissions on his behalf from his solicitors dated 18 August 2014 and have read his letter. Reliance was placed on a Substance Misuse treatment Report of May 2014. He had become a regular user of cannabis but, to his credit, he had decided that he would not revert to its use. The report is certainly positive in that it recognises a genuine desire to put his involvement in gangs or with criminals behind him. However, the report noted that it became evident that his engagement could be affected by his mood. He was capable of change but was struggling to put it into practice. More time and application is in my view clearly needed and his letter shows a clear desire to avoid future offending and to obtain employment. I can only recommend a reduction in tariff if Mr Mason has made exceptional and unforeseen progress. Mr Mason has only shown real signs of progress over the past nine months or so. But I am afraid that I do not think that his progress, good though it is, can be regarded as exceptional or unforeseen. It may be that he can show such progress before his tariff expires but I am afraid I cannot recommend reduction.

are affected by the road closure itself, regardless of who is paying for it. Nor could the state simply rely on the needs of public safety and/or the prevention of disorder or crime, since (even if there were any suspicion that the protests might involve or lead to violence or disorder, which does not appear to be the case) there is no reason why those aims should be achieved by a private security firm rather than by the police. The real reason appears to be cuts to police funding; but, given that the state as a whole is responsible for securing the Convention rights in its territory, that justification would be unlikely to hold much weight in Strasbourg.

None of this means that the state is obliged to facilitate all protests, however long or disruptive they may be. Public authorities will always have to balance the other considerations, including the rights of other members of the public, against those of protesters. Recent domestic decisions have made clear, for example, that it will generally be lawful to remove protesters who have been exclusively occupying public land for many months and are significantly interfering with the rights of others: see e.g. Samede v City of London Corp [2012] EWCA Civ 160 at [49], and Hall v Mayor of London [2010] EWCA (Civ) 817 at [49]. But those circumstances are very far from this case, where self-contained protests are scheduled for a particular day. It may well be necessary and proportionate for the police to limit, say, the length of time for which roads will be closed in order to minimise disruption to other road users, but that does not mean that they can refuse to facilitate any closure at all. If the planned protests were to go on for a long time or to cause significant disruption, then it may well become lawful to stop them for that reason; that does not mean it would become lawful to allow them to continue only if the protesters paid for the privilege.

It seems likely, therefore, that any requirement that demonstrators pay to protest in a public space would constitute a breach of Article 11. From a practical perspective, it also risks discouraging groups from engaging with the authorities with the result that demonstrations become more disruptive – why bother to notify the police about your protest if you will be asked either to pay or prevented from protesting altogether? We will have to wait and see if the question ever gets as far as a court room.

Review of the Tariff in the Case of Brandon Richmond

[Two teenagers found guilty of murdering 16-year-old schoolboy Kodjo Yenga have been given life sentences. Kodjo was stabbed in the heart in March 2007 after being ambushed by a gang, including two girls, armed with knives and bats in Hammersmith, west London. Tirrell Davis, 17, from Shepherd's Bush, west London, and Brandon Richmond, 14, from Hammersmith, were ordered to serve a minimum of 15 years. Three other youths were given 10-year custodial sentences for manslaughter. Michael Williams, 14, from West Kensington, west London, Jamel Bridgeman, 15, from Shepherd's Bush, and Kurtis Yemoh, 17, also from Shepherd's Bush, were all convicted of manslaughter.]

Mr Justice Collins: The applicant, whom I shall refer to as BR, was born on 19 September 1993. On 17 February 2007 when he was 13 years old he was involved with four others in the killing of a 16 year old victim. The victim was lured to a quiet street on the pretext that he was to have a one-to-one fight with one of the assailants. The four then pursued him and he suffered a number of stab wounds, one of which was fatal penetrating the heart. Two of the five were convicted of murder, the other three of manslaughter. BR did not at his trial admit that he had stabbed the victim but subsequent reports indicate from what he said that he did. Whether he administered the fatal wound is not clear. Despite his age, he had a bad record of

factors for suicide and being subject to a restraining order can be a sign of increased vulnerability; - all new arrivals should promptly receive an induction to provide information to help them meet their basic needs in prison; - mental health referrals need to be made and acted on promptly and there should be continuity of care from the community; - prisoners are most at risk in the first month of custody; - the cumulative impact on potential suicide of restrictions, punishments, IEP levels and access to work needs to be considered; - prisoners on open ACCT documents should only be segregated in exceptional circumstances; - suicide prevention procedures should focus on the prisoner as an individual and the processes must be correctly implemented; - increased risk of suicide and self-harm should be considered when a prisoner is a suspected victim of bullying; and - effective and confident emergency response saves lives.

Nigel Newcomen said: "This review reinforces the tentative view, set out in my annual report, that there is no simple well-evidenced answer to why self-inflicted deaths increased so sharply, so quickly. Some commentators have argued, perfectly reasonably, that staff reductions and other strains in the prison system may have reduced protective factors against suicide. This report does suggest some association between suicides and increased prison crowding, and between suicides and less time out of cell, but the picture is less than clear. For example, deaths occurred in a much wider range of prisons than the year before, including private prisons and high security prisons, both of which were largely immune from the cutbacks and pressures elsewhere in the estate.

"It is also troubling that many investigations simply repeated criticisms that we have made before. In particular, too many cases illustrated the inadequacy of reception and first night risk assessment. Even when risk of suicide or self-harm was identified, too often the support and monitoring put in place was poor. This repeated failure is why I have called for - and continue to call for - a review of Prison Service suicide and self-harm procedures and their implementation. There needs to be assurance that these procedures, now a decade old, remain fit for purpose and that staff are able to implement them as intended. There remains an urgent need to improve safety in custody and reduce the unacceptable rate of suicides in prison. I hope the lessons from this report offer a guide for action and better support for prisoners in crisis."

Security Staff Get a Bollicking Over Defendant's 'Costume'

A judge rebuked security staff who failed to ensure a prison van escapee changed out of a bright-coloured jumpsuit before appearing in the dock. Adam Herbert, who escaped from a prison van on 26 December, appeared at Leicester Crown Court dressed in the blue and yellow suit. He admitted fleeing the security van as he was taken from a police station to court on a burglary charge. Judge Simon Hammond called the outfit "inappropriate" for a defendant. Herbert, 20, thought to be from the New Parks area of Leicester, admitted the escape charge and a second burglary charge. He will be sentenced at a later date along with co-defendant Dempsey Lunn, aged 21, of Marriott Drive, Leicester. Herbert had been wearing a grey tracksuit and black trainers when he escaped from a GEOAmey security van on Boxing Day. the van had been stationary at a junction in Leicester city centre when he "climbed out". The escape was filmed on CCTV and Herbert was re-arrested two days later. Judge Hammond said: "The costume is inappropriate for any defendant to be dressed in the way Mr Herbert is. He is in custody so he is not going to be at liberty. He shouldn't be produced in the dock in a blue and yellow jumpsuit." He asked for the defendant to be presented in different clothing for sentencing and warned that any further attempts to escape would result in him being ordered to serve a longer sentence.

Green Light for Miscarriage of Justice Compensation Test Case *Jon Robins: Justice Gap*

The court of appeal has on Tuesday 10th march 2015, gave the green light for a critical test case by a man who spent 17 years in prison before having his conviction for attempted rape overturned on DNA evidence to continue his fight for compensation against Chris Grayling. Victor Nealon, whose case has featured numerous time on www.thejusticegap.com, was convicted of attempted rape in 1997 outside a nightclub in Redditch. The evidence used to secure his conviction was a disputed ID parade and a weakened alibi. His conviction was quashed in December 2013 after a DNA test pointed to another man as the perpetrator. The former postman has always said he was innocent and always called for a DNA test which he believed would clear his name; however that test was only undertaken on the third review by the Criminal Cases Review Commission. The watchdog looked at the Nealon case in 1998 and 2001 before the final review leading to the overturning of his conviction.

Not only was Victor Nealon refused permission to judicially review the decision of Chris Grayling to turn down his application for compensation; but, as reported on www.thejusticegap.com (here), the Ministry of Justice is now pursuing Nealon who was released with just £43 and a return ticket to Shrewsbury for £2,500 legal costs. The Court of Appeal has quashed that previous decision refusing a JR. Victor Nealon now has been given permission to judicially review the Ministry of Justice's refusal. The case of Victor Nealon and Sam Hallam will now be heard later in the year.

'This is clearly the right decision,' comments Mark Newby. 'No right thinking member of the public would consider that someone in Victor's position should not be compensated. This will be a critical test case against an outrageously illiberal piece of legislation which is not only devoid of compassion but turns legal principle on its head.' Victor Nealon's challenge is seen as a test case for the new, much restricted regime to compensate the victims of miscarriages introduced under this year's Anti-Social Behaviour, Crime and Policing Act 2014. That legislation further restricted eligibility for compensation to only those who can demonstrate their innocence 'beyond reasonable doubt'. You can read more about that here. Mark Newby continues: 'No one would suggest that everyone who has their conviction quashed should be entitled to compensation – and nor was that the position under the old law. These cases are not convictions being overturned on technicalities but there is newly discovered evidence which plainly points to innocence.' 'It is one thing to lose your freedom, family, friends, job and money; but it's quite another thing to be told in prison that, unless you confess to the crime, you'll never ever be released. I was told I had no prospect for release. I continued to maintain my innocence for 17 years.' Victor Nealon

Civil Legal Aid Cuts "Failed To Target Help Where Needed"

The Government achieved its aim of substantially reducing the civil legal aid budget but the Justice Committee concluded that it had failed to target legal aid to those who need it most and had not discouraged unnecessary litigation at public expense and could not show it was delivering better overall value for money for the taxpayer.

Justice Committee Report, published Thursday 12th March 2015: Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) was introduced as part of the Government's programme of spending cuts to achieve significant savings to the legal aid budget. In this Report we consider the impact of the reforms to civil legal aid, including the removal from scope of some areas of law and changes to the financial eligibility criteria.

The Ministry's four objectives for the reforms were to: - discourage unnecessary and adversarial litigation at public expense; - target legal aid to those who need it most; - make significant sav-

discretion when doing so: see Barankevich v Russia (2008) 47 EHRR 8 at [33]. In Olinger v Austria (2008) 46 EHRR 38, which similarly concerned two potentially competing meetings, the Court held at [48]: "the Court is not convinced by the Government's argument that allowing both meetings while taking preventive measures, such as ensuring police presence in order to keep the two assemblies apart, was not a viable alternative which would have preserved the applicant's right to freedom of assembly while at the same time offering a sufficient degree of protection as regards the rights of the cemetery's visitors."

The state therefore cannot simply take the route which requires the fewest resources. The fact that Scotland Yard has provided traffic management for such protests in the past, including for the particular groups in question, might be evidence that it is reasonable to expect them to do so again. Of course, the police in this instance were not intending to ban the demonstrations altogether. However, given that at least some of the groups in question made it quite clear that they could not afford to pay, the effect would have been the same as far as those groups were concerned. The Met clearly had in mind groups supported by regular donations or with a defined subscription-paying membership: no consideration appears to have been given to groups which may be less well-organised, or whose members lack the resources or inclination to pay these kinds of sums.

It is also important to remember that the rights at stake are not only those of the organisers, but of each and every person who wishes to join the demonstration. In fact, therefore, arguments about whether or not the group can afford to pay are somewhat beside the point. If the organisers decided not to do so for whatever reason, then each of those persons would be effectively prevented from taking part in the demonstration (unless they are able to and choose to pay themselves, but that obviously cannot be an answer to the problem).

"Manner and form" or the essence of the right? But, the Met might respond, no one is suggesting that these people would then be prevented from exercising their rights to protest. Each of those people could choose to do so in smaller numbers or in a different location, so that no roads needed to be closed. A similar argument was made by the Secretary of State in Tabernacle v Secretary of State for Defence [2009] EWCA Civ 23, which concerned a women's protest camp which had been happening on a monthly basis for 23 years, and which the Secretary of State wanted to move from its established location. Laws LJ identified, at [16], various Strasbourg cases which have recognised a distinction between the essence of a right and the manner and form of its exercise. However, at [37] he said: "But this "manner and form" may constitute the actual nature and quality of the protest; it may have acquired a symbolic force inseparable from the protesters' message; it may be the very witness of their beliefs… the camp has borne consistent, long-standing, and peaceful witness to the convictions of the women who have belonged to it. To them, and (it may fairly be assumed) to many who support them, and indeed to others who disapprove and oppose them, the "manner and form" is the protest itself." Of course, the demonstrations with which we are concerned are not long-standing or continuous. However, it could certainly be argued that the manner and form of a large-scale rally, attended by large numbers of people, constitutes the nature and quality of that protest. A small demonstration, attended by few enough people to fit on the pavement, would hardly have the same feel or impact.

Legitimate aim: On the face of it, therefore, it seems the state does have a duty to facilitate these protests. It would have to establish that its failure to do so in this case was necessary in order to fulfill one of the legitimate aims in Article 11(2) and was proportionate to that aim. The aim cannot be to protect the rights and freedoms of other road users, since those people

porary licence was underused. Offender management work was generally good and benefited from a stable and well¬established team. However, the quality and timeliness of some reports needed to be improved and elements of public protection work needed tightening. Children and families work was very good, although there were gaps in support for women who had been victimised or abused before their imprisonment. Most resettlement needs were identified on arrival, but there was no systematic pre¬release process to check that needs had been addressed, and despite some good efforts too many women were being released with nowhere to live. Most other areas of resettlement support were strong.

Low Newton is a hugely complex prison holding a challenging and very vulnerable population mix. It is notable that despite these complexities, the approach to providing a safe and decent environment is humane and caring, and good attention is also paid to the essential elements of providing a purposeful and rehabilitative regime where women are encouraged to progress and address elements of risk. We have identified some areas where they still need to improve, but managers and staff at the prison should be commended for the valuable work they do for the women held and the public as a whole. In some cases, the mix of professionalism and compassion I witnessed being delivered to some very troubled women was very moving. But however good the level of care offered, the question remains about why some of these obviously very ill and troubled women are in prison at all, rather than in a health setting which would be much more appropriate for their needs.

Nick Hardwick, HM Chief Inspector of Prisons, March 2015

The Right to Freedom of Peaceful Assembly *Hannah Noyce, Human Rights Blog*

The starting point is the right to freedom of peaceful assembly protected by Article 11 ECHR. Protesters will usually also be exercising their right to freedom of expression under Article 10, which in this context is treated by the European Court of Human Rights as an aspect of the Article 11 right. The right to freedom of peaceful assembly is a fundamental right in a democratic society and one of the foundations of such a society. It therefore should not be interpreted restrictively: Djavit An v Turkey (2005) 40 EHRR 45 at [56]. This does not mean, however, that everyone has the right to protest whenever, wherever and for however long they wish. The right may be subjected to limits which are prescribed by law, necessary in a democratic society to meet one of the legitimate aims set out in Article 11(2), and proportionate to that aim. The permissible aims are the protection of national security or public safety, the prevention of disorder or crime, the protection of health or morals, and the protection of the rights and freedoms of others. Article 11 imposes both negative and positive obligations on the state: see e.g. Djavit An at [57]. This means that the state is required not only to permit, but also to take positive steps to facilitate peaceful demonstrations. These positive obligations are not unlimited: the state will not usually be obliged, for example, to require private landowners to permit demonstrations on their property, so long as the protesters can exercise their right somewhere else: Appleby v UK (2003) 37 EHRR 38. But where positive steps are necessary to ensure that the right is practical and effective, the state will be required to take them.

Policing demonstrations: The Court has made clear on a number of occasions that states have a positive duty to provide adequate policing at demonstrations. For example, where a demonstration and counter-demonstration are planned to coincide, the state will not usually be permitted simply to ban one or the other. Rather, it must consider measures which will allow both demonstrations to take place without disturbance, although it has a wide margin of

ings in the cost of the scheme; and - deliver better overall value for money for the taxpayer.

Our overall conclusion was that, while it had made significant savings in the cost of the scheme, the Ministry had harmed access to justice for some litigants and had not achieved the other three out of four of its stated objectives for the reforms.

Since the reforms came into effect there has been an underspend in the civil legal aid budget because the Ministry has not ensured that many people who are eligible for legal aid are able to access it. A lack of public information about the extent and availability of legal aid post-reforms, including about the Civil Legal Advice telephone gateway for debt advice, contributed to this and we recommend the Ministry take prompt steps to redress this.

Parliament intended the exceptional cases funding scheme to act as a safety net, protecting access to justice for the most vulnerable. We are very concerned that it has not achieved that aim. We heard of a number of cases where, to our surprise, exceptional case funding was not granted. The Ministry was too slow to respond to the lower than expected number of such grants; we now expect it to react rapidly to ensure that the system fulfils the purpose Parliament intended for it.

Private family law was removed from the scope of legal aid, but those who can provide evidence of domestic violence are still eligible. We welcome the Ministry's efforts to ensure that victims of domestic violence are provided with the necessary evidence by healthcare professionals and its assurance that the types of evidence required are under continual review. However we are concerned by evidence we received that a large proportion of victims of domestic violence do not have any of the types of evidence required. We are also troubled by the potentially detrimental effects of the strict requirement that the evidence be from no more than 24 months prior to the date of application, which we consider should be a matter of discretion for the Legal Aid Agency in appropriate cases. We received evidence on the effects of the reforms on the legal aid market and providers of publicly-funded legal services. We were told by both the for-profit and not-for-profit sectors that the reforms have led to the cutting and significant downsizing of departments and centres dealing with such work, leading to concerns about the sustainability of legal aid practice in future. We are troubled by National Audit Office findings which indicate that there may already be 'advice deserts', geographical areas where these services are not available, and think that work to assess and rectify this must be carried out immediately.

There has been a substantial increase in litigants in person as a result of the Government's reforms, but the precise magnitude of the increase is unclear. More significant has been the shift in the nature of litigants in person, who are increasingly people with no choice other than to represent themselves and who may therefore have some difficulty in effectively presenting their cases. The result is that the courts are having to expend more resources to assist litigants in person and require more funding to cope, alongside increased direct assistance by the Ministry for litigants in person.

Also indicative of the lack of evidence on the effects the reforms would have has been the sharp reduction in the use of mediation, despite the Ministry's estimates that it would increase. We found that this was because the Ministry did not appreciate what makes people seek mediation, with the end of compulsory mediation assessment, the removal of solicitors from the process, and the lack of clear advice from the Ministry all contributing. Unlike in other areas, however, the Ministry did act swiftly to remedy the problems.

The Ministry's significant savings are potentially undermined by its inability to show that it has achieved value for money for the taxpayer. The Ministry's efforts to target legal aid at those who most need it have suffered from the weakness that they have often been aimed

at the point after a crisis has already developed, such as in housing repossession cases, rather than being preventive. There have therefore been a number of knock-on costs, with costs potentially merely being shifted from the legal aid budget to other public services, such as the courts or local authorities. This is another aspect of the reforms about which there is insufficient information; the Ministry must assess and quantify these knock-on costs if it is to be able to demonstrate it has met its objective of better value for the taxpayer.

It was clear to us that the urgency attached by the Government to the programme of savings militated against having a research-based and well-structured programme of change to the provision of civil legal aid. Many of the issues which we have identified and which have been identified to us could have been avoided by research and an evidence base to work from, as well as by the proper provision of public information about the reforms. It is therefore crucial that, in addition to the various remedial steps which we recommend in the short term, in the longer term the Ministry work to provide this information and undertake the requisite research so a review of the policy can be undertaken.

Unannounced Inspection of HMP & YOI Low Newton

HMP Low Newton is a women's local prison situated near Durham that serves courts in the north¬east of England, and also holds sentenced women. At the time of this inspection the prison was taking women from all over the north of England because of overcrowding elsewhere; as a result of this a third of the population was 100 miles or more away from home and family.

The prison's population was the most complex we have seen. It held women who were remanded in custody through to those with indeterminate sentences, and was one of only two women's prisons holding restricted status prisoners (the female equivalent of a high security A classification). There were 10 young women under 21, the youngest of whom was 19, and seven women over 60, the oldest of whom was 66. Levels of need in the population were extremely high, with more than three¬quarters of the population receiving treatment or therapy for their mental health. Over a third said they had a disability of some sort, and 83% were taking medication. Over 40% said they had problems with drugs and nearly a third said the same about alcohol. About a third of the population were receiving opiate substitution treatment at the time of the inspection. For around half it was their first time in prison, and 60% had children under the age of 18 years.

Some of the mental health treatment required was very complex and some prison officers were beginning to discuss informally whether it was appropriate for them to wear uniform given the predominantly caring role they performed. It was not an unreasonable view as in many ways the services provided were more appropriate to a hospital than a prison. But a prison can never be a hospital and we had particular concerns about a small number of women who had been remanded at the prison 'for their own protection'. These women had significant mental health problems and prison was not an appropriate 'place of safety' for them.

In response to the high level of complex demand in the population, mental health services had improved both in terms of capacity and breadth and were generally very good overall. The care provided in the Primrose Unit for women with personality disorders and the groundbreaking PIPE unit (a 'psychologically informed planned environment') was outstanding; both were key components of the national offender personality disorder pathway. Primary physical health care was also generally very good although there were long waiting lists for some services. Despite the good quality of health services provided, overall many women were negative about them. We did not think the evidence supported these criticisms and more needed to be done to manage

expectations and set appropriate boundaries about what could be provided.

A more coordinated approach to managing the many women with a multitude of complex needs was needed to ensure consistency and a more holistic approach. In common with other women's prisons, although the number of incidents of self-harm remained high, levels of self-harm had reduced and it was notable that six women accounted for 53% of such incidents in the months prior to our inspection. Levels of care for these women were generally good. There was a danger that because of the high number of very complex cases, women with 'ordinary' levels of need to be found in the prison (which by any objective measure was still very high) did not receive the attention they required. For example, we found two young adults who were being disciplined by being locked up alone in their cells for most of the day with very little to occupy them, despite being known to be at risk of suicide or self-harm.

As we have reported in other women's prison inspections, women had long waits in courts cells after they had been dealt with, before they were moved to the prison. This was exacerbated by the long distances women had to travel to the prison. Escorts continued to be shared with male prisoners and women often arrived late in the evening because the prison was the last drop off point for escorts; unlike male prisons, it did not have a specific cut off time for new arrivals. Nevertheless, reception was clean and welcoming and first night processes were good.

Most women told us they felt safe at the prison although 40% said they had felt unsafe at some time. However, there were few serious incidents and poor behaviour was well managed, often without recourse to formal disciplinary processes, which were in any case well managed. Security was proportionate to the population but while there was little concrete evidence of excessive drug availability, 41 % of women in our survey said it was easy to obtain illegal drugs, a claim that was repeated by women and staff throughout the inspection. Managers needed to interrogate these perceptions and also remain vigilant to the threats posed. Demand for substances misuse services was very high but care was generally good, although the lack of a dedicated dual diagnosis service was a gap.

Living conditions were generally good, as was the food provided, and most women could eat together and some could self-cater. Relationships were very strong and underpinned much of the good work done at the prison, and personal officers were knowledgeable about the women in their care and provided some excellent support. Work in equalities and diversity was individualised and most women from the protected characteristics reported positively, although those with a disability were less positive about some outcomes. Complaints were generally dealt with well, but better scrutiny by senior managers was required.

Time out of cell was good and the regimes were delivered consistently and reliably. However, the time available for outside exercise was limited and there were clashes in the regime which meant opportunities to go outside in the fresh air were somewhat limited. There were sufficient purposeful activities for all women to work or attend education and the 'women-centred' approach adopted to curriculum planning meant that focus was appropriately on enhancing personal and social skills, employability and enterprise skills. There were some particularly good and innovative enrichment activities offered that helped to develop confidence, self-esteem and expression. While achievement of qualifications was generally good, improvements were needed in the key area of English at levels I and 2. The library and gym provided good support, although access to recreational gym was limited. Work had recently begun to promote a positive body image.

The prison had a sound understanding of the resettlement needs of the many groups of women held, and some good services were provided, although we felt that release on tem-